

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 v. : **No. 349-2006; 551-2006; 552-2006**
 :
 DARNELL JOHNSON, : **CRIMINAL DIVISION**
 Defendant : **APPEAL**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

Darnell Johnson (Defendant) was found guilty on December 15, 2006, to charges that include Robbery, Criminal Conspiracy, Possession of a Weapon, and Person not to Possess Firearms. The Court sentenced the Defendant to an aggregate sentence of fifteen (15) to thirty (30) years in a State Correctional Institution. The Defendant filed a *nunc pro tunc* appeal to the Pennsylvania Superior Court, which was denied by memorandum opinion on May 27, 2009.

On October 15, 2009, the Defendant filed a *pro-se* Post Conviction Relief Act (PCRA) Petition. Edward J. Rymsza, Esquire was appointed to represent the Defendant on October 22, 2009. Defendant filed an Amended PCRA Petition on August 27, 2010. Further, on December 20, 2010, the Defendant filed a Supplemental Amended Petition for Post-Conviction Collateral Relief. On September 7, 2011, this Court in an Order and Opinion found that three (3) of Defendant’s issues lacked merit. An evidentiary hearing, however, was scheduled for the issues of whether trial counsel was ineffective for failing to file a pre-trial motion challenging the identification procedures utilized by the police and whether the circumstances of the photo array were unduly suggestive. After several continuances, a hearing was held on January 6, 2012. In an Order and Opinion dated March 7, 2012 the Court found that these issues lacked merit and notified the Defendant of its intention to dismiss Defendant’s PCRA Petition. After receiving no response to the proposed dismissal, the Court dismissed the PCRA Petition on March 30, 2012.

On April 20, 2012, the Defendant filed a Notice of Appeal appealing the Court order dated March 30, 2012. On April 25, 2012, the Court ordered the Defendant to file a concise statement of the matters complained of on appeal in accordance with Pa.R.A.P. 1925(b). The Defendant filed his Statement of Matters Complained of on Appeal on May 21, 2012. Defendant raises six (6) issues that include: 1) the trial court erred when it determined that trial counsel was not ineffective for failing to file a pre-trial motion challenging the identification procedures utilized by the police in the three cases; 2) the trial court erred when it determined that trial counsel was not ineffective for failing to object to the late disclosure of handwritten criminal histories of the Commonwealth witnesses prepared by the District Attorney's office, where such records were not only untimely, but were not authentic computerized criminal histories thereby denying Defendant of his right to effective cross-examination; 3) the trial court erred when it determined that trial counsel was not ineffective for failing to object to the highly prejudicial closing arguments of the prosecutor where he, among other things, made a deliberate appeal to the juror's concern for personal safety in the community and improperly suggested that the community demanded a particular verdict; 4) the cumulative effect of trial counsel's ineffective assistance warrants a new trial; 5) the trial court erred when it determined that appellate counsel was not ineffective for failing to raise these issues on direct appeal; and 6) the trial counsel erred when it summarily denied all but one of the issues raised in the PCRA petition without an evidentiary hearing.

For purposes of this Opinion, the Court will rely on Judge Butts' Opinions dated September 1, 2011 and March 7, 2012, which determined that the issues the Defendant has raised lack merit. Also, because three (3) issues raised in Defendant's Petition were not genuine issues concerning any material fact, the Court found that there was no need for further proceedings on those issues. Pa.R.C.P. 907.

If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal.

Id. Therefore, the Court did not have to have an evidentiary hearing for the issues the Court found lacked merit in Defendant's PCRA Petition. As none of the Defendant's contentions appear to have merit, it is respectfully suggested that the dismissal of the Defendant's PCRA be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

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