

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	
<b>v.</b>	:	<b>No. 140-2009</b>
	:	<b>CRIMINAL DIVISION</b>
<b>ALLEN SMITH,</b>	:	<b>APPEAL</b>
<b>a/k/a AQUIL THORNTON</b>	:	
<b>Defendant</b>	:	

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

Allen Smith (Defendant) pled guilty on January 10, 2010, to Possession of Controlled Substance, Contraband by Inmate Prohibited, Tampering or Fabricating Physical Evidence. The Court sentenced the Defendant to an aggregate sentence of three (3) to six (6) years in a state correctional institution. The sentence imposed was consistent with Defendant's plea agreement. On January 7, 2011, the Defendant filed a *pro-se* Post Conviction Relief Act (PCRA) Petition. Edward J. Rymysza, Esquire was appointed to represent the Defendant. On September 29, 2011, the Defendant filed an Amended PCRA Petition. The Amended PCRA Petition raised four (4) issues: 1) the guilty plea entered in this case was unlawfully induced where the plea was not knowing, voluntary and intelligent where the trial court failed to conduct a sufficient on the record colloquy; 2) trial counsel was ineffective for advising the Defendant to plead guilty to all three (3) counts of Inmate Contraband charges; 3) trial counsel was ineffective for failing to familiarize himself with the facts and law in the case and to make an informed recommendation regarding the plea bargaining/agreement; and 4) trial counsel was ineffective for failing to object to his sentencing on the application of an erroneous prior record score of five (5).

In an Opinion and Order dated December 13, 2011, the Court found that the only issue the Defendant raised that had merit was the issue of the prior record score. On April 25, 2012, the Court held a PCRA Hearing on the issue of whether the Court sentenced the Defendant based

of an erroneous prior record score of five (5). At the hearing the Defendant informed the Court, during an on the record colloquy, that he had decided to withdraw the issue. On the same day, the Court dismissed the Defendant's PCRA Petition and advised the Defendant of his appellate rights.

On May 21, 2012, the Defendant filed a Notice of Appeal appealing the Court order of April 25, 2012. On May 23, 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 June 6, 2012. Defendant raises four (4) issues that include: 1) the trial court erred when it determined that the guilty plea entered was not unlawfully induced by failing to conduct a sufficient on-the-record colloquy advising Mr. Smith of, among other things, his presumption of innocence, unanimous verdict requirement and the possibility of consecutive sentence with his other case; 2) the trial court erred when it determined that trial counsel was not ineffective for failing to advise Mr. Smith to plead guilty to all three counts of the contraband charges where if counsel had adequately investigated the issue, counsel could have challenged the number of charges where the possession of contraband constituted a single offense and/or merged; 3) the trial court erred when it determined that trial counsel was not ineffective for failing to familiarize himself with the facts and law in the case and to make an informed recommendation regarding plea bargaining/agreement thereby making Mr. Smith's plea not knowing, voluntary, and intelligently made; 4) the trial court 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 its Opinion and Order of December 13, 2011, which determined that the issues the Defendant has raised lack merit. Further, because the remaining 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 in 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

xc: DA  
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