

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 899-2005</b>
	:	<b>CRIMINAL DIVISION</b>
<b>LINDSEY WILLIAMS,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

Following the filing of current Post Conviction Relief Act (PCRA) Counsel's Petition to Withdraw, the Court conducted a review of the record and this Opinion follows. The Court incorporates into this Opinion its Opinion and Order of April 28, 2011, which addressed the majority of the Defendant's PCRA Petition.

***Background***

The Court's April 28, 2011, Opinion and Order was issued in response to then PCRA Counsel's, James Protasio, Esquire's letter finding no merit to the Defendant's PCRA Petition. The Court agreed with Attorney Protasio and notified the Defendant of its intention to dismiss the Petition unless the Defendant filed an objection within twenty (20) days. The Defendant thereafter filed an objection to the dismissal of his Petition and informed the Court that one of the issues raised in the Petition was misinterpreted by both the Court and Attorney Protasio. Rather than claiming that he should not have initially been charged as an adult, the Defendant indicated that he was actually alleging that his trial counsel was ineffective for failing to petition the court for decertification. As Attorney Protasio no longer serves as Conflicts Counsel, the Defendant's case was reassigned on October 27, 2011 to Donald F. Martino, Esquire, who was directed to file with the Court a response addressing the merits of the Defendant's objection.

Attorney Martino filed a Petition to Withdraw as Counsel on November 23, 2011 the merits of which this Opinion addresses.

***Discussion***

***Ineffective assistance of counsel for failing to request case transfer to juvenile court***

The Defendant claims that his trial counsel was ineffective for failing to request that his criminal case be transferred to juvenile court. As Attorney Martino correctly points out in his Turner-Finley letter, a copy of which was attached to his Petition to Withdraw, when an allegation of ineffective assistance of counsel is based on counsel's failure to petition for a transfer to juvenile court, "[t]he juvenile bears the burden of showing his or her need of and amenability to programs of rehabilitation, supervision and care provided by the juvenile system." Commonwealth v. Wallace, 433 A.2d 856 (Pa. 1981). In this case, following an investigation into the Defendant's history, Attorney Martino found that prior to being charged in adult court the Defendant was involved in several in and out patient programs through the juvenile probation office and other organizations within the community. The Defendant was on juvenile probation from the age of eleven (11) to fifteen (15) and was receiving community based programs and/or assistance at the time he committed the underlying offense in this case. Given the Defendant's history and past involvement with programs, Attorney Martino concluded that even if the Defendant had set forth in his PCRA Petition a specific basis for why transfer would have been successful, "there would be no evidence in the record or evidence capable of being presented to the trial court to establish that you [Defendant] would be amendable to further treatment in the juvenile system." Furthermore, despite Attorney Martino's request to do so, the Defendant failed to provide him with specific information concerning his allegation of ineffective assistance of

counsel. As the Superior Court stated in Commonwealth v. Pettus, 424 A.2d 1332 (Pa. 1981) in reference to a claim that counsel was ineffective for failing to request a criminal case transfer to juvenile court, “[t]rial counsel’s failure to gather and marshal said evidence on appellant’s behalf could constitute ineffectiveness only if such evidence existed.”

To make a claim for ineffective assistance of counsel, a defendant must show 1) an underlying claim of arguable merit; 2) no reasonable basis for counsel's act or omission; and 3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. Commonwealth v. Cooper, 941 A.2d 655, 664 (2007). (See Commonwealth v. Carpenter, 725 A.2d 154, 161 (1999)). As the Court has been presented with no evidence to support the Defendant’s “need of and amenability to programs of rehabilitation, supervision and care provided by the juvenile system,” the Court finds that the Defendant’s claim of ineffective assistance of counsel for failing to request a transfer to juvenile court lacks merit as it fails at least the first and third prongs needed to establish ineffective assistance of counsel.

**ORDER**

**AND NOW**, this \_\_\_\_ day of February, 2012, based on the above Opinion, the Petition to Withdraw is GRANTED and Donald F. Martino, Esquire, may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

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