IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
v.	:	No. 74-2009
FREDERICO DACENZO, JR., Defendant	:	CRIMINAL DIVISION APPEAL

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

On October 13, 2009, Frederico Dacenzo, Jr. (Defendant) pled guilty to one count of Sexual Abuse of Children,¹ a felony of the third degree, nine counts of Sexual Abuse of Children,² felonies of the second degree, and one count of Criminal Use of Communication Facility,³ a felony of the third degree. On January 15, 2010, the Defendant received an aggregate sentence of ten (10) to twenty (20) years in a State Correctional Institution with a consecutive twenty (20) years probation under the supervision of the Pennsylvania Board of Probation and Parole. No subsequent appeal was filed.

On August 13, 2012, the Defendant filed a PCRA Petition alleging that his trial counsel was ineffective because they failed to file a Motion to Suppress. Donald F. Martino, Esquire was appointed to represent the Defendant on his PCRA Petition. On October 3, 2012, Attorney Martino filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition was untimely. Subsequently, the Defendant filed a Motion to Dismiss, requesting that this Court deny Attorney Martino's Motion to Withdraw. On December 5, 2012, this Court proposed the dismissal of the PCRA Petition, as it found that it was untimely. On December 21, 2012, the Defendant filed a motion objecting to this Court's proposed dismissal. On December 26, 2012, prior to this Court dismissing the PCRA Petition, the Defendant filed a Notice of Appeal with

¹ 18 Pa.C.S. § 6312(d). ² 18 Pa.C.S. § 6312(d). ³ 18 Pa.C.S. § 7412.

the Superior Court of Pennsylvania. After assessing the Defendant's objections, this Court dismissed the PCRA Petition on January 8, 2013.

On January 8, 2013, this Court ordered the Defendant to file a concise statement of the matters complained of on appeal. On January 24, 2013, the Defendant filed another Notice of Appeal to the Superior Court of Pennsylvania. On January 28, 2013, the Court requested another concise statement, as the Defendant had filed two Notices of Appeal. On February 4, 2013, the Court received the Defendant's concise statement, which alleges three issues: 1) whether Attorney Martino's Motion to Withdraw as Counsel should have been granted; 2) whether the Defendant's Motion to Dismiss Attorney Martino's Motion to withdraw should have been granted; and 3) whether the Court should have been intending to dismiss the Defendant's PCRA Petition.

Based on the concise statement submitted to this Court, the Defendant's issue of whether the Court should have proposed the dismissal of his PCRA is not a final order and should be waived. Further, for purposes of this Opinion, the Court will rely on this Court's Opinion dated December 5, 2012, which determined that the Defendant's PCRA Petition was untimely.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA Frederico Dacenzo, Jr. #JK-1349 SCI Retreat 660 State Route 11 Hunlock Cree, PA 18621