

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-50-2003

vs. :

RICHARD W. ILLES, :
Defendant :

ORDER

AND NOW, this ____ day of January 2013, after review of Defendant's response to the Court's Order giving notice of its intent to dismiss Defendant's Post Conviction Relief Act (PCRA) petition without holding an evidentiary hearing, it is ORDERED and DIRECTED as follows:

The Court rescinds the portion of its Opinion which questions the timeliness of Defendant's petition. After reviewing Defendant's response and the documents attached thereto, it appears that Defendant filed his Second PCRA petition within 60 days of the date his claims of PCRA appellate counsel ineffectiveness could have been presented. Nevertheless, the Court still must dismiss his Second PCRA petition without holding an evidentiary hearing because Judge Brown previously found that Defendant's underlying claims of trial counsel ineffectiveness lacked merit. Defendant has not alleged anything in his response that would even arguably constitute an exception to the coordinate jurisdiction rule. He also has not put forth any argument to distinguish Commonwealth v. Reed, 601 Pa. 257, 971 A.2d 1216 (2009), which indicates that an appellate brief deficient in some aspect or another does not constitute a complete failure to function as a client's advocate so as to warrant a presumption of prejudice. Instead, Defendant must show actual prejudice to be

entitled to PCRA relief. Therefore, the Court DISMISSES Defendant's Second PCRA petition.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the Lycoming County courthouse, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirement set forth in Rule 904 of the Rules of Appellant Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

The Prothonotary shall mail a copy of this order to the defendant by certified mail, return receipt requested.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Richard W. Illes, FS-5769 (regular and certified mail)
10745 Rte 18, Albion PA 16475
Gary Weber, Esquire (Lycoming Reporter)
Work file
Suzanne Fedele, Prothonotary/Clerk of Courts