

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **No. 1279-CR-2008; 1990-CR-2008**
 : **CRIMINAL DIVISION**
JONATHAN KRESS, :
 Defendant : **APPEAL**

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

Jonathan Kress (Defendant) was charged under docket numbers 1279-2008 and 1990-2008 based on numerous sexual acts performed on a fourteen (14) year old male. On December 4, 2008, the Defendant pled guilty under 1279-2008 to Involuntary Deviate Sexual Intercourse, a felony of the first degree;¹ and under 1990-2008 to Sexual Abuse of Children, a felony of the third degree.² On April 24, 2009, the Defendant was sentenced to ten (10) to twenty (20) years in a State Correctional Institution followed by seven (7) years of supervision by the Pennsylvania Department of Probation and Parole. The Defendant was determined to be a Sexually Violent Predator and was advised that he was a lifetime registrant under the Megan's Law Statute.

On May 8, 2009, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. The Defendant alleged that the Court erred in finding there was clear and convincing evidence that he was a Sexually Violent Predator. The Defendant's appeal was denied on March 16, 2010. Subsequently, the Defendant filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, which was denied on October 24, 2011.

¹ 18 Pa.C.S. § 3123(A)(6).

² 18 Pa.C.S. § 6312(d)(1).

On December 6, 2012, the Defendant filed a *pro se* Post Conviction Relief Act (PCRA) Petition. The Defendant alleged six (7) issues: 1) trial counsel provided ineffective assistance by coercing the guilty plea; 2) trial counsel was ineffective by altering the terms of the plea agreement; 3) Defendant did not give an appropriate recitation of the facts to support a guilty plea; 4) police violated the Fourth Amendment by entering his residence without a search warrant; 5) Defendant was denied an attorney prior to police executing the search warrant on his residence; 6) police coerced the Defendant into confessing to the crimes charges and that he was denied an attorney during the interrogation; 7) trial counsel did not advise him of the Mistake of Age defense. On December 13, 2012, Donald Martino, Esquire was appointed to represent the Defendant for the PCRA Petition. On February 11, 2013, Attorney Martino filed a Petition to Withdraw as Counsel and a Memorandum Pursuant to Turner/Finley.

On April 16, 2013, this Court proposed the dismissal of the Defendant's PCRA Petition in an Opinion and Order. Following a thirty (30) day extension to file objections to the proposed dismissal, this Court dismissed the Defendant's PCRA Petition on June 17, 2013. On July 9, 2013, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. On August 20, 2013, due to improper docket sheets the Superior Court ordered this Court to appoint counsel as this was the Defendant's first PCRA Petition. On August 29, 2013, this Court issued an Order clarifying that the docket did not accurately represent that Attorney Martino had already represented the Defendant on this PCRA Petition. This Court, however, still complied with the Superior Court's Order and assigned Julian Allatt, Esq. to represent the Defendant on September 18, 2013. On September 20, 2013, the Superior Court vacated its August 20, 2013 Order.

For purposes of this Opinion, the Court will rely on its Opinion and Order dated April 16, 2013, which found that the Defendant's PCRA Petition lacked merit.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Jonathan Kress #JA-5435
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