

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 1135-1994; 1066-1994
	:	
EDWARD NICHOLAS,	:	CRIMINAL DIVISION
Defendant	:	APPEAL

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

On December 17, 2012, Edward Nicholas (Defendant) filed his third *pro se* Post-Conviction Relief Act (PCRA) Petition. The Defendant alleged that his guilty plea was not voluntary because he was not sentenced according to his plea agreement, which he also raised in his second *pro se* PCRA Petition. As this was the Defendant's third PCRA Petition he was not entitled to court appointed counsel unless the Court found that an evidentiary hearing was required. Pa.R.Crim.P. 904(D). On January 17, 2013, this Court issued an Opinion and Order proposing the dismissal of the Defendant's PCRA Petition because it was untimely and the issues had been waived. On February 1, 2013, the Defendant filed a response. After reviewing the Defendant's filing, the Court dismissed the Defendant's third PCRA Petition.

On March 5, 2013, the Defendant filed a Notice of Intention to Appeal. On March 7, 2013, the Defendant filed a Notice of Intention to Appeal to Superior Court of Pennsylvania.¹ On March 8, 2013, this Court requested that the Defendant file a concise statement of the matters complained of on appeal within thirty (30) days in accordance with Pa.R.A.P. 1925(b). On April 3, 2013, the Defendant raised five (5) issues in his statement of matters complained on appeal: 1) whether the Defendant's PCRA Petition is timely; 2) whether the conduct of the Defendant's

¹ On April 5, 2013, the Superior Court of Pennsylvania consolidated the two notice of appeals.

attorneys violated his substantive and procedural Due Process rights pursuant to the Fifth and Fourteenth Amendment; 3) whether the plea agreement violates the Pennsylvania Rules of Criminal Procedure and Pennsylvania Rules of Court; 4) whether the transcripts reflect that the Court accepted the Commonwealth's plea bargain; and 5) whether conflict counsel was ineffective for conducting a hearing without the Defendant and not notifying him of it.

For purposes of this Opinion, the Court will rely on its Opinion and Order dated January 17, 2013, which found that the Defendant's PCRA Petition was untimely and that the issues were also waived as they could have been raised in his first PCRA Petition.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
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