

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No's. CR-196-2011; CR-630-2011  
 :  
 vs. :  
 :  
 BILAL SABUR, :  
 Defendant :

**OPINION AND ORDER**

Following a jury trial, the Defendant was found guilty of numerous charges. On May 7, 2012, he was sentenced to an aggregate term of 18 to 38 years of incarceration in a State Correctional institution. Following the filing and disposition of Post-Sentence Motions, Defendant filed an appeal on November 1, 2012.

By Order dated December 11, 2012, the Superior Court directed this Court to conduct an on-the-record inquiry of the appellant to determine if his expressed waiver of counsel is knowing, intelligent and voluntary pursuant to Commonwealth v. Grazier, 713 A.2d 81 (Pa. 1988). If so, this Court was directed to allow appellant's counsel to withdraw and permit the appellant to proceed pro se. If not, this Court was directed to direct present counsel to continue or appoint new counsel.

Pursuant to the Superior Court Order, a hearing was held on January 7, 2013. Defendant participated via video conferencing. Defendant's counsel was present, as was a representative of the District Attorney's office.

Defendant testified that although he requested his attorney to file a Petition to Withdraw and to allow him to proceed pro se, he no longer desired to proceed pro se. Instead, he desired the appointment of new counsel.

Defendant was extremely dissatisfied with his counsel's failure to respond to his requests which included requests for documents, requests to meet, requests to discuss matters over the telephone and requests for input into what issues to raise on appeal. He testified that his counsel last had personal contact with him for only 15 minutes in May of 2012 during the argument on his Post-Sentence Motions. He related that two times previously he had requested to proceed pro se without success and that at this stage of the proceedings he absolutely had no faith whatsoever in the abilities of his counsel to effectively represent him. He claimed that he was innocent of the charges to which he was convicted and raised numerous substantive deficiencies to the evidence that was presented and used to convict him. He was extremely frustrated over the fact that other than the Court, no one including his attorney, responded to his requests and that it was not until he received a letter from the Court dated November 13, 2012 that he was provided with a copy of the Post-Sentence Motion, the Court's Opinion and Order regarding such, and his attorney's Concise Statement of Matters Complained of on Appeal.

Defendant's counsel testified as well. She denied having no contact with him and specifically referenced letters that she wrote in response to his letters. Counsel did admit, however, that her office erred in failing to provide Defendant with a copy of her Concise Statement of Matters Complained of on Appeal. While Defendant claimed that defense counsel lacked either the initiative or competency to effectively represent him, defense counsel denied such.

Defense counsel conceded that the relationship between her and the

Defendant was significantly strained, that she did not keep Defendant as “fully abreast” of developments as she should have, and that it was clear to her that he lacked trust in her continued representation.

“While an indigent [defendant] is entitled to free counsel, he is not entitled to free counsel of his own choosing.” Commonwealth v. Chumley, 482 Pa. 626, 394 A.2d 497, 507 n.3 (Pa. 1978). When counsel has been assigned, a request for new counsel shall not be granted except for substantial reasons. Pa. R. Cr. P. 122 (C). “To satisfy this standard, a defendant must demonstrate that he has an irreconcilable difference with counsel that precludes counsel from representing him.” Commonwealth v. Spotts, 562 Pa. 498, 756 A.2d 1139, 1150 (Pa. 2000).

The basis of an effective attorney/client relationship is trust. It is clear based on the testimony that said trust no longer exists in the present attorney/client relationship. This Court finds that the Defendant has demonstrated he has an irreconcilable difference with his counsel that precludes his counsel from effectively representing him. Regardless of any objective assessment of counsel’s representation of Defendant, the relationship has deteriorated to a point where it is appropriate to appoint new counsel.

### **ORDER**

**AND NOW**, this 14<sup>th</sup> day of January 2013, following a hearing and pursuant to the December 11, 2012 Order of the Superior Court, **Julian Allatt, Esquire** is appointed to represent the Defendant in connection with Defendant’s present appeal to the Superior Court and any subsequent Petition for Allowance of Appeal to the Pennsylvania Supreme Court if necessary and appropriate.

Mr. Allatt shall file an appropriate Entry of Appearance under Docket No.  
1955 MDA 2012 in the Superior Court of Pennsylvania.

By The Court,

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Marc F. Lovecchio, Judge

cc: DA; CA  
Nicole Spring, Esquire (APD)  
Julian Allatt, Esquire  
Bilal Sabur  
    Inmate # KN-5413  
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Mary A. Graybill, Esquire  
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    (RE: Commonwealth v. Sabur; No. 1955 MDA 2012)  
Gary Weber, Lycoming Reporter  
Work File