

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1314 - 2003
 :
 vs. :
 :
 DAYLE LEALAND WHEELLOCK, :
 Defendant :

OPINION IN SUPPORT OF ORDER OF MARCH 25, 2013,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this court’s order of March 25, 2013, in which his Petition for Post Conviction Relief was dismissed. In his Statement of Matters Complained of on Appeal, Defendant raises three issues.¹ These will be addressed seriatim.

First, Defendant alleges the search warrant which led to his arrest was invalid as having been based on an invalid Affidavit of Probable Cause. This issue was previously raised on appeal, however, and therefore cannot be considered in the context of a PCRA petition.

Second, Defendant contends this court had no jurisdiction to “try the case”. It is unclear to what Defendant is referring and, in any event, he has not to this point raised any challenge to this court’s jurisdiction. Thus, the issue is considered waived.

Finally, Defendant contends the trial court erred in refusing to allow the testimony of Gretta Evans at the first trial to be read into evidence at the second

¹ Although the Statement contains six numbered paragraphs, the first two paragraphs assert the same error, the fifth paragraph purports to reserve the right to supplement the Statement, and the sixth paragraph alleges ineffectiveness of PCRA counsel (who was granted permission to withdraw following the PCRA proceedings) for filing a no-merit letter.

trial.² This issue is without merit. It was never requested at the second trial that such testimony be read into evidence, and thus the court will interpret this allegation of error in the context of a PCRA, as an allegation that trial counsel was ineffective for failing to seek to introduce such testimony. Gretta Evans provided the information to police which led to issuance of the search warrant. Defendant contends here that Ms. Evans recanted her statement to police at the first trial. The court fails to see how such testimony (even if it did constitute a recantation) would have made a difference in the outcome of the trial as the decision was based on the testimony of the trooper who executed the search warrant, and the description she gave of the items found in Defendant's residence, as well as the exhibits introduced into evidence (the items found and photographs of the residence before the items were removed), and even if Ms. Evans changed her story about what she had seen, it would not have affected this court's determination of the trooper's credibility.³ Therefore, as the issue has no merit, trial counsel was not ineffective for having failed to raise it.

Dated: April 24, 2013

Respectfully submitted,

Dudley N. Anderson, Judge

cc: District Attorney
Dayle Wheelock, GD6221, P.O. Box 256, Waymart, PA 18472-0256
Gary Weber, Esquire
Hon. Dudley N. Anderson

² At some point after the first trial was underway, Defendant entered a guilty plea. That plea was later withdrawn and a second trial was conducted.

³ In any event, the court reviewed Ms. Evans' testimony in the first trial and fails to see how it would have been at all helpful to Defendant, as she testified that when she went into Defendant's apartment she saw a lot of pictures of "very young children in odd situations" in the living room and "naked, totally nude pictures" of "little boys" in the bedroom. N.T., April 22, 2004, at pp. 9-11.