

COMMONWEALTH OF PA,

vs.

DELORES BRYANT,  
Defendant

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

:

: NO. 300-2010

:

:

:

***Date: March 21, 2014***

**OPINION and ORDER**

And now this 21st day of March, 2014 this opinion and order is entered in regards to the Petition for Post-Conviction Collateral Relief (PCRA) filed by Defendant on November 20<sup>th</sup>, 2013 and subsequently amended on December 9<sup>th</sup>, 2013. Following a bench trial on April 25, 2011 and April 26<sup>th</sup>, 2011 Defendant was found guilty of the following counts and crimes: Count 2, Possession with Intent to Deliver; Count 3, Possession with Intent to Deliver; Count 4, Possession of a Controlled Substance, cocaine; Count 5, Possession of a Controlled Substance, marijuana; and Count 6, Possession of Drug Paraphernalia.

**I. FACTS AND PROCEDURAL HISTORY**

On Tuesday, April 26, 2011 during a nonjury trial of *Commonwealth v. Bryant* the following facts were determined to have occurred.

On the afternoon of October 21, 2009, Tyson Havens, Pennsylvania State Trooper, observed a white Nissan Maxima in the area of the Pennvale Housing Development in Williamsport, Lycoming County, Pennsylvania. Prior to October 21, 2009, Trooper Havens had spoken with Christy Limbach, manager of the Pennvale Housing Development, regarding a suspicious white Nissan Maxima which she had observed frequenting the housing development.

On the day in question, the driver of the Nissan parked and exited the vehicle. Trooper Havens proceeded to drive past the driver and greet him. A conversation ensued which at some point Trooper Havens became aware of the fact that the driver did not have a driver's license. At that point Trooper Havens initiated a traffic stop. The individual identified himself as Izone Jackson and indicated that he was going to visit his girlfriend Delores Bryant at her place of residence, 1814 Hazel Drive. Mr. Jackson further indicated that his girlfriend was not home and that he did not have a key to her residence but a friend of his, Raymond Jones, was inside the residence. Trooper Havens gave Mr. Jackson a verbal warning and indicated that Mr. Jackson was free to leave.

Mr. Jackson proceeded to walk away heading in the direction of Ms. Bryant's residence. He then veered south away from the residence. Trooper Havens called out to Mr. Jackson "Hey, weren't you going to 1814? You passed it." Mr. Jackson indicated that he was not going to 1814 that he was going to pick up his son from daycare. Mr. Jackson then walked around the back of the building and out of sight.

Trooper Havens proceeded to 1814 Hazel Drive and knocked on the door. The door was opened approximately six inches and then slammed closed. Trooper Havens stayed at the door announcing himself and asking for someone to come outside or indicate that they were alright for approximately ten minutes. After his attempts proved unsuccessful, Trooper Havens contacted Ms. Limbach. Ms. Limbach arrived and at that time requested Trooper Havens make entry to the residence due to the fact that she was concerned that someone inside was injured or that there was a burglary in progress.

Trooper Havens and Trooper Rankey made entry into the residence. Upon entry, Trooper Havens encountered an individual by the name of Raymond Howard in the kitchen. Mr. Howard was placed under arrest after indicating erroneously that he was in Terra Smith's house. After the downstairs portion of the residence was cleared the officers proceeded upstairs. Trooper Havens entered the master bedroom and observed in plain view a pair of black Timberland boots. Inside one of the boots was a plastic bag. The bag contained nineteen (19) smaller ziplock bags which contained crack cocaine. A second bag, also in the boot, contained four smaller ziplock bags that contained crack cocaine. By the window in the master bedroom Trooper Havens observed a stack of approximately fifteen (15) shoe boxes the top shoebox was open and contained money. It was later determined that it contained one hundred thirty dollars (\$130). The shoebox directly below the top shoebox had holes in the side of the box. Through the holes a stack of money was evident. It was later determined that it was the sum of seven hundred dollars (\$700). The officers continued to clear the residence to make sure that there was no one else present. After the residence was secured Trooper Havens left and proceeded to apply for a search warrant.

After the search warrant was obtained the following evidence was recovered from Defendant's residence:

Kitchen:

- In the kitchen drawer there was a plastic bag with marijuana dime bags and a grocery bag containing marijuana dime bags.
- In the kitchen cabinet there was a paper bag that contained a plastic bag containing marijuana and between 1,000 -2,000 little plastic ziplock bags commonly used for distributing crack cocaine and marijuana.
- In a trash box there were four clear yellow bags containing crack cocaine.

Living Room:

- One hundred and thirty-one dollars (\$131) in a pair of white Adidas sneakers
- A silver Page Plus cell phone
- A blue Virgin Mobile cell phone

Dining Room:

- On the dining room table was a wallet that contained identification for Izone Jackson.

Master Bedroom:

- Large Tupperware tote containing men's clothing and an Astra A-100 9mm handgun
- Black wallet containing two forms of identification for Delores Bryant.

Additionally, the master bedroom showed signs of use. It contained a dresser; ironing board; and a photo of Delores Bryant and Mr. Jackson. Delores Bryant and her minor child, who was approximately five or six years of age at the time, were the only individuals listed on the lease. During an interview with Trooper Havens Ms. Bryant stated that the items found in the residence belonged to her boyfriend, Earnest Jackson.

At the close of the trial the Trial Court found Defendant guilty of Count 2, Possession with Intent to Deliver; Count 3, Possession with Intent to Deliver; Count 4, Possession of a Controlled Substance, cocaine; Count 5, Possession of a Controlled Substance, marijuana; and Count 6, Possession of Drug Paraphernalia.

On May 8<sup>th</sup>, 2012, Defendant was sentenced to serve an aggregate period of state incarceration the minimum of which shall be four years and the maximum of which shall be eight years.

Counsel for the Defendant filed a Post Sentence Motion filed on May 25th, 2012 which was denied by this Court on August 2, 2012. Counsel for the Defendant filed a Notice of Appeal

to the Superior Court of Pennsylvania on August 9<sup>th</sup>, 2012. Counsel then filed a Statement of Matters Complained of on Appeal August 20<sup>th</sup>, 2012. On September 13<sup>th</sup>, 2013 the Superior Court of Pennsylvania entered an Order finding the Notice of Appeal filed by counsel for the Defendant was not filed within 30 days of the sentencing held May 8<sup>th</sup>, 2012 as well as finding the Post Sentence Motion filed May 25, 2012 was not filed within the requisite ten day period from sentencing and thus the Superior Court held the Notice of Appeal was untimely and quashed the Defendant's appeal.

On March 13, 2013, this Court entered the following Order:

“AND NOW, this 13<sup>th</sup> day of March, 2013 after stipulation, it is hereby Ordered and Directed that because of trial counsel's failure to timely file Notice of Appeal, and appellant counsel will raise sufficiency of the evidence on direct appeal, the appellant's appeal rights are hereby reinstated. Appellant counsel had thirty days from today's date to file Notice of Appeal.”

The March 13, 2013 Order was entered without Defendant having filed a PCRA petition alleging ineffective assistance of her prior counsel. Counsel for the Defendant file a Notice of Appeal to the Superior Court on March 15<sup>th</sup>, 2013 and a Statement of Matters Complained of on Appeal on March 28<sup>th</sup>, 2013. The Superior Court ordered Defendant's counsel to file a Brief in Support of Appeal no later than July 1, 2013. On July 2<sup>nd</sup>, 2013 Defendant's counsel filed the Brief in Support. On October 28<sup>th</sup>, 2013 the Superior Court entered a Memorandum Opinion and Order dismissing Ms. Bryant's second appeal filed March 15<sup>th</sup>, 2013 because this Court lacked jurisdiction to enter its Order of March 13, 2013 reinstating direct appeal rights. Ms. Bryant filed a pro se PCRA petition on November 20, 2013. Counsel for Ms. Bryant filed an Amended PCRA Petition on December 9<sup>th</sup>, 2013. A conference on the Petition was held February 3<sup>rd</sup>, 2014.

## **II. DISCUSSION**

### *1. The Defendant alleges ineffective assistance of counsel.*

Defendant's first assertion is ineffectiveness of counsel. Defendant specifically raises issues on counsel's timeliness of filing various appeals. Defendant bears the burden of proving ineffectiveness of counsel. *Commonwealth v. Cooper*, 596 Pa. 119, 134 (Pa. 2007). To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that the underlying claim is of arguable merit, that counsel's actions had no reasonable basis designed to effectuate appellant's interests and that counsel's actions prejudiced the Defendant's case. *Commonwealth v. Correa*, 664 A.2d 607, 625(1995). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. *Commonwealth v. Sneed*, 899 A.2d 1067, 1076 (Pa. 2006). In this case the Defendant has met her burden. Defendant specifies that she requested a Post Sentence Motion to be filed by her Attorney. Defendant's counsel did file the Motion but was not timely. Additionally, Defendant's counsel failed to timely file Notice of Appeal. Defendant has demonstrated that her case was prejudiced by the actions of counsel and that counsel acted unreasonably. Defendant's claim of ineffectiveness of counsel is meritorious. As of this Court's Order of March 13<sup>th</sup>, 2013 the District Attorney in this matter was in agreement that the Defendant's rights to appeal be reinstated.

### *2. The Defendant alleges the untimeliness of the PCRA Petition was due governmental interference and therefor the exception to the Time for Filing a Petition applies.*

Pursuant to 42 Pa. C. S. A. § 9545 the Defendant was obligated to file her PCRA within one year to the date after filing unless an exception can be met. The statute reads as follows:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

42 Pa.C.S. § 9545

This Court finds that its own Order of March 13, 2013 stipulated to by the District Attorney was an error which amounted to governmental interference. In a similar case, a PCRA Court erroneously informed the Defendant that their counsel had withdrawn. *Commonwealth of Pennsylvania v. Tramayne Blackwell*, 936 A.2d 497, 502 (Pa. Super. 2007). The Defendant relied on the Court's information. *Id.* The erroneous information by the PCRA Court was held to be governmental interference. *Id.* This Court clearly erred when it ordered that the Defendant's

appellate rights were reinstated. But for the Court's Order, Ms. Bryant would not have relied that her appellate rights were reinstated and would have timely filed a PCRA petition.

At the time of the Court's Order of March 13, 2013 the period for Ms. Bryant to timely file her PCRA petition had not yet expired.

**ORDER**

AND NOW, this 21<sup>st</sup> March, 2014, it is ORDERED and DIRECTED that Defendant's rights to file a Petition for Allowance of Appeal with the Superior Court of Pennsylvania is reinstated, nunc pro tunc.

It is further ORDERED and DIRECTED that the Defendant file her Notice of Appeal no later than thirty days (30) from the date of this Order.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Donald Martino, Esquire  
DA  
Judges  
Gary L. Weber, Esquire (Lycoming Reporter)  
Jerri Rook, Executive Secretary to Judge McCoy



