

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1431-2019
v.	:	
	:	
BRADLEY RINKER	:	MOTION TO DISMISS
Defendant	:	

ORDER

On January 21, 2021 this Court was scheduled to hear Defendant’s Habeas Corpus motion that challenged the Commonwealth’s evidence presented at the preliminary hearing. Newly hired defense counsel, who entered the case after the preliminary hearing, now alleges that the original defense attorney should not have waived the preliminary hearing. The Commonwealth has filed a Motion to Dismiss Defendant’s Habeas Corpus motion.

Counsel agree that a preliminary hearing began with original defense counsel present. However after the Commonwealth began presenting their evidence, original counsel for Defendant indicated to the MDJ and the Commonwealth that they believed that sufficient evidence was presented at the hearing and then waived the remainder of the hearing. No transcript or record of the preliminary hearing testimony was made.

Under Pennsylvania Rule of Criminal Procedure 541(a)(1), a defendant is precluded from challenging the sufficiency of the Commonwealth’s evidence unless the parties have agreed at the time the hearing is waived that the defendant may do so in the future. Here, original defense counsel waived the hearing after the testimony of a witness was presented. As a result, a hearing, albeit brief, was held. However, no transcript of the hearing was generated for the court to review. The remainder of the hearing was waived without agreement to allow a

Habeas motion to be filed by Defendant in this case. Based upon these facts, the Commonwealth's motion shall be granted.

And now, this 7th day of May, 2021 the Commonwealth's Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus is hereby GRANTED. Defendant's motion for Writ of Habeas Corpus is DISMISSED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MS)
Peter T. Campana, Esquire
Law Clerk (JMH)

NLB/n