

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

: NO. CR-238-2020

vs.

: CRIMINAL DIVISION

MARK ALLEN BIRD,
Defendant

FILED
LYCOMING COUNTY
FEB 29 AM 10:45
CLERK OF COURTS

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

Mark Bird, Appellant, files this appeal following the denial of his Post-Conviction Relief Act (PCRA) petition by this Court on December 19th, 2023. Following a jury trial on January, 28th, 2023, Appellant was found guilty of Delivery of a Controlled Substance – Methamphetamine, and Criminal Use of a Communication Facility. He was sentenced on March 31st, 2022.

After sentencing Defense counsel filed an appeal on behalf of the Appellant. Shortly after the Appellant also filed a petition for Post-Conviction Relief. The Court on June 14th, 2022 dismissed the petition for Post-Conviction Relief as being untimely. On July 14th, 2022 the Superior Court remanded the case for a *Grazier* hearing. Ultimately, the Superior Court discontinued the appeal on August 8th, 2022, upon application by the Appellant.

On September 22nd, 2022 the present Post-Conviction Relief petition was filed. On October 27th, 2022 Donald Martino was appointed as counsel and an amended PCRA petition was filed on behalf of Appellant on December 20th, 2022. The basis of relief that Appellant relied on in his amended petition was ineffective assistance of trial counsel.

On January 12th, 2023 the Court granted the Appellant's request for an evidentiary hearing and that hearing was held on October 12th, 2023. On December 19th, 2023 this Court

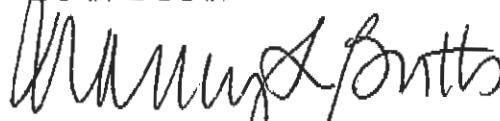
denied Appellant's PCRA request by opinion and order and Appellant subsequently filed a Notice of Appeal on December 20th, 2023.

On January 3rd, 2024, Appellant filed its Statement of Matters Complained of on Appeal and alleges the following:

1. The trial court erred by failing to find trial counsel provided ineffective assistance by failing to cross examine law enforcement to reveal to the jury that Harry Delong, who arrived at the residence where the drug sale took place between the time the transaction was arranged and when the transaction occurred and was present in the home when the transaction occurred, was a known seller of the same substance purchased and was convicted of selling that substance prior to trial even though it was established that the confidential informant met with Appellant Mark Bird prior to going into the residence, but that the transaction itself only occurred after the confidential informant entered the residence where Harry Delong waited.
2. The trial court erred by failing to find trial counsel provided ineffective assistance by failing to fully investigate the credibility of the confidential informant and present evidence to the jury which would have altered their verdict.

These issues were thoroughly addressed in the Court's Opinion and Order dated December 19th, 2023. As such, this Court relies on that opinion for the purposes of this appeal.

BY THE COURT



Nancy L. Butts, President Judge

NLB/kbc

cc: Superior Court (Original + 1)
DA
Donald Martino, Esq
Gary Weber, Esq