

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

**COMMONWEALTH OF PENNSYLVANIA** : **NO. CR-1890-2018**  
: **CRIMINAL DIVISION**  
**vs.** :  
: **1925(a)**  
**LINDA STROUSE,**  
**Defendant**

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

The Commonwealth, files this appeal following this Court granting Defendant’s PCRA petition by opinion and order on January 29<sup>th</sup>, 2024. On June 7<sup>th</sup>, 2021, Defendant plead to twenty-five (25) counts of various theft and forgery charges related to monies stolen from the victim, Rose Strouse. She was sentenced by this Court on September 2<sup>nd</sup>, 2021.

After sentencing, Defense counsel filed Post Sentence Motions on September 13<sup>th</sup>, 2021. This Court denied those Motions by opinion and order on January 12<sup>th</sup>, 2022. No direct appeal was filed. On March 22<sup>nd</sup>, 2022 Defendant filed a PCRA petition to reinstate her appeal rights. Upon agreement of the parties those rights were reinstated.

Her appeal was ultimately denied by the Superior Court of Pennsylvania on March 3<sup>rd</sup> 2023. Following that denial Defendant filed a second timely PCRA petition. Argument was held on October 20<sup>th</sup>, 2023 and November 6<sup>th</sup>, 2023. This Court, by opinion and order, granted her PCRA petition on January 29<sup>th</sup>, 2024 and scheduled a hearing for the Defendant to withdraw her plea.

After Defendant’s PCRA petition was granted the Commonwealth filed a timely appeal on February 2<sup>nd</sup>, 2024.

On February 13<sup>th</sup>, 2024, Appellant filed their Statement of Matters Complained of on appeal and alleges the following:

1. The trial court erred as a matter of law in granting relief in spite of Defendant's failure to present sufficient evidence to meet her burden of proof.
2. The trial court's decision was against the weight of the evidence.
3. The trial court erred as a matter of law in allowing Defendant to withdraw her guilty plea as to all counts when the court only found plea counsel ineffective with respect to his legal advice for two counts. The proper remedy would be for Defendant to be resentenced under the sentencing guidelines for those two counts only.
4. The trial court erred as a matter of law by shifting the burden of proof to the Commonwealth, resolving a purported factual ambiguity in favor of the Defendant despite the fact that the burden was on the Defendant.
5. The trial court erred as a matter of law by granting relief to Defendant based in part on the alleged lack of notice by the Commonwealth, an allegation, which, even if true, would not entitle Defendant to any PCRA relief but would need to be raised on direct appeal as a challenge to the sentence, which Defendant did not do.
6. The trial court erred as a matter of law in granting relief based on plea counsel's purported failure to appreciate the applicability of a mandatory minimum sentencing provision, because the imposition of the twelve ( 12) month mandatory sentence under 42 Pa.C.S. § 9717(a) is discretionary, meaning that the court could have imposed a probationary sentence for those two counts.
7. The trial court erred by granting relief without making a legal determination that Defendant suffered prejudice according to the definitions set forth in *Strickland v. Washington*.

This Court will rely on its opinion and order from January 29th, 2024 for issues one, two, four, five and seven.

As for issue three raised by the Commonwealth, this Court relied on the mandatory time when it formed its sentence. Therefore, this Court found it appropriate to allow the Defendant to withdraw her plea to all counts as the mandatory time was a factor in the sentence imposed.

As for issue six, “The only requirement is that the defendant receive reasonable notice of the Commonwealth's intention to invoke Section 9717 after conviction and before sentencing.” *Commonwealth v. Rizzo*, 523 A.2d 809 (Pa. Super. 1987). Although the statute reads, “but the imposition of the minimum sentence shall be discretionary with the court where the court finds justifiable cause and that finding is written in the opinion.”, notice that it will be invoked is still required. It was and is this Court’s opinion that the Defendant had no notice prior to sentencing of the mandatory minimum.

BY THE COURT

Nancy L. Butts, President Judge

NLB/kbc

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