

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 98-11,971
:
:
vs. : CRIMINAL DIVISION
:
RONALD LEE McKISSICK, : Motion to File
Defendant : Summary Appeal

ORDER

AND NOW, this ____ day of May 1999, the Court GRANTS the defendant's Motion to File Summary Appeal Nunc pro Tunc.

The Court finds that a summary appeal of the defendant's conviction for Driving Under Suspension, DUI Related, was not timely filed because the defendant received ineffective assistance of counsel. Counsel for the defendant filed an summary appeal in an untimely fashion and this Court quashed the appeal by Order of March 30,1999, when the defendant appeared for a trial on the summary appeal. At that time, the Court advised counsel for the defendant that a Motion to File an Appeal Nunc Pro Tunc could be filed. The defendant filed such a motion on April 6, 1999.

The Court believes the Pennsylvania Supreme Court's decision in Commonwealth v. Stock, 679 A.2d 760 (Pa. 1996), is analogous to this case. The Supreme Court in Stock stated:

Furthermore, in criminal cases, when counsel's conduct has adversely affected the right to appeal, Courts have granted an appeal nunc pro tunc on the basis that the defendant's right to appeal has been denied.

679 A.2d at p. 763.

While the Court understands the Commonwealth's concern that they suffer some

unfairness because their witnesses will once again have to appear in court to prosecute the case, despite appearances before the district justice and the Court on March 30, 1999, we must keep in mind that the prejudice to the defendant is significant in this case. He will suffer ninety days incarceration, a \$1,000 fine and adverse effects regarding his driving privileges as a result of a conviction. Although the defendant could file a PCRA petition when he is incarcerated, as suggested by the Commonwealth, the fairest and most direct remedy is to restore his appeal privileges because his right to appeal has been denied through the ineffective assistance of counsel.

Accordingly, the defendant's Motion is GRANTED. The defendant must perfect the summary appeal within thirty (30) days of the date of this Order. The defendant shall pay the costs of filing the appeal unless he is indigent. If so, he may file for leave to proceed *in forma pauperis*.

By The Court,

Kenneth D. Brown, J.

cc: Kenneth Osokow, Esquire
Jay Stillman, Esquire
Prothonotary