

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 99-11,192

VS :

VERNON LYNN :

ORDER

Before the Court is Defendant's Motion for Post Conviction Collateral Relief. In his motion Defendant alleges that his counsel was ineffective for failing to file a direct appeal on his behalf. The Post Conviction Relief Act, 42 Pa.C.S. § 9543(a), requires that to be eligible for relief, the Defendant must plead and prove by a preponderance of the evidence *all* of the following:

...

(2) That the conviction or sentence resulted from one or more of the following:

...

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

In Commonwealth v Lantzy, [736 A.2d at 570](#) (Pa. 1999), the Pennsylvania Supreme Court held that an unjustified failure to file a requested direct appeal constitutes conduct of counsel falling beneath the range of competence demanded of attorneys in criminal

cases. Under Lantzy, this Court finds that Defendant has established that his counsel was ineffective for failing to perfect his appeal. The Court finds that Defendant is entitled to the restoration of his appeal rights.

ORDER

AND NOW, this ____ day of November, 2001, it is ORDERED and DIRECTED that Defendant's Petition for Post Conviction Collateral Relief is Granted. Defendant has 30 days from today's date in which to file his appeal.

By The Court,

Nancy L. Butts, Judge

cc: DA
Donald Martino, Esquire
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges