

# Adams County Legal Journal

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DALE BENNETT SWAIN



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## ADAMS COUNTY

## COURT OF COMMON PLEAS

NUMBER: 15-S-22

NOTICE OF ACTION IN MORTGAGE  
FORECLOSURE

Astoria Bank, Plaintiff  
v.

Christine A. Clouser, in her capacity as Known Surviving Heir of Terri L. Neiderer, Deceased Mortgagor and Real Owner, Bradley M. Sneeringer, in his capacity as Known Surviving Heir of Terri L. Neiderer, Deceased Mortgagor and Real Owner and Unknown Surviving Heirs of Terri L. Neiderer, Defendants

TO: Unknown Surviving Heirs of Terri L. Neiderer. Premises subject to foreclosure: 185 Bollinger Road, Littlestown, Pennsylvania 17340. NOTICE: If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you. You should take this notice to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Donald Fennimore,  
Court Administrator  
Adams County Courthouse  
117 Baltimore Street  
Gettysburg, Pennsylvania 17325  
(717) 337-9846

McCabe, Weisberg & Conway, P.C.  
123 S. Broad St., Ste. 1400  
Philadelphia, PA 19109  
215-790-1010

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately 10/25/2016, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of INSIGHT MEDITATION COMMUNITY OF GETTYSBURG, with its principal place of business at PO Box 4681, 136 South Stratton St., Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Association for Project Reform, residing at 654 Yingling Rd., Littlestown, PA 17340. The character or nature of the business is a not-for-profit community meditation group.

Donald Redman  
PO Box 4681  
Gettysburg, PA 17325  
717-338-3036

12/09

12/09

COMMONWEALTH OF PENNSYLVANIA VS.  
DALE BENNETT SWAIN

1. This Court did not have jurisdiction concerning Defendant's Motion to Vacate Sentence after thirty days from the date of sentence. Section 5505 plainly states a trial court has jurisdiction to modify a sentence within thirty days after its imposition. Failure of the court to act within that period generally results in a loss of jurisdiction to modify the sentence.

2. The issue presented is whether the holding of **Birchfield** applies retroactively to this case where the **Birchfield** decision was rendered on the same date as Defendant's sentencing. Defendant failed to raise and to preserve this issue in pre-trial motions and failed to file post-sentence motions within ten days of sentence. Pennsylvania Supreme Court authority is clear that a new rule is to be applied retroactively to cases where the issue in question is "properly preserved at all stages of adjudication up to and including any direct appeal."

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CRIMINAL, CP-01-CR-206-2016,  
COMMONWEALTH OF PENNSYLVANIA VS. DALE BENNETT  
SWAIN.

Roy A. Keefer, Esq., Attorney for Commonwealth

Kristin L. Rice, Esq., Attorney for Defendant

Wagner, J., October 18, 2016

## OPINION PURSUANT TO PA. R.A.P. 1925

The Defendant, Dale Bennett Swain (hereinafter referred to as “Defendant”), appeals this Court’s entry of an Order of Court, dated August 1, 2016, and Amended Order of Court dated September 1, 2016, denying Defendant’s Motion to Vacate Sentence.<sup>1</sup>

On June 23, 2016, Defendant appeared with counsel and entered a *nolo contendere* plea to count one of the above-captioned case, driving under the influence of alcohol, a first offense, in violation of 75 Pa.C.S.A. § 3802(a)(1) of the Pennsylvania Vehicle Code as an ungraded misdemeanor. Defendant refused to provide a blood test and was sentenced under the enhanced penalties contained in § 3804(c) of the Pennsylvania Vehicle Code. Defendant was sentenced to serve 72 hours to 6 months in partial confinement at the Adams County Adult Correctional Complex.

On July 22, 2016, Defendant, through defense counsel, filed a Motion to Vacate Sentence in accordance with **Birchfield v. North Dakota**, 136 S. Ct. 2160 (2016). Relying on 42 Pa.C.S.A. § 5505, Defendant argued this Court had jurisdiction to “modify or rescind any order within thirty days after its entry, notwithstanding the prior termination of any term of Court, if no appeal from such order has been taken or allowed.”

On July 28, 2016, the Honorable Michael A. George, President Judge of the Court of Common Pleas of Adams County, scheduled for August 25, 2016 a hearing before this Court on Defendant’s Motion to Vacate Sentence. This Court heard argument on Defendant’s Motion to Vacate Sentence on August 25, 2016. This Court denied Defendant’s Motion to Vacate Sentence on September 1, 2016.<sup>2</sup>

It should be noted that the instant Petition to Vacate Sentence is the first time Defendant raised the issue of the legality of the sentence imposed in this case. Specifically, Defendant failed to file post-sentence motions within ten days of Defendant’s sentence in accordance with Pa.R.Crim.P. 720.

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<sup>1</sup> This Court mistakenly dated the Order of Court August 1, 2016. The correct date for the Order of Court is September 1, 2016, as reflected in the Amended Order of Court.

<sup>2</sup> This Court mistakenly dated the Order of Court August 1, 2016. The correct date for the Order of Court is September 1, 2016, as reflected in the Amended Order of Court.

Initially, this Court notes that on August 25, 2016, this Court did not have jurisdiction to consider Defendant's Motion to Vacate Sentence. Defendant was sentenced on June 23, 2016 and defense counsel filed a Motion to Vacate Sentence on July 22, 2016. When this Court entertained argument on the Motion to Vacate Sentence on August 25, 2016, it was already past the 30 day time frame set forth in 42 Pa.C.S.A. § 5505. Therefore, this Court did not have jurisdiction concerning Defendant's Motion to Vacate Sentence after thirty days from the date of sentence. Section 5505 plainly states a trial court has jurisdiction to modify a sentence within thirty days after its imposition. Failure of the court to act within that period generally results in a loss of jurisdiction to modify the sentence. **See Commonwealth v. Bogden**, 528 A.2d 168, 169 – 170 (Pa. Super. 1987). Instantly, this was not a situation where there was an error in the sentencing order which was patent and obvious on the face of the order itself. **See Commonwealth v. Cole**, 263 A.2d 339 (Pa. 1970) and **Commonwealth v. Holmes**, 933 A.2d 57 (Pa. 2007).

Turning to the merits of Defendant's Petition to Vacate Sentence, it is evident Defendant is not entitled to the relief requested. The issue presented is whether the holding of **Birchfield** applies retroactively to this case where the **Birchfield** decision was rendered on the same date as Defendant's sentencing. Defendant failed to raise and to preserve this issue in pre-trial motions and failed to file post-sentence motions within ten days of sentence. Pennsylvania Supreme Court authority is clear that a new rule is to be applied retroactively to cases where the issue in question is "properly preserved at all stages of adjudication up to and including any direct appeal." **Commonwealth v. Cabeza**, 469 A.2d 146, 148 (Pa. 1983). Defendant did not file any pre-trial motion concerning the blood test refusal and enhanced penalty, nor did Defendant file post-sentence motions within ten days of sentence in accordance with Pa.R.Crim.P. 720. Accordingly, Defendant has failed to properly preserve the issue at all stages of adjudication in this case. Therefore, under **Cabeza**, the **Birchfield** holding does not apply retroactively to afford Defendant relief in this case.



**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

**FIRST PUBLICATION****ESTATE OF IRENE R. DIVVER, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Norine D. Henrie, 1094 Fox Run Terrace, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., Shultis Law, LLC, 1147 Eichelberger Street, Suite F, Hanover, PA 17331

**ESTATE OF HEATHER SUSAN McCULLER, DEC'D**

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: Wade McCuller, 380 West King Street, Abbottstown, PA 17301

Attorney: Jillian A.S. Roman, Esq., Cohen, Placitella & Roth, P.C., Two Commerce Square, 2001 Market Street, Suite 2900, Philadelphia, PA 19103

**ESTATE OF RICHARD G. SAVIDGE, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Executor: W. Todd Savidge, 15 Spring Creek Circle, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ARTHUR WARREN STARNER, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Benedict A. Kuhn, 706 Baer Avenue, Hanover, PA 17331

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ROLLA RICHARD STERBTUTZEL, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

David Sterbutzel, 6022 Boyette Road, Wesley Chapel, FL 33545

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF MILDRED P. DANNER, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Executor: Bryan D. Danner, c/o Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

**ESTATE OF VALEDA J. HUGHES, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Donald P. Winter, 14775 SE Avenue, Summerfield, FL 34491

Attorney: Gregory R. Reed, Esq., 4303 Derry Street, Harrisburg, PA 17111

**ESTATE OF PETER A. KOUFUS, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Administrator: Peter N. Koufus, 150 Myers Road, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF BARBARA A. LAWRENCE, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Belinda R. Arnold, 603 Main Street, McSherrystown, PA 17344

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

**ESTATE OF FRANCIS J. NEVINS, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Co-Executors: Francis Joseph Nevins, 27 Jackson Road, Gettysburg, PA 17325; James John Nevins, 151 Center Street, Hanover, PA 17331

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF MARY L. OYLER, a/k/a MARY G. OYLER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Ralph D. Oyler, 754 Maple Street, Lake Oswego, OR 97034

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF DANIEL J. SCHMIDT, a/k/a DANIEL JOHN SCHMIDT, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Gerald Ste-Marie, 531 Wilson Avenue, Hanover, PA 17331

Attorney: Ann C. Shultis, Esq., Shultis Law, LLC, 1147 Eichelberger Street, Suite F, Hanover, PA 17331

**ESTATE OF JOSEPH W. WILSON, DEC'D**

Late of Freedom Township, Adams County, Pennsylvania

Executor: Gerald S. Miller, 4231 Emmitsburg Road, Fairfield, PA 17320

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF M. ROMAINE WIRTZ, a/k/a MARGUERITE ROMAINE WIRTZ, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Galen C. Krebs, 1058 Pickett Drive, Gettysburg, PA 17325

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

**THIRD PUBLICATION****ESTATE OF MAHLON R. CRAWFORD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Rodney W. Crawford, c/o Laucks & Laucks, PC, 105 West Broadway, Red Lion, PA 17356

Attorney: David M. Laucks, Esq., Laucks & Laucks, PC 105 West Broadway, Red Lion, PA 17356

**ESTATE OF DOROTHY FREITAG, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 308, 4242 Carlisle Pike, Camp Hill, PA 17001-0308

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF RICHARD G. KING, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Estelle B. King, 2596 Hanover Pike, Hanover, PA 17331

Attorney: Elyse E. Rogers, Esq., Saidis, Sullivan & Rogers, 100 Sterling Parkway, Suite 100, Mechanicsburg, PA 17050

