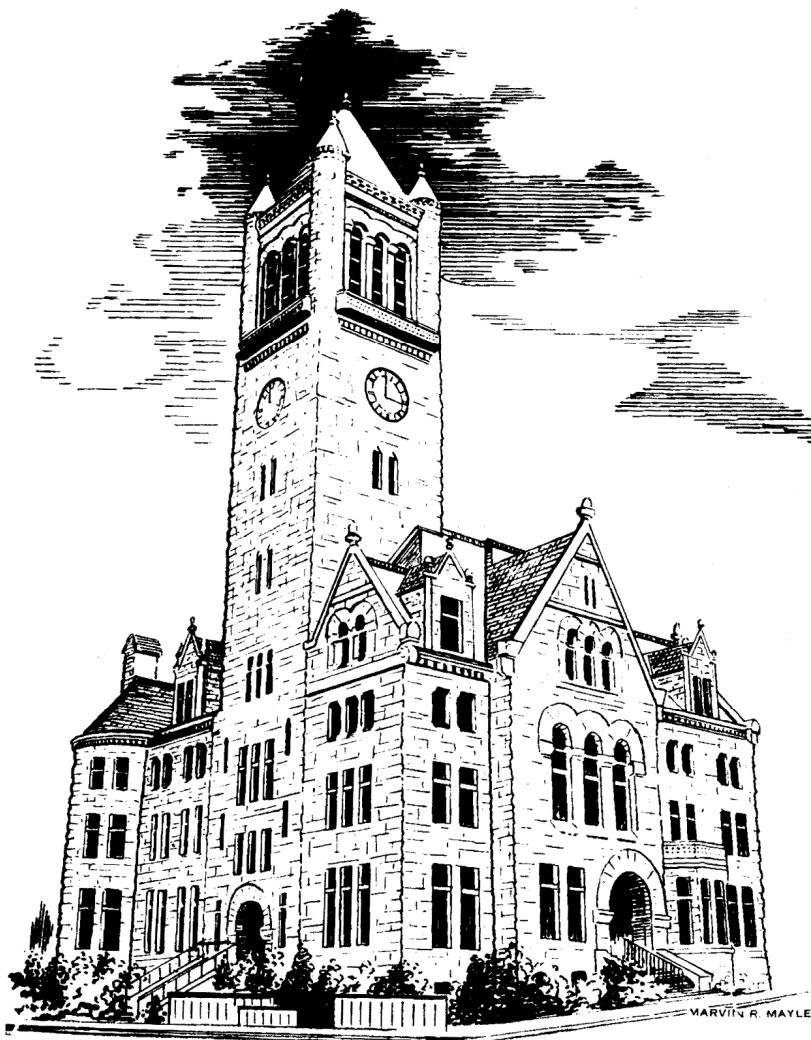


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

MARY ALICE DROBNY, late of Georges Township, Fayette County, PA ⁽³⁾

Executors: Joseph M. Braya and Frank Balawender
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

ANNABELLE DZURNAK, a/k/a ANNABELLE A. DZURNAK, late of Uniontown, Fayette County, PA ⁽³⁾

Personal Representatives:
David W. Dzurnak & Mark A. Dzurnak
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

BETTY L. EUTSEY, late of Connellsville, Fayette County, PA ⁽³⁾

Executrix: Janet Morris
c/o 815 A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

ALLEN KOVACH, a/k/a ALLEN J. KOVACH, late of Brownsville, Fayette County, PA ⁽³⁾

Administratrix: Ilona Kovach
193 Hancock Road
Brownsville, PA 15417
c/o Conti Law
986 Brodhead Road
Moon Township, PA 15108
Attorney: Michele Conti

JEAN MALINSKY, late of Masontown, Fayette County, PA ⁽³⁾

Executrix: Deborah L. Malinsky
344 W. Church Avenue
Masontown, PA 15461
c/o 6 South Main Street Washington Trust Building, Suite 214
Washington, PA 15301
Attorney: Joseph Brodak

JIMMIE R. MCGINNIS, late of German Township, Fayette County, PA ⁽³⁾

Personal Representative: Nancy J. Priselac
c/o Riverfront Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

PHILLIP M. SHIPLEY, a/k/a PHILLIP M. SHIPLEY, late of North Union Township, Fayette County, PA ⁽³⁾

Personal Representative:
William W. Cobert, Sr.
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: G.T. George

JAMES A. ULMER, late of Uniontown, Fayette County, PA ⁽³⁾

Personal Representative: Eleanor C. Ulmer
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

Second Publication

WILLIAM CRESS, a/k/a WILLIAM RUDOLPH CRESS, late of Bullsken Township, Fayette County, PA ⁽²⁾

Executor: William M. Cress
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

GARY THOMAS GLISAN, a/k/a GARY T. GLISAN, late of Franklin Township, Fayette County, PA (2)

Personal Representative: Chad Glisan
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

JOSEPH P. HERRIOTT, a/k/a JOSEPH HERRIOTT, late of German Township, Fayette County, PA (2)

Executor: David Howenstine
c/o Proden and O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

HENRY ADAM PADLO, a/k/a HENRY A. PADLO, a/k/a HENRY PADLO, late of German Township, Fayette County, PA (2)

Co-Executors: Jerome M. Padlo and Henry L. Padlo
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

DOROTHA WILSON, late of Hopwood, Fayette County, PA (2)

Executrix: Betty Lowe
c/o 2944 National Pike Road, Box 245
Chalk Hill, PA 15421
Attorney: Charles C. Gentile

ROBERT F. YANIK, late of South Union Township, Fayette County, PA (2)

Administratrix: Patricia L. Yanik
c/o 9 Court Street
Uniontown, Pa 15401
Attorney: Vincent J. Roskovensky, II

First Publication

JUSTIN ANTHONY BOWSER, a/k/a JUSTIN BOWSER, late of Adah, Fayette County, PA (1)

Administrator: David Bowser
369 First Street
Adah, PA 15410
c/o Shenderovich, Shenderovich & Fishman, P.C.
429 Fourth Avenue
1100 Law & Finance Building
Pittsburgh, PA 15219
Attorney: Amber Archer

DAVID EARL BRADLEY, a/k/a DAVID E. BRADLEY, late of Menallen Township, Fayette County, PA (1)

Personal Representative:
Rose Marie Bradley
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Douglas S. Sepic

MICHAEL VINCENT BRIENZA, a/k/a MICHAEL BRIENZA, late of Bullsken Township, Fayette County, PA (1)

Personal Representative: Diana L. Brienza
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

JOYCE A. DOPPELHEUER, late of Bullsken Township, Fayette County, PA (1)

Administrator: Daniel Doppelheuer
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

TILER GUTH, a/k/a TILER MIKAL GUTH, late of Vanderbilt, Fayette County, PA (1)

Administratrix: Melissa Ann Nicholson
408 East Gibson Avenue
Connellsville, PA 15425
c/o 986 Brodhead Avenue
Moon, PA 15108
Attorney: Michele Conti

CARTER HIGBEE, a/k/a EDWARD HIGBEE, a/k/a EDWARD CARTER HIGBEE, a/k/a CARTER HIGBEE, late of Connellsville, Fayette County, PA (1)

Personal Representative: Tina Gross
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

CONNIE L. HONSAKER, a/k/a CONNIE LOU HONSAKER, late of Masontown, Fayette County, PA (1)

Personal Representative: Tabitha Corradi
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

DONALD K. KISSLER, late of Belle Vernon, Fayette County, PA (1)

Executor: Brian Anderson
26 Mulberry Street
Belle Vernon, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

DIANA L. KRICHBAUM, late of Masontown, Fayette County, PA (1)

Administrator: Kristle Krichbaum and Devon Krichbaum
84 Kyle Avenue
Fairchance, PA 15436
c/o 76 East Main Street
Uniontown, PA 15401
Attorney: Douglas S. Sholtis

NANCY L. MCGILL, a/k/a NANCY MCGILL, late of Connellsville, Fayette County, PA (1)

Executor: Lisa Kornhaus
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

PAUL L. MULLIGAN, late of Springfield Township, Fayette County, PA (1)

Co-Executor: Pamela L. Mulligan and Derek P. Mulligan
15445 State Highway 198
Meadville, PA 16335
c/o Barbera, Melvin & Svnavec, LLP

146 West Main Street
P.O. Box 775
Somerset, PA 15501-0774
Attorney: Matthew G. Melvin

ANN RELICH, late of Washington Township, Fayette County, PA (1)

Executor: Richard Relich
305 Overdale Road
Pittsburgh, PA 15221
c/o 1310 Freeport Road
Pittsburgh, PA 15238
Attorney: Anthony R. Sosso, Jr.

LEGAL NOTICES

NOTICE OF ORDINANCE 20-01

The public is hereby notified that Brownsville Township intends to enact at a meeting to be held on April 6, 2020, a requirement for certification of sanitary sewer status prior to sale of real estate within Brownsville Township, Fayette County, Pennsylvania, and as condition for the issuance of municipal lien letters and property tax verification letters.

A true and correct copy of the ordinance can be found in the following offices: Offices of the Herald Standard, Fayette County Law Library, and Brownsville Township Municipal Building during regular business hours.

Anthony S. Dedola, Jr.
Solicitor for Brownsville Township

ARTICLES OF INCORPORATION

Notice is hereby given that Articles of Incorporation - For Profit have been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 13, 2020, for a corporation known as Anna Banana Up, Inc. Said corporation has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania. The purpose or purposes of the corporation is/are: Gaming space and related activities as permitted in the Commonwealth of Pennsylvania, and any other lawful purpose related thereto for which the corporation may be

organized under the Business Corporation Law.

DAVIS & DAVIS
107 East Main Street
Uniontown, PA 15401

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about February 21, 2020, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Watson Mundorff Illar Witt Dietz & Gannon with the principal place of business at: 720 Vanderbilt Road, Connellsville, Fayette County, PA 15425.

The name or names and addresses of persons owning and interested are: Watson Mundorff, LLP, 720 Vanderbilt Road, Connellsville, Fayette County, PA 15425

Jarod Illar, Esquire
Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville Fayette 15425

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about February 7, 2020, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of L-E-Warehouse with the principal place of business at: 1210 Blackstone Rd., Connellsville, PA 15425.

The name or names and addresses of persons owning and interested are: Linda A. Corso, 1210 Blackstone Rd., Connellsville, PA 15425

Marvin D. Snyder Esq.
Snyder & Snyder Attorneys at Law, PLLC
17 N. Diamond Street
Mount Pleasant PA 15666

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION
Case No. 910 of 2019
IN DIVORCE

DOUGLAS L. LOWERY,
Plaintiff,
vs.
JACQUELINE S. LOWERY,
Defendant.

Notice

If you wish to deny any of the statements set forth in this affidavit, you must file a counter - affidavit within twenty days after this affidavit has been served on you or the statements will be admitted.

AFFIDAVIT UNDER SECTION 3301(d) OF THE DIVORCE CODE

1. The parties to this action separated on April 15, 2017 and have continued to live separate and apart for a period of at least one year.

2. The marriage is irretrievably broken,
3. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

DOUGLAS L. LOWERY, Plaintiff
Date: 10-29-19

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION
Case No. 910 of 2019
IN DIVORCE

DOUGLAS L. LOWERY,
Plaintiff,
vs.
JACQUELINE S. LOWERY,
Defendant.

COUNTER-AFFIDAVIT UNDER §3301(D) OF THE DIVORCE CODE

- 1. Check either (a) or (b):
 - (a) I do not oppose the entry of a divorce decree.
 - (b) I oppose the entry of a divorce decree because (Check (i), (ii), (iii), or all):
 - (i) The parties to this action have not lived separate and apart for the required separation period: two years for parties that separated prior to December 5,

2016, and one year for parties that separated on or after December 5, 2016.

(ii) The marriage is not irretrievably broken.

(iii) There are economic claims pending

2. Check either (a), (b), or (c):

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that in addition to checking (b) above, I must also file all of my economic claims with the Department of Court Records in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further notice to me, and I shall be unable thereafter to file any economic claims.

(c) Economic claims has been raised and are not resolved.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

JACQUELINE S. LOWERY

Date

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 CASE #: 1197 OF 2019, G.D.
 COMPLAINT IN ACTION TO
 QUIET TITLE

ROBERT L. KENNEY, an unmarried widower,

Plaintiff,

Vs.

CHARLES E. GUTHRIE & VIRGINIA GUTHRIE, his wife, & their heirs, successors and assigns, generally,

Defendants.

TO: CHARLES E. GUTHRIE & VIRGINIA GUTHRIE, their heirs, successors and assigns, generally

You are hereby notified that Robert L. Kenney, an unmarried widower, has filed a complaint in the above number and term in the above mentioned court in an action to quiet title wherein it is alleged that he is the owner of the following property located in Nicholson Township, Fayette County, Pennsylvania, situated on Fairview Hill Drive as follows:

FIRST:

ALL that lot of land situate in Nicholson Township, Fayette County, Pennsylvania, more particularly described as follows:

BEGINNING at an iron pin corner of other land of Grantor of which the parcel herein described was a part, which iron pin is located South 1 degree 12 minutes 40 seconds East, a distance of 170 feet from the point of intersection of the course which reads "North 16 degrees 5 minutes East, 327.5 feet to a post" with the course which reads "North 8 degrees 40 minutes West, 381.2 feet to a post in the aforesaid public road" in the description of "Second" tract conveyed to John E. Mrazeck, Jr. and Jennie Mrazeck, his wife, by deed of Serafino Cinci, et ux., dated July 26, 1958, and recorded in the Recorder's Office of said Fayette County, in Deed Book Volume 899, at page 679; thence along said lands, South 25 degrees 30 minutes 40 seconds East, a distance of 87.05 feet to an iron pin; thence South 71 degrees 18 minutes 40 seconds East, a distance of 96.94 feet to an iron pin; thence North 47 degrees 40 minutes 20 seconds East. A distance of 131.18 feet to a point in the center of Legislative Route 26079 leading to the Borough of Masontown; thence in the center of said road, North 50 degrees 35 minutes West, a distance of 224.99 feet to a point; thence leaving said road and through said lands of Grantor, South 23 degrees 21 minutes 20 seconds West, a distance of 132.41 feet to the iron pin at the place of beginning, containing 0.7047 of an acre, as per survey plot of Edwin J. Taylor, dated March, 1969.

BEING the same premises as conveyed to Plaintiff by virtue of a deed of record at Record Book Volume 1859, page 52. Being Fayette County Tax Map Parcel #24-04-0022.

SECOND:

ALL that lot of land situate in Nicholson Township, Fayette County, Pennsylvania, more particularly described as follows:

BEGINNING at a point in the center of Legislative Route 26079 corner of other lands conveyed by John E. Mrazcek, Jr., one of the grantors herein, to grantees, dated April ____, 1971 and of record in the Office for the Recording of Deeds in and for said Fayette County, in Deed Book Volume ____, page __; thence from said point in said road, South 44 degrees 23 minutes 10 seconds West, a distance of 133.29 feet to a point in said road; thence leaving said road and running along other lands of John E. Mrazcek, Jr., North 75 degrees 04 minutes 20 seconds West, a distance of 275.68 feet to an iron pin corner; thence North 15 degrees 49 minutes 40 seconds West, a distance of 194.96 feet to an iron pin corner with lands of Grantees; thence along line of said lands, South 25 degrees 30 minutes 40 seconds East, a distance of 87.05 feet to an iron pin; thence still along line of said lands, South 71 degrees 18 minutes 40 seconds East, a distance of 96.94 feet to an iron pin; thence still along line of said lands, North 47 degrees 40 minutes 20 seconds East, a distance of 131.18 feet to a point in the center of the road, the place of beginning, CONTAINING an area of 0.51890 of an acre.

BEING the same premises as conveyed of record to the Defendant herein by deed of record at Deed Book Volume 1168, page 1044. Also being a part of Plaintiffs real estate as assessed to him at Map #24-04-0023

Said complaint sets forth that Plaintiff is the owner in fee simple of the above described premises. The complaint was filed for the purpose of barring all of your right, title and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in Court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice or any money claimed in the complaint, or for

any other claim or 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET, P.O. BOX 186
HARRISBURG, PA 17108
TELEPHONE: 1-800-932-0311**

John A. Kopas III, Esquire
Attorney for Plaintiff
556 Morgantown Road
Uniontown, PA 15401
724-437-1111

NOTICE OF ACTION IN MORTGAGE FORECLOSURE IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW NO.: 2018-00119 PNC BANK, NATIONAL ASSOCIATION, Plaintiff, vs. Unknown Heirs and/or Administrators of the Estate of John Hete; David A. Rogers, as Heir to the Estate of Mary E. Rogers; Unknown Heirs and/or Administrators of the Estate of Mary E. Rogers, Defendants TO: Unknown Heirs and/or Administrators of the Estate of John Hete; Unknown Heirs and/or Administrators of the Estate of Mary E. Rogers You are hereby notified that Plaintiff, PNC Bank, National Association, filed an Action in Mortgage Foreclosure endorsed with a Notice to Defend, in the Court of Common Pleas of Fayette County, Pennsylvania, docketed to No. 2018-00119, seeking to foreclose the mortgage secured by the real estate located at 157 1st Street, Allison, PA 15413. A copy of the Action in Mortgage Foreclosure will be sent to you upon request to the Attorney for the Plaintiff, Manley Deas Kochalski LLC, P. O. Box 165028, Columbus, OH 43216-5028. Phone 614 -220-5611. You have been sued in court. If you wish to defend against the claims in this notice, you must take action within twenty (20) days after this publication, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or 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 LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. LAWYER REFERRAL SERVICE Pennsylvania Lawyer Referral Service Pennsylvania Bar Association P.O. Box 186 Harrisburg, PA 17108 (800) 692-7375

Fayette County
Court of Common Pleas
Number: 2020-00062

Notice of Action in Mortgage Foreclosure

Reverse Mortgage Funding, LLC, Plaintiff v. Christopher Breegle, Known Surviving Heir of Eugene Breegle, Stuart Breegle, Known Surviving Heir of Eugene Breegle, Jeffery Breegle, Known Surviving Heir of Eugene Breegle, and Unknown Surviving Heirs of Eugene Breegle, Defendants

TO: Unknown Surviving Heirs of Eugene Breegle. Premises subject to foreclosure: 112 Wall Street, Everson, Pennsylvania 15631. 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. **Pennsylvania Lawyer Referral Service, Pennsylvania Bar Association, 100 South Street, P.O. Box 186, Harrisburg, Pennsylvania 17108, (800) 692-7375.** McCabe, Weisberg & Conway, LLC, Attorneys for Plaintiff, 123 S. Broad St., Ste. 1400, Phila., PA 19109, 215-790-1010

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
V.	:	
	:	
PATRICK ALAN DUGAN,	:	No. 817 of 2016
Appellant.	:	Judge Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

September 16, 2019

SUMMARY

Before this Court is an Amended Post-Conviction Relief Act Petition filed by Defendant, Patrick Alan Dugan. After full consideration of the Hearing held on August 30, 2019, the arguments of counsel, and appropriate case law, this Court DENIES the Defendant's requested relief.

BACKGROUND

On February 6, 2018, following a bench trial, Defendant was found guilty of two counts of Criminal Attempt, Criminal Homicide; fifteen counts of Aggravated Assault; Discharge of a Firearm into Occupied Structure; and fifteen counts of Recklessly Endangering Another Person. Defendant was sentenced to five to ten years on each charge of attempted homicide, to run concurrently, and three to six years on the Discharge of a Firearm offense, also to run concurrently. Defendant's trial counsel was Attorney Blaine Jones, who withdrew his appearance immediately after trial. Thereafter, this Court appointed the Fayette County Public Defender's Office to represent the Defendant on appeal.

An Appeal to the Pennsylvania Superior Court was timely filed, and on December 24, 2018, the Pennsylvania Superior Court issued an Opinion affirming the Judgement of Sentence. Defendant thereafter filed this timely Post-Conviction Relief Act Petition, and this Court appointed Attorney James Natale to represent the Defendant. Defendant alleges ineffective assistance by both his trial counsel, Attorney Blaine Jones, and his appellate counsel, the Fayette County Public Defender, Attorney Jeffrey Whiteko.

DISCUSSION

Defendant argues that both of his previous attorneys provided him with ineffective assistance of counsel for numerous reasons discussed more fully herein. In order to succeed on a claim of ineffective assistance, a defendant must establish that the claim is of

arguable merit, that no reasonable trial strategy existed for counsel's action or inaction, and that the outcome of the proceedings would have been different but for counsel's failures. Counsel is presumed effective, and it is the defendant's burden to prove otherwise. *Commonwealth v. Daniels*, 963 A.2d 409, 427 (Pa. 2009).

Defendant contends that trial counsel was ineffective for failing to explain a bench trial to the Defendant. With respect to claims involving involuntary jury waivers due to counsel's ineffectiveness, the defendant must prove actual and not presumed prejudice. A defendant has the burden to demonstrate a reasonable probability that the result of the waiver proceeding would have been different absent counsel's ineffectiveness." *Commonwealth v. Mallory*, 941 A.2d 686, 702 (Pa. 2006).

On October 2, 2017, the Defendant signed a Waiver of Jury Trial, and the written waiver was also signed by Attorney Blaine Jones and the Honorable Joseph George. The written waiver includes that the Defendant elects to be tried by a Judge without a jury:

[F]ully understanding that if he/she were tried by a jury:

- (a) [T]he jury would be chosen from members of the community thereby producing a jury of his/her peers;
- (b) [A]ny verdict rendered by a jury must be unanimous, that is, all twelve jurors must agree before they can return a verdict of guilty; and
- (c) [H]e/she would be permitted to participate in the selection of the Jury.

Again, on February 1, 2018, the Defendant signed a Waiver of Jury Trial, in the same form as the Waiver signed on October 2, 2017, and this Waiver was signed by Attorney Blaine Jones and the undersigned after an on-the-record colloquy with the Defendant as follows:

Q. Mr. Dugan, I have been provided by your counsel this waiver of jury trial, is this your signature on, on this document?

A. Yes, Your Honor.

Q. And did you carefully review this document with your attorney?

A. Yes, Your Honor.

Q. How old are you, sir?

A. 24 years old.

Q. And how far did you go in school?

A. Sophomore year of college, Your Honor.

Q. So it's fair to say you read, write and understand English?

A. Yes, Your Honor.

Q. Now, was this document signed today?

A. Yes, Your Honor.

Q. And have you consumed any drugs, alcohol or any medication in the last 48 hours?

A. No, Your Honor.

Q. And do you understand that you have the right to have your case heard by a jury?

A. Yes, Your Honor.

Q. And do you believe that you had sufficient time to discuss the matter of a jury trial with attorney Jones?

A. Yes, Your Honor.

Q. And is it your desire to waive your right to have a trial by jury and have this case heard by this Court?

A. Yes, Your Honor.

Q. You have any questions about your right to a jury trial?

A. No, Your Honor.

Q. You have any questions about this waiver of the jury trial?

A. No, Your Honor.

The Court: The Court finds that the defendant has made a knowing, voluntary, intelligent waiver of his right to a jury trial and we will proceed.

Criminal Non-Jury Trial Proceedings at 12-13.

At the PCRA hearing, Attorney Blaine Jones testified that it is his practice to provide his clients with their option of proceeding with a bench trial or a jury trial. Attorney Jones testified that it is not his job to make the decision, but ultimately, it is up to the client whether to have a jury trial. This Court finds the testimony of the Defendant to be incredible when he testified that Attorney Jones never explained to him the difference between a bench trial and a jury trial. This Court finds the testimony of Attorney Jones to be very credible to show that he assured that his client understood his right to have a jury trial or waive a jury trial. As a result, there is not factual support to Defend-

ant's claim of ineffectiveness for counsel's failure to explain a bench trial to the Defendant. In addition, this Court finds that Defendant has failed to present any evidence of prejudice due to the fact his case proceeded as a non-jury trial.

Defendant also avers that Attorney Jones failed to conduct proper cross-examination of Trooper Reitler. Specifically, Defendant raises as ineffectiveness Attorney Jones's failure to ask Trooper Reitler why there was not gunshot residue collected from co-defendant Zachary Helisek. As Attorney Jones testified, on the date of this crime, gunshot residue was collected from the four individuals apprehended at or near the scene. Zachary Helisek was not detained on the date of the crime, and Attorney Jones explained this as the reason that he did not inquire about gunshot residue collected from Zachary Helisek. As a general rule, in criminal proceedings, an attorney is authorized to act for his client and to determine for the client all procedural matters, as well as trial strategy and tactics. A court will not second-guess a trial counsel's trial tactics, so long as there is a reasonable basis for what counsel did or did not do. *Commonwealth v. Rivers*, 786 A.2d 923, 930 n.5 (Pa. 2001).

In addition, Defendant argues that trial counsel was ineffective with regard to his cross-examination of co-defendant, Zachary Helisek. Defendant testified that Attorney Jones failed to bring up the inconsistencies in two written statements of Mr. Helisek.

Upon review of the trial transcript, this Court does not accept this argument by the Defendant. The trial transcript contains eighteen pages of cross-examination of Mr. Helisek by Attorney Jones. This interrogation includes Attorney Jones specifically asking Mr. Helisek about the first and second statements that he provided to the police. In addition, Attorney Jones brought up the fact that Mr. Helisek's memory may have been impaired by alcohol and drugs, and that Mr. Helisek may have been testifying to "save" his "tail."

At the PCRA Hearing, Attorney Jones testified credibly that it is his practice of asking the court for just a moment after he questions each witness, and he asks the defendant if there is anything he missed, or if there is anything the defendant would like him to ask each witness. The record reflects that before Attorney Jones concluded his cross and recross of Mr. Helisek, he asked, "May I have a moment Judge?" and "One moment please, Judge." In addition, the Defendant himself testified that Attorney Jones told him that Mr. Helisek appeared to be trying to help the Defendant in his testimony, and Attorney Jones did not want to make Mr. Helisek mad. Furthermore, the Defendant testified that Attorney Jones did ask a few of the questions that Mr. Dugan wanted Attorney Jones to ask Mr. Helisek on the stand. The Defendant has failed to establish his claim for ineffectiveness in this regard.

Defendant next contends that his appellate counsel, Public Defender Jeffrey Whiteko, was ineffective. Specifically, Defendant argues that the Public Defender failed to file a Petition for Allowance of Appeal to the Pennsylvania Supreme Court after the Superior Court issued an Opinion affirming the Defendant's sentence. The Defendant made a bald assertion that he requested an appeal to the Pennsylvania Supreme Court when he received notice in the mail that his appeal was denied. He testified that he wrote the Public Defender's office the same night as he received the denial of his appeal.

Then, on cross-examination, the Defendant testified that he believes he contacted his mother to file the appeal, but she couldn't get in touch with the Public Defender.

Attorney Whiteko testified that he cannot specifically recall if the Defendant requested a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. This Court finds it significant that there was no testimony by Attorney Whiteko that his file contained any letter from the Defendant requesting a Petition for Allowance of Appeal.

A defendant has a rule-based right to effective counsel throughout his direct appeal. Pa.R.Crim.P. 122(8)(2); *Commonwealth v. Liebel*, 825 A.2d 630, 633 (Pa. 2003). While an appeal to the Supreme Court is a matter of judicial discretion and not a matter of right (See Pa.R.A.P. 1114(a)), a defendant can establish prejudice for counsel's failure to seek allowance of appeal in certain circumstances. After the Superior Court renders a decision, a defendant has a right to effective consultation regarding the filing of a petition for allowance of appeal with the Pennsylvania Supreme Court, and failure to receive said consultation would result in prejudice. See *Commonwealth v. Gadsden*, 832 A.2d 1082, 1088 (Pa. Super. Ct. 2003); But cf. *Commonwealth v. Bath*, 907 A.2d 619, 620-21 (Pa. Super. Ct. 2006) (holding that it is not per se ineffectiveness when counsel fails to consult with the defendant concerning the potential advantages of filing a petition for allowance of appeal). Further, defendants who request that counsel file a petition for allowance of appeal on their behalf have a right to effective representation, and it is per se ineffective assistance for counsel to fail to file that petition. See *Commonwealth v. Reed*, 971 A.2d 1216, 1225 (Pa. 2009).

Where the record is devoid of a defendant's request for review before the Pennsylvania Supreme Court, the defendant still may have a cognizable claim under the PCRA if the defendant proves any issues the defendant sought to take to the Supreme Court "rose 'above frivolity.'" *Commonwealth v. Rigg*, 84 A.3d 1080, 1088 (Pa. Super. Ct. 2014) (quoting *Bath* at 624); see also *Gadsden* at 1085-86 (citing *Liebel* at 635).

In *Bath*, the Superior Court stated, "[w]here no request [to file a petition for allowance of appeal] has been made, an appellant must establish that a duty to consult was owed." *Bath* at 623. An appellant may establish a duty to consult by indicating issues that had any potential merit for further review. See *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000); See also *Commonwealth v. Touw*, 781 A.2d 1250, 1254 (Pa. Super. Ct. 2001). This does not require appellant to demonstrate that the Supreme Court would likely grant review to a petition for allowance of appeal, but only that appellant must show that any issue rises above frivolity. *Bath* at 623-24.

In the case presently before this Court, other than the Defendant's bald allegation, the record lacks any evidence that Defendant asked direct appeal counsel to file a petition for allowance of appeal with the Pennsylvania Supreme Court. Therefore, Defendant must establish that a duty to consult was owed. However, Defendant fails to state what issues he would have sought to pursue, nor does he attempt to prove any claim would have risen above frivolity. Specifically, Defendant never suggests how his challenge to the sufficiency of the evidence to support his conviction would not be considered frivolous upon further appeal. As such, this Court finds that Defendant has failed to meet the prejudice prong of the test for ineffective assistance of counsel for his failure

to show his sufficiency of the evidence challenge would rise above mere frivolity upon further review. Accordingly, this Court cannot find that appellate counsel was ineffective.

CONCLUSION

For the foregoing reasons, Mr. Dugan's Petition for Post-Conviction relief is Denied.

ORDER

AND NOW, this 16th day of September, 2019, in consideration of Defendant's Petition for Post-Conviction Collateral Relief, and after a Hearing on the matter, it is hereby ORDERED and DIRECTED that the Petition is DENIED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts



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| March 24 | <p>Handling the Workers' Comp Case
 9:00 a.m. to 4:15 p.m.
 5 substantive/1 ethics</p> |
| March 26 | <p>Elder Law Update 2019
 9:00 a.m. to 12:00 p.m.
 3 substantive</p> |
| March 31 | <p>The Binders on Pennsylvania Evidence 2020
 1:00 p.m. to 4:15 p.m.
 3 substantive</p> |
| April 3 | <p>Litigation Blunders, Bloopers and Boons
 9:00 a.m. to 4:30 p.m.
 4 substantive/2 ethics</p> |
| April 7 | <p>Securing Electronic Communications, Email Etiquette and Ethics
 9:00 a.m. to 12:15 p.m.
 2 substantive/1 ethics</p> |
| April 14 | <p>Sheriff's Sales in Pennsylvania 2020
 9:00 a.m. to 1:15 p.m.
 3 substantive/1 ethics</p> |
| April 23 | <p>Personal Injury Law Conference 2019
 9:00 a.m. to 3:30 p.m.
 5 substantive/1 ethics</p> |
| April 27 | <p>A Day on Ethics 2020
 9:00 a.m. to 4:20 p.m.
 6 ethics</p> |
| April 29 | <p>Legal Issues in an Age of Aging 2020
 9:00 a.m. to 4:00 p.m.
 5 substantive/1 ethics</p> |





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- Date: **Wednesday, March 18th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **Issues in Bank Fraud and Safeguarding your IOLTA Account, Online Wire Transfers for Closings & Electronic Notifications**
- Presenters: Daniel Flynn, Fraud Investigations Manager, Karla Strosnider, Operational Risk Manager, and Jacquie Stanley, Senior Vice President and Regional Manager of Commercial Services, all of United Bank.

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RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, March 16th.

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