

**Chester
County
Bar
Association**

Chester County Law Reporter

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Chester County Law Reporter

(USPS 102-900)

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Commonwealth v. Penaloza

Guilty plea withdrawal – Ineffective assistance of counsel – Direct appeal – Request for release on bail pending appeal

1. A request to withdraw a guilty plea on the grounds that it was involuntary is a claim that must be raised by motion in the trial court in order to be reviewed on direct appeal.
2. An ineffective assistance of counsel claim is not subject to review on direct appeal, but only on petition for post-conviction relief.
3. Although the language of Pa.R.Crim.P. 521(B)(3) does not expressly so state, its phrasing suggests that the appropriate time for the defendant to request a release on bail, if he is eligible under 521(B)(1), is at the time of sentencing.
4. Where, following sentencing in a negotiated guilty plea, defendant, sentenced to imprisonment of less than 2 years, (a) does not initially request to be released on bail, but instead, voluntarily commences his agreed sentence; (b) does not file a post sentence motion requesting to withdraw his guilty plea; (c) subsequently changes counsel and takes a direct appeal; (d) indicates in his Motion for Bail Pending Appeal that he has “colorable meritorious constitutional claims;” (e) but, thereafter, in his Statement of Matters Complained of raises only two claims, both of which, on their face, are not proper grounds for direct appeal, simply modifying bail pursuant to Pa.R.Crim.P. 521(D) is not appropriate and would set a poor precedent for other negotiated guilty pleas wherein a defendant may have second thoughts after spending some time in prison.
5. Defendant, while represented by counsel, and pursuant to a written guilty plea colloquy, entered pleas of guilty to the crimes of statutory sexual assault and corruption of a minor. Immediately following the oral guilty plea colloquy and pursuant to the negotiated and agreed terms of sentence set forth on the written colloquy form, defendant was sentenced to 11½ to 23 months on the statutory sexual assault charge, and 4 years consecutive probation on the corruption of minors charge. He was taken into custody at the conclusion of the sentencing hearing and commenced serving his sentence. Thereafter, new counsel entered his appearance on behalf of defendant, and simultaneously filed (a) a Notice of Appeal to the Superior Court from the judgment of sentence and (b) a Motion for Bail Pending Appeal. In compliance with the court’s Order for Concise Statement of Errors Complained of on Appeal, Defendant filed his Statement of Matters Complained of Pursuant to Pa.R.A.P. 1925(B). Upon consideration of the defendant’s Motion for Bail Pending Appeal, and following a hearing on the Motion, the Court Held, that the Motion was denied.

P.McK.

Pennsylvania v. Edwin Penalzoa

Kimberly A. Callahan for Commonwealth

Jonathan J. Sobel for defendant

Bortner, J., September 30, 2011:-

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
:
: CHESTER COUNTY, PENNSYLVANIA
v. :
: NO. CR 1152-11
:
EDWIN PENALOZA

Kimberly A. Callahan, Esquire, Assistant District Attorney
Jonathan J. Sobel, Esquire, Attorney for Defendant

ORDER

AND NOW, this 30th day of September, 2011, upon consideration of Defendant's Motion for Bail Pending Appeal, filed August 19, 2011, and following the hearing conducted on September 27, 2011 in open court, on the record, with all parties present, it is hereby ORDERED and DECREED that the relief requested in the Motion is DENIED. ¹

BY THE COURT:

/s/ David F. Bortner, J.

¹On July 21, 2011, Defendant, Edwin Penalzoa, represented by his attorney, Richard E. Meanix, and pursuant to a written Guilty Plea Colloquy, entered pleas of guilty to the crimes of statutory sexual assault and corruption of a minor. The charges arise from Defendant having sexual intercourse on several occasions with a female, then 15 years of age, when he was 4 years, 2 months and 10 days older than she. Defendant and the victim were, at the time, boyfriend and girlfriend.

Immediately following the oral guilty plea colloquy and pursuant to the negotiated and agreed terms of sentence set forth on pages 3 and 4 of the written colloquy form, Defendant was sentenced to 11½ to 23 months on the statutory sexual assault charge, and 4 years consecutive probation on the corruption of minors charge. He was taken into custody at the conclusion of the sentencing hearing and commenced serving his sentence.

On August 19, 2011, Jonathan J. Sobel entered his appearance on behalf of Defendant, and simultaneously filed (1) a Notice of Appeal to the Superior Court from the judgment of sentence and (2) the instant Motion for Bail Pending Appeal (hereinafter "Motion"). Paragraph 8 of the Motion reads as follows: "Inasmuch as Penalzoa claims that the Appeal will raise colorable meritorious constitutional claims, the further execution of his sentence should be stayed pending the disposition of the pending appeal." Hearing on the Motion was scheduled for September 27, 2011.

In compliance with the court's August 29, 2011 Order for Concise Statement of Errors Complained of on Appeal, Defendant filed, on September 19, 2011, his Statement of Matters Complained of Pursuant to Pa.R.A.P. 1925(B). The Statement avers as follows:

"1. The voluntary guilty plea entered into by Defendant, Edwin Steven Penaloza was not knowing, voluntary or intelligent.

2. Defense Counsel was ineffective in its representation of Defendant, Edwin Steven Penaloza."

It appears that neither of these grounds for direct appeal is proper. A request to withdraw a guilty plea on the grounds that it was involuntary is a claim that must be raised by motion in the trial court in order to be reviewed on direct appeal. *Commonwealth v. Rush*, 959 A.2d 945 (Pa.Super. 2008). This claim was not raised by motion in the trial court. An ineffective assistance of counsel claim is not subject to review on direct appeal, but only on petition for post-conviction relief. *Commonwealth v. Quel*, — A.3d —, 2011 WL 3672083 (Pa.Super. 2011).

We begin with a review of the provisions of Pa.R.Crim.P. 521(B). Although the language of Pa.R.Crim.P. 521(B)(3) does not expressly so state, its phrasing suggests that the appropriate time for the defendant to request a release on bail, if he is eligible under 521(B)(1), is at the time of sentencing. Otherwise, the prospective nature of the following language would be meaningless: "the judge shall require as a condition of release that the defendant either file a post-sentence motion and perfect an appeal or, when no post-sentence motion is filed, perfect an appeal within the time permitted by law." Here, Defendant, after he voluntarily entered a guilty plea with negotiated and agreed terms of sentence, made no request for bail after sentencing and, instead voluntarily was taken from the courtroom to Chester County Prison by the sheriff's deputies. He has now served more than 2 months of his sentence.

The court is also mindful of the language of Pa.R.Crim.P. 521(B)(1) which states: "When the sentence imposed includes imprisonment of less than 2 years, the defendant shall have the same right to bail as before verdict, unless the judge, pursuant to paragraph (D), modifies the bail order." We are aware, as well, of Pa.R.A.P. 1762(a), which addresses applications "relating to bail when an appeal is pending" which "shall ordinarily first be presented to the lower court, and shall be governed by the Pennsylvania Rules of Criminal Procedure."

Our research reveals no case law on the issue before us, which we lengthily frame as follows: Where, following sentencing in a negotiated guilty plea, defendant, sentenced to imprisonment of less than 2 years, (1) does not initially request to be released on bail, but instead, voluntarily commences his agreed sentence; (2) does not file a post sentence motion requesting to withdraw his guilty plea; (3) subsequently changes counsel and takes a direct appeal; (4) indicates in his Motion for Bail Pending Appeal that he has "colorable meritorious constitutional claims;" (5) but, thereafter, in his Statement of Matters Complained of raises only two claims, both of which, on their face, are not proper grounds for direct appeal,

does the trial court have discretion to refuse bail, or must it rather act pursuant to Pa.R.Crim.P. 521(D), to somehow modify the bail order? More succinctly stated, the issue is, under these circumstances, when it is now evident that the appeal is frivolous, does a defendant maintain “the same right to bail as before verdict”?

We conclude that simply modifying bail pursuant to Pa.R.Crim.P. 521(D), under the circumstances present in this case, is not appropriate and would set poor precedent for other negotiated guilty pleas wherein a defendant may have second thoughts after spending some time in prison. If the court were to modify the existing bail order, we would set bail at \$50,000 cash, and impose a condition of electronic home confinement. (We note that the Commonwealth’s position on bail, if the court acted to modify, was \$100,000 cash, and a condition that Defendant not leave Pennsylvania). However, because Defendant is a resident of New York, and intends to return to New York if he is released, the Chester County Bail Agency is unable to conduct his electronic monitoring out of state. Moreover 521(D) requires the court to “consider whether there is an increased likelihood of the defendant’s fleeing the jurisdiction.” When asked at the hearing, Mr. Sobel stated that his client would not be “fleeing” because he is announcing in advance that he would not be remaining in Pennsylvania. Nevertheless, we are concerned that, if his Superior Court appeal is denied, Defendant would have little incentive to return to Chester County to complete the 9 remaining months of his sentence. Bench warrant proceedings could become complicated and lead to protracted extradition proceedings.

This is not an instance where Defendant has raised trial errors for appellate review, because there was no trial. He has no argument that erroneous evidentiary rulings were made, that jury instructions were improper, that a verdict was against the weight of the evidence, nor even that the court improperly exercised its discretion in sentencing. The facts of the case are not complicated: the issue is whether Defendant had sexual intercourse with his girlfriend, then 15 years old. We view this as a situation where Defendant has changed his mind about pleading guilty only after experiencing life in prison.

Under these circumstances, and for these reasons, we have refused Defendant’s request for bail.

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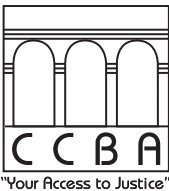


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CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an application was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, PA by All About McCarthy Enterprises, Inc., a foreign corporation formed under the laws of the state of Delaware, where its principal office is located at 35701 Cutter Ct., Lewes, DE 19958 for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Corporation Law of 1988.

The registered office in Pennsylvania shall be located at 14 Bills Way, Landenberg, PA 19350.
FOX ROTHSCHILD LLP, Solicitors
2700 Kelly Road
Suite 300
Warrington, PA 18976

**CHANGE OF NAME NOTICE
IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO. 11-0059**

NOTICE IS HEREBY GIVEN that the name change petition of Audrey Lee Myers was filed in the above-named court and will be heard on December 5, 2011, at 2:30 PM, in Courtroom 16 at the Chester County Justice Center, 201 West Market Street, West Chester, Pennsylvania.

Date of filing the Petition: August 23, 2011

Name to be changed from: Audrey Lee Myers
to: Audrey Lee Hogan

Any person interested may appear and show cause, if any they have, why the prayer of the said petitioner should not be granted.

DAVID T. SCHNARRS, Attorney for Petitioner
PO Box 1186
Pottstown, PA 19464

**CHANGE OF NAME NOTICE
IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO. 11-11425**

NOTICE IS HEREBY GIVEN that the name change petition of Nichole Harmon Pike was filed in the above-named court and will be heard on January 9, 2012, at 9:30 AM, in Courtroom 11 at the Chester County Justice Center, 201 West Market Street, West Chester, Pennsylvania.

Date of filing the Petition: October 18, 2011

Name to be changed from: Nichole Harmon
Pike to: Nichole Mairs-Cayer Pike

Any person interested may appear and show cause, if any they have, why the prayer of the said petitioner should not be granted.

CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for COATESVILLE BEAUTY & DOLLARPLUS INC in accordance with the provisions of the Pennsylvania Business Corporation Law of 1988.

CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on October 28, 2011 for Marling's, Inc., in accordance with the provisions of the Business Corporation Law of 1988. TOM MOHR LAW OFFICE, P.C., Solicitors
301 West Market Street
West Chester, PA 19382

CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for Carroll Consultants Advisors, Ltd., in accordance with the provisions of the Pennsylvania Corporation Law of 1988. PALMARELLA, CURRY & KELLY, P.C., Solicitors
1255 Drummers Lane
Suite 105
Wayne, PA 19087

CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania. The name of the proposed corporation is Skyline Management Services, Inc. The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988. MICHAEL G. DEEGAN, Solicitor
134 West King Street
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1st Publication

BISHOP, Dorothy H., late of Parkesburg. Regina Cahill, care of JANIS M. SMITH, Esquire, 428 West First Avenue, Suite C, Parkesburg, PA 19365, Executor. JANIS M. SMITH, Esquire, 428 West First Avenue, Suite C, Parkesburg, PA 19365, atty.

BRADLEY, George J., late of Strasburg Township. Elsie M. Bradley, care of GEORGE G. HEINEY, II, Esquire, P.O. Box 80, Oxford, PA 19363, Executor. GEORGE G. HEINEY, II, Esquire, P.O. Box 80, Oxford, PA 19363, atty.

DELUCE, John, late of Kennett Square. Maria De La Luz C. DeLuce, care of P. RICHARD KLEIN, Esquire, 218 West Miner Street, West Chester, PA 19382, Administrator. P. RICHARD KLEIN, Esquire, Klein, Head & Head, LLP, 218 West Miner Street, West Chester, PA 19382, atty.

HABIG, Gladys E., late of Downingtown. Deanna R. Metzger, 1547 Broad Run Road, Downingtown, PA 19335, Executrix.

HAGOPIAN, Marguerite Joyce, late of West Chester. Ellen Joyce Hagopian, care of L. ROBERT FRAME, JR., Esquire, 390 Waterloo Boulevard, Ste. 101, Exton, PA 19341, Executrix. L. ROBERT FRAME, JR., Esquire, 390 Waterloo Boulevard, Ste. 101, Exton, PA 19341, atty.

HINES, Frederick J., a/k/a Frederick Jackie Hines, late of Kennett Square. Joyce L. Long, care of JENNIFER ABRACHT, Esquire, 610 Millers Hill, P.O. Box 96, Kennett Square, PA 19348, Executor. JENNIFER ABRACHT, Esquire, Perna & Abracht, LLC, 610 Millers Hill, P.O. Box 96, Kennett Square, PA 19348, atty.

HOLLINGSWORTH, Helen G., late of Pennsbury Township. Julie Shenk and L. Peter Temple, care of L. PETER TEMPLE, Esquire, P.O. Box 384, Kennett Square, PA 19348, Executors. L. PETER TEMPLE, Esquire, Larmore Scarlett LLP, P.O. Box 384, Kennett Square, PA 19348, atty.

JACKSON, Dorothy Joan, late of West Chester. Kimberly A. Jackson and Kyle M. Bianco, care of KEVIN J. RYAN, Esquire, 220 W. Gay Street, West Chester, PA 19380-2917, Executrices. KEVIN J. RYAN, Esquire, Ryan, Morton & Imms LLC, 220 W. Gay Street, West Chester, PA 19380-2917, atty.

LATSHAW, Helen M., a/k/a Helen Latshaw, late of West Vincent Township. Kyle L. Latshaw and Russell T. Latshaw, care of DOUGLAS L. KAUNE, Esquire, 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, Executors. DOUGLAS L. KAUNE, Esquire, Unruh, Turner, Burke & Frees, P.C., 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, atty.

MADDEN, Thomas S., late of Willistown Township. Catherine Madden, 101 Wynwood Avenue, Piscataway, NJ 08854, Executrix. BERNARD J. MCLAFFERTY, JR., Esquire, McLafferty & Kroberger, P.C., 807 Bethlehem Pike, Erdenheim, PA 19038, atty.

MAZZARELLA, Theresa R., late of Uwchlan Township. Linda Mele, care of KEVIN HOLLERAN, Esquire, 17 E. Gay Street, Suite 100, P.O. Box 562, West Chester, PA 19381-0562, Executor. KEVIN HOLLERAN, Esquire, Gawthrop Greenwood, P.C., 17 E. Gay Street, Suite 100, P.O. Box 562, West Chester, PA 19381-0562, atty.

MCDONOUGH, Miriam C., late of West Chester. Mrs. Jean Shavor, 12 Ponds End Drive, Downingtown, PA 19335, Executrix. JANET SATTERTHWAITE, Esquire, Hudson L. Voltz, PC, 110 Hopewell Road, Suite 200, Downingtown, PA 19335, atty.

SCHMITT, Cora Mae, a/k/a C. Mae Schmitt, late of East Goshen Township. Edward H. Schmitt, care of KEVIN HOLLERAN, Esquire, 17 E. Gay Street, Suite 100, PO Box 562, West Chester, PA 19381-0562, Executor. KEVIN HOLLERAN, Esquire, Gawthrop Greenwood, P.C., 17 E. Gay Street, Suite 100, PO Box 562, West Chester, PA 19381-0562, atty.

STERGIN, Philip G., a/k/a Philip Gregory Stergin, late of West Bradford Township. Gregory P. Stergin, care of JAY G. FISCHER, Esquire, 342 East Lancaster Avenue, Downingtown, PA 19335, Executor. JAY G. FISCHER, Esquire, Valocchi & Fischer, 342 East Lancaster Avenue, Downingtown, PA 19335, atty.

STOLTZFUS, Amos K., late of Honey Brook. Amos K. Stoltzfus, Jr., care of P. RICHARD KLEIN, Esquire, 218 West Miner Street, West Chester, PA 19382, Executor. P. RICHARD KLEIN, Esquire, Klein, Head & Head, LLP, 218 West Miner Street, West Chester, PA 19382, atty.

STONER, Edward Luke, late of West Goshen Township. Donna White and Darlene Mellott, care of LISA COMBER HALL, Esquire, A Professional Corporation, 27 S. Darlington Street, West Chester, PA 19382, Executrices. LISA COMBER HALL, Esquire, Hall Law Offices, A Professional Corporation, 27 S. Darlington Street, West Chester, PA 19382, atty.

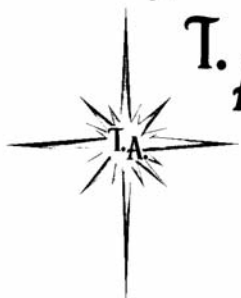
SUTTON, Lois W., late of Penn Township. Ernest S. Sutton, Jr., care of L. PETER TEMPLE, Esquire, P.O. Box 384, Kennett Square, PA 19348, Executor. L. PETER TEMPLE, Esquire, Larmore Scarlett LLP, P.O. Box 384, Kennett Square, PA 19348, atty.

THOMAS, James N., late of Atglen. Mary Ann Rosenbaum and Julius N. Santiago, care of MICHAEL R. PERNA, Esquire, 610 Millers Hill, P.O. Box 96, Kennett Square, PA 19348, Administrators. MICHAEL R. PERNA, Esquire, Perna & Abracht, LLC, 610 Millers Hill, P.O. Box 96, Kennett Square, PA 19348, atty.

UJOBAL, Mary Ann, late of Borough of Phoenixville. Marla Shiffler, care of MARZIA P. TONGIANI MIRABILE, Esquire, 254 Bridge Street, Phoenixville, PA 19460, Executor. MARZIA P. TONGIANI MIRABILE, Esquire, 254 Bridge Street, Phoenixville, PA 19460, atty.

WHITFIELD, Mildred A., late of Penn Township. Kathleen Mary Balcerzak and L. Peter Temple, care of L. PETER TEMPLE, Esquire, P.O. Box 384, Kennett Square, PA 19348, Executors. L. PETER TEMPLE, Esquire, Larmore Scarlett LLP, P.O. Box 384, Kennett Square, PA 19348, atty.

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YOUNG, Adelyn, late of Easttown Township. Paul L. Dailey, 586 Watford Lane, Berwyn, PA 19312, Executor.

ZAMBETTI, Americo A., late of West Whiteland Township. Lisa Castanzo, care of LISA COMBER HALL, Esquire, A Professional Corporation, 27 S. Darlington Street, West Chester, PA 19382, Executrix. LISA COMBER HALL, Esquire, Hall Law Offices, A Professional Corporation, 27 S. Darlington Street, West Chester, PA 19382, atty.

2nd Publication

CHOINIERE, Paul O., late of Parkerford. Cecile D. Osipowicz, 1600 Whitfield Blvd., West Lawn, PA 19609, Executrix. CHERYL J. ALLERTON, Esquire, Hartman Shurr, 1100 Berkshire Blvd, Suite 301, P.O. Box 5828, Wyomissing, PA 19610, atty.

DOUGHERTY, Patricia A., late of East Whiteland Township. Michelle C. Lusi, 308 Fairview Drive, Exton, PA 19341 and Colleen N. Walsh, 28 Springlawn Road, Glen Mills, PA 19342, Executrices. JOHN J. KILCOYNE, Esquire, Heaney & Kilcoyne, LLC, P.O. Box 528, Worcester, PA 19490, atty.

FUREY, Margaret H., late of Easttown Township. Patricia Messick and Allan B. Greenwood, care of ALLAN B. GREENWOOD, Esquire, 941 Pottstown Pike, Suite 200, Chester Springs, PA 19425, Executors. ALLAN B. GREENWOOD, Esquire, Siana, Bellwoar & McAndrew, LLP, 941 Pottstown Pike, Suite 200, Chester Springs, PA 19425, atty.

TESTA, Enrico F., a/k/a Enrico Francis Testa a/k/a Harry Testa, late of Kennet Square. Kelly Rago, care of ANITA M. D'AMICO, Esquire, 128 E. State Street, P.O. Box 618, Kennett Square, PA 19348, Executrix. ANITA M. D'AMICO, Esquire, Rigler & D'Amico, LLC, 128 E. State Street, P.O. Box 618, Kennett Square, PA 19348, atty.

3rd Publication

BEAUSANG, Michael F., Jr. a/k/a M.F. Beausang, late of Easttown Township. Deborah D. Beausang, care of RODNEY S. FLUCK, Esquire, 630 Freedom Business Center, Suite 212, King of Prussia, PA 19406, Executrix. RODNEY S. FLUCK, Esquire, Butera Beausang Cohen Brennan, 630 Freedom Business Center, Suite 212, King of Prussia, PA 19406, atty.

BRONSTON, Elisie, late of Oxford. Lonnie K. Wilder, 1017 Glendora Rd S, Poinciana, FL 34759, Executor.

CIACCI, Elizabeth A., late of West Brandywine Township. Andrea C. Freeman, P.O. Box 113, Valley Forge, PA 19481, Executrix. JAMES R. FREEMAN, Esquire, 606 S. Main Street, Phoenixville, PA 19460, atty.

CROSS, Corinnita, late of Malvern. Ian Cross, 503 Swedesford Road, Malvern, PA 19355, Executor. EDITH CHEW LLC, 20 West Miner Street, West Chester, PA 19382, atty.

DILWORTH, Maryland L., late of East Brandywine Township. Lawrence M. Dilworth, Jr., care of JOSEPH A. BELLINGHIERI, Esquire, 17 W. Miner Street, P.O. Box 660, West Chester, PA 19381-0660, Executor. JOSEPH A. BELLINGHIERI, Esquire, MacElree Harvey Ltd., 17 W. Miner Street, P.O. Box 660, West Chester, PA 19381-0660, atty.

ENGER, Shari Ann, a/k/a Shari Ann Kubicek Enger, late of Charlestown Township. Mathew S. Enger, 269A West Wendy Way, King of Prussia, PA 19406 and Nathan Scott Embree, 111 East Easter Avenue, Littleton, CO 80122, Administrators.

FRESTA, Irene T., a/k/a Irene (nee)Andrilli, late of Chester County. Ross K. Fresta, care of JOHN A. NOVELLO, Esquire, 221 N. Olive Street, Media, PA 19063, Administrator. JOHN A. NOVELLO, Esquire, 221 N. Olive Street, Media, PA 19063, atty.

RASSBERG, Eugene, late of Pennsbury Township. Mary McLaughlin-Koprowski, care of JEAN WHITE E. JONES, Esquire, 130 West Lancaster Avenue, Wayne, PA 19087, Executrix. JEAN WHITE E. JONES, Esquire, Butera & Jones, 130 West Lancaster Avenue, Wayne, PA 19087, atty.

GREER, James M., late of Westtown Township. Margaret G. Davis, 1670 Fox Crossing, West Chester, PA 19380, Executrix. FRANK W. HAYES, Esquire, Hayes & Romero, 31 South High Street, West Chester, PA 19382, atty.

HENNESY, Clare M., late of Schuylkill Township. Celia A. Rafalowski, care of DAVID M. FREES, III, Esquire, 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, Executor. DAVID M. FREES, III, Esquire, Unruh, Turner, Burke & Frees, P.C., 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, atty.

KILBY, Larry J., late of West Grove. Larry J. Kilby, care of LARRY ELLIOT JONES, Esquire, 118 West Evergreen Street, West Grove, PA 19390, Executor. LARRY ELLIOT JONES, Esquire, 118 West Evergreen Street, West Grove, PA 19390, atty.

KOVATCH, Dorothy M., late of Honey Brook. Carolyn D. Arnold, 35 Lenape Way, Honey Brook, PA 19344, Executrix.

LEBOUTILLIER, Zelinda, late of West Whiteland Township. LOUIS N. TETI and Kathryn V. Snyder, care of LOUIS N. TETI, Esquire, 17 West Miner Street, P.O. Box 660, West Chester, PA 19381-0660, Executors. LOUIS N. TETI, Esquire, MacElree Harvey, Ltd., 17 West Miner Street, P.O. Box 660, West Chester, PA 19381-0660, atty.

LUICANA, Marjorie S., late of North Convery Township. Judith Ann Emrich, 1831 Ashton Drive, Lebanon, PA 17046 and Donald G. Luicana, 99 Packer Avenue, Jim Thorpe, PA 18229, Executors. JOHN A. KOURY, Esquire, O'Donnell, Weiss & Mattei, P.C., 41 East High Street, Pottstown, PA 19464-5426, atty.

MESSICK, Robert E., late of Borough of Kennett. Sherry Lynn Albert, 105 Lincoln Street, Kennett Square, PA 19348, Executrix. WILLIAM J. GALLAGHER, Esquire, MacElree Harvey Ltd., 211 E. State Street, Kennett Square, PA 19348, atty.

PEPE, Joseph M., late of Easttown Township. Brenda Mc Fadden, 1430 N. Hirst Street, Philadelphia, PA 19151, Executrix. ROBERT B. SHOEMAKER, JR., Esquire, 1800 East Lancaster Avenue, Paoli, PA 19301, atty.

ROBERTS, William B., Jr., late of Kennett Square Borough. Stephen R. Roberts, care of L. PETER TEMPLE, Esquire, P.O. Box 384, Kennett Square, PA 19348, Executor. L. PETER TEMPLE, Esquire, Larmore Scarlett LLP, P.O. Box 384, Kennett Square, PA 19348, atty.

ROMANO, Angela R., late of Chester County. Jeffrey A. Romano, care of MICHAEL P. ROWAN, Esquire, 214 S. New Street, West Chester, PA 19382, Executor. MICHAEL P. ROWAN, Esquire, 214 S. New Street, West Chester, PA 19382, atty.

SCHWERING, Mary L., late of West Sadsbury Township. Andrew C. Cappelli, care of JANIS M. SMITH, Esquire, 428 West First Avenue, Suite C, Parkesburg, PA 19365, Executor. JANIS M. SMITH, Esquire, 428 West First Avenue, Suite C, Parkesburg, PA 19365, atty.

SLOAD, Lois I., late of Charlestown Township. Elizabeth A. Shunk, 4087 S. Whitehorse Road, Devault, PA 19432, Administratrix. DAVID S. KAPLAN, Esquire, O'Donnell, Weiss & Mattei, P.C., 41 East High Street, Pottstown, PA 19464-5426, atty.

SPIEGELFORD, Morton B., late of Tredyffrin Township. Eric R. Feld, care of ALLISON BELL ROYER, Esquire, 280 N. Providence Road, Media, PA 19063, Executor. ALLISON BELL ROYER, Esquire, 280 N. Providence Road, Media, PA 19063, atty.

VON REMBOW, Patricia J., late of Uwchlan Township. Penny K. Davis, 205 Louis Drive, Exton, PA 19341, Executrix. WILLIAM T. KEEN, Esquire, Keen, Keen & Good, 3460 Lincoln Highway, Thorndale, PA 19372, atty.

FICTITIOUS NAME

NOTICE is hereby given, pursuant to Fictitious Names Act of 1982, 54 Pa.C.S. Section 301 et seq., which repealed prior laws on the subject, any entity or entities (including individuals, corporations, partnership or other groups, which conduct any business in Pennsylvania under an assumed or fictitious name shall register such name by filing an application for registration of fictitious name with the Department of State for the conduct of a business in Chester County, Pennsylvania under the assumed or fictitious name, style or designation of

A-V Tributes, with its principal place of business at 812 Goshen Rd., Ste C-8, West Chester, PA 19380.

The application has been (or will be) filed on: September 20, 2011.

The name(s) and address(es) of the individual(s) or entity(ies) owning or interested in said business: David Fink, 812 Goshen Road, Suite C-8, West Chester, PA 19380. This was filed in accordance with 54 Pa.C.S. 311.

Success at Home, with its principal place of business at 651 Saginaw Rd., Oxford, PA 19363.

The application has been (or will be) filed on: October 31, 2011.

The name(s) and address(es) of the individual(s) or entity(ies) owning or interested in said business: Caitlin Gardner, 651 Saginaw Rd., Oxford, PA 19363.

**CORPORATION NOTICE
LIMITED LIABILITY COMPANY**

NOTICE IS HEREBY GIVEN that the Certificate of Organization of Domestic Limited Liability Company have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania pursuant to the provisions of Business Corporation Law of 1988.

The name of the corporation is : Mindtronix, LLC

The Certificate of Organization was filed on October 25, 2011.

GERALD J. MULLANEY, SR., Solicitor
Mullaney Law Offices
598 Main Street
PO Box 24
Red Hill, PA 18076

CHARLES T. DeTULLEO

**Attorney at Law
134 North Church St.
West Chester, PA 19380
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1st Publication**ESTATE AND TRUST NOTICE****CORPORATION NOTICE**

NOTICE is hereby given that Articles of Incorporation have been approved and filed in the Department of State of the Commonwealth of Pennsylvania on October 13, 2011, pursuant to the provisions of the Nonprofit Corporation Law of 1988, 15 Pa. C.S. Section 5101, et. seq.

The name of the non-profit corporation is: Fuchsia Moose Thrift Shop, Inc.

The purpose or purposes of the corporation are to generally engage in and to do any lawful acts concerning any and all lawful business for which nonprofit corporations may be incorporated under the Pennsylvania Nonprofit Corporation Law of 1988.

EDWARD M. FOLEY, Solicitor
Brutscher, Foley, Milliner & Land, LLP
213 East State Street
Kennett Square, PA 19348

Let all persons be on notice that EDWARD E. VANDENEYKEL, late of West Bradford Township, died on October 4, 2011, leaving both an Estate and a Revocable Living Trust.

Letters Testamentary have been granted to Steven R. Vanden-Eykel and Cheryl A. Vanden Eykel, and the Trustees of the Revocable Living Trust are Steven R. Vanden-Eykel and Cheryl A. Vanden Eykel. The attorney for the estate and trust is Barry S. Rabin.

All persons having claims or demands on the Estate or Trust are requested to make them known, and all persons indebted to the said decedent or trust are requested to make payment without delay, c/o the Law Firm of Barry S. Rabin, 3460 Lincoln Highway, Thorndale, PA 19372

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NOTICE**IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW****NO.: 11-02869****NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

Wells Fargo Bank, N.A.
Plaintiff

vs.

The Unknown Heirs and Administrators of the Estate of Kathy A. Mastrangelo also known as Kathy Mastrangelo
Defendant(s)

TO: The Unknown Heirs and Administrators of the Estate of Kathy A. Mastrangelo also known as Kathy Mastrangelo

PRESENTLY OR FORMERLY of 309 Franklin Avenue with a mailing address of 309 Franklin Avenue, Phoenixville, PA 19460. A lawsuit has been filed against you in mortgage foreclosure and against your real estate at 309 Franklin Avenue with a mailing address of 309 Franklin Avenue, Phoenixville, PA 19460 because you have failed to make the regular monthly payments on your mortgage loan and the loan is in default. The lawsuit is an attempt to collect a debt from you owed to the plaintiff, Wells Fargo Bank, N.A.. A detailed notice to you of your rights under the Fair Debt Collection Practices Act (15 U.S.C. §1692, et. seq.) is included in the Complaint filed in the lawsuit. The lawsuit is filed in the Chester County Court of Common Pleas, at the above term and number.

A copy of the Complaint filed in the lawsuit will be sent to you upon request to the Attorney for the Plaintiff, Scott A. Dietterick, Esquire, P.O. Box 1024, Mountainside, NJ 07092. Phone (908) 233-8500.

IF YOU WISH TO DEFEND, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN 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 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.

NOTICE TO DEFEND
Chester County Bar Association
15 W. Gay Street
P.O. Box 3191
West Chester, PA 19381
Phone (610) 429-1500

LAWYER REFERRAL
Chester County Bar Association
15 W. Gay Street
P.O. Box 3191
West Chester, PA 19381
Phone (610) 429-1500

NOTICE

RW-406 (7/07)

D.B. – Unknown Owner

IN THE COURT OF COMMON PLEAS OF Chester COUNTY, PENNSYLVANIA

IN RE: CONDEMNATION BY THE	: NO. 11-12050	TERM, 2011
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
TRANSPORTATION, OF THE	:	
RIGHT-OF-WAY FOR STATE	:	
ROUTE 29, SECTION AL2	: EMINENT DOMAIN PROCEEDING	
IN THE TOWNSHIP OF CHARLESTOWN	: IN REM	

NOTICE OF CONDEMNATION AND DEPOSIT OF ESTIMATED JUST COMPENSATION

Notice is hereby given that the Commonwealth of Pennsylvania, by the Secretary of Transportation, whose address is the Commonwealth of Pennsylvania, Department of Transportation, Office of Chief Counsel, Real Property Division, Commonwealth Keystone Building, Harrisburg, Pennsylvania 17120, pursuant to the provisions of Section 2003(e) of the Administrative Code of 1929, P.L. 177, 71 P.S. 513(e), as amended, has filed on 1 November 2011 a Declaration of Taking to the above term and number, condemning the property shown on the plans of the parcels listed on the Schedule of Property Condemned which have been recorded in the Recorder’s Office of the above county at the places indicated on the said schedule. The name(s) of the owner(s) of the property interest(s) condemned is (are) also shown on the aforesaid Schedule. The Secretary of Transportation, on behalf of himself and the Governor has approved the within condemnation by signing on 13 May 2011 a plan entitled Drawings Authorizing Acquisition of Right-of-Way for State Route 29, Section AL2 in Chester County, a copy of which plan was recorded in the Recorder’s Office of the aforesaid county on 24 June 2011, in Book 97, Page 9.

The purpose of the condemnation is to acquire property of transportation purposes.

Plans showing the property condemned from the parcels listed on the Schedule of Property Condemned have been recorded in the aforesaid Recorder’s Office at the places indicated on the Schedule, where they are available for inspection. The Property Interest thereby condemned is designated on the Declaration of Taking heretofore filed. The Commonwealth of Pennsylvania is not required to post security, inasmuch as it has the power of taxation.

Because the identity or the whereabouts of the condemnee(s) listed below is (are) unknown or for other reasons he (they) cannot be served, this notice is hereby published in accordance with Section 305(b) of the Eminent Domain Code (26 Pa.C.S. §305(b)).

RW-406 (7/07)

Page 2 of 2

Claim No.	Parcel No.	Name	Address
1500287000	18	Unknown Owner	Unknown

The power or right of the Secretary of Transportation of the Commonwealth of Pennsylvania to appropriate the property condemned, the procedure followed by the Secretary of Transportation or the Declaration of Taking may be challenged by filing preliminary objections within thirty (30) days of the date of this notice.

FURTHERMORE, NOTICE IS GIVEN THAT the Commonwealth of Pennsylvania, Department of Transportation, pursuant to Section 522 of the Eminent Domain Code (26 Pa.C.S. §522), will, at the end of the above-referenced thirty (30) day time period within which to file preliminary objections to the Declaration of Taking, present a petition to the Court of Common Pleas of the above county to deposit into court the just compensation estimated by the Commonwealth to be due all parties in interest for damages sustained as the result of the condemnation of the property herein involved.

The petition to deposit estimated just compensation may not be presented to the court if the owner(s) of the property herein involved inform the District Right-of-Way Administrator of the District noted below of their existence and/or whereabouts prior to the expiration of the noted period. After estimated just compensation has been deposited into court, the said monies may be withdrawn by the persons entitled thereto only upon petition to the court. If no petition is presented within a period of six years of the date of payment into court, the court shall order the fund or any balance remaining to be paid to the Commonwealth without escheat.

Matthew J. Kulpa
District Right-of-Way Administrator
Engineering District 6-0
Pennsylvania Department of Transportation

3rd Publication

**DOWNINGTOWN AREA SCHOOL DISTRICT
CHESTER COUNTY, PENNSYLVANIA
PUBLIC NOTICE**

NOTICE IS GIVEN that a hearing shall be conducted on the Amended Petition of the Board of School Directors of the Downingtown Area School District to Sell Unnecessary Lands and Buildings by Private Sale ("the Petition") on Monday, November 21, 2011, in Courtroom # 3 of the Chester County Justice Center, 201 W. Market Street, West Chester, PA at 11:30 a.m. The purpose of the hearing is to address Downingtown Area School District's ("the School District") Amended Petition for approval to sell by private sale, under the terms set forth below and contained in the Amended Petition, the School District's former warehouse located at 320 Boot Road, East Caln Township, Chester County, Pennsylvania also known as tax parcel number 40-03-0011.060E, deed reference Book 7051 page 1713 ("the Property").

The Property is approximately two acres and is improved with a 20,008 square feet flex warehouse with related improvements, including approximately 2000 square feet of finished administrative space within the warehouse and an asphalt parking area. The warehouse is also improved with a gas fired heater, a fire suppression sprinkler system, six roll-up doors and fluorescent lighting throughout and is serviced by public water, public sewer and natural gas. The Property is located within the I-1 Industrial Zoning District of East Caln Township.

The Property is being sold pursuant to an Agreement of Sale, as amended, to Michael Homaijani ("the Purchaser") with an address of Import Cars of West Chester, 700 East Market Street, West Chester, PA 19382. The Purchaser has offered \$1.7 Million for the Property and has offered to pay all real estate transfer tax. The School District has agreed to pay a broker's fee to Times Real Estate, Inc. in the amount of 3% of the purchase price. The School District seeks Court approval at the hearing on the date and time set forth above to the sell the Property to Purchaser by private sale pursuant to the Pennsylvania School Code of 1949, 24 P.S. §7-707(3) under these terms and conditions and as further set forth in the Agreement of Sale, as amended.

At the hearing, the School District shall offer evidence in support of its Amended Petition. The hearing shall be open to the public. Any interested persons may appear and participate at the hearing and may offer evidence in support of or in opposition to the School District's Amended Petition. The Amended Petition and the Agreement of Sale, as amended, may be reviewed upon request during regular business hours at the Administrative Offices of the School District, 540 Trestle Place Downingtown, PA 19335, c/o Richard A. Fazio, (610) 269-8460. For more information, please contact:

Guy A. Donatelli, Esquire

Lamb McErlane PC

24 East Market Street

West Chester, PA 19381

Direct Dial: (610) 701-4419

Facsimile: (610) 692-0877

Email: gdonatelli@chescolaw.com

Guy A. Donatelli, Solicitor Downingtown Area School District

NOTICE

NOTICE OF WRIT OF SCIRE FACIAS SUR MUNICIPAL CLAIM
IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

SADSBURY TOWNSHIP	:	NO. 2009-05225-LN
	:	
vs.	:	CIVIL ACTION - LAW
	:	
DONNA BOLIVAR	:	
	:	
SADSBURY TOWNSHIP	:	NO. 2010-06540-LN
	:	
vs.	:	CIVIL ACTION - LAW
	:	
DONNA BOLIVAR	:	
	:	
SADSBURY TOWNSHIP	:	NO. 2011-08006-LN
	:	
vs.	:	CIVIL ACTION - LAW
	:	
DONNA BOLIVAR	:	

NOTICE

To Donna Bolivar:

You are hereby notified that on September 30, 2011 and October 5, 2011 Plaintiff, Sadsbury Township, filed three Praecepta for Writ of Scire Facias Sur Municipal Claim and the Prothonotary of the Court of Common Pleas of Chester County issued said Writs on said Claims against the property located at 808 Timber Drive, Sadsbury Township, Chester County Pennsylvania, as more particularly described as tax parcel no. 37-4-183, owned or reputed to be owned by you.

You are hereby notified to file your Affidavit of Defense to said Claim, on or before twenty (20) days from the date of this publication. If no Affidavit of Defense be filed within said time, judgment may be entered against you for the whole Claim, and the property described in the Claim be sold to recover the amount thereof. 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 INFORM 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.

CHESTER COUNTY BAR ASSOCIATION
Lawyer Referral Service
15 West Gay Street, 2nd Floor
West Chester, PA 19380
(610) 429-1500

NOTICE

Chester County Orphans Court
Docket # 1510-1977
Public Auction
Sat. Nov. 26 at 10 AM
201 Union Ave.
Coatesville, Pa. 19320
Rowhome – 10% cash deposit
Inspection 1 hr. before or by appt.
Estate of Elizabeth C. Hracho A/K/A
Betty Hracho.
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