

1 COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
2 : OF ERIE COUNTY, PENNSYLVANIA
3 VS : CRIMINAL DIVISION
4 JERIMIAH VAN TASSEL : NO. 2154 OF 2016
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6
7

PLEA

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9 Proceedings held before the
10 Honorable Daniel J. Brabender, Jr., in Courtroom F,
11 Erie County Courthouse, Erie, Pennsylvania, on
12 Wednesday, May 3, 2017, commencing at 9:52 a.m.
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15

16 APPEARANCES:
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18 Elizabeth Hirz, First Assistant District Attorney, and
19 Jessica Lasley, Assistant District Attorney, appearing on
20 behalf of the Commonwealth.

21 Eric Vaughn Hackwelder, Attorney at Law, appearing on behalf
22 of the Defendant.
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25 Andrea C. Muscarella, Official Court Reporter

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P-R-O-C-E-E-D-I-N-G-S

THE TIPSTAFF: If you can acknowledge your presence for the court reporter by responding here. Jack DeFilippo?

MR. DEFILIPPO: Yes.

THE TIPSTAFF: Anthony Dzuricky?

MR. DZURICKY: Yes.

THE TIPSTAFF: Bahein Hawkins?

MR. HAWKINS: Here.

THE TIPSTAFF: Shawn Kitcey?

MR. KITCEY: Here.

THE TIPSTAFF: Cody Miles?

MR. MILES: Here.

THE TIPSTAFF: Michael Salow?

MR. SALOW: Here.

THE TIPSTAFF: Jerimiah Van Tassel?

MR. RODRIGUEZ: Here.

THE TIPSTAFF: Joshua Conaway? No response.
Joshua Conaway?

MR. CONAWAY: Here.

THE TIPSTAFF: Ahmed Duale?

MR. DUALE: Here.

THE TIPSTAFF: Courtney Fuller?

1 MS. FULLER: Here.

2 THE TIPSTAFF: Lorin Grate?

3 MR. GRATE: Here.

4 THE TIPSTAFF: Joseph Hollis?

5 MR. HOLLIS: Here.

6 THE TIPSTAFF: Marcello Woodard?

7 MR. WOODARD: Here.

8 THE TIPSTAFF: Jeremy Wunz?

9 MR. WUNZ: Here.

10 THE TIPSTAFF: Jacob Young?

11 MR. YOUNG: Here.

12 MS. LASLEY: Good morning, everyone. My name
13 is Jessica Lasley. I or First Assistant District
14 Attorney Beth Hirz and Assistant District Attorney
15 Jared Trent are going to be handling your cases this
16 morning.

17 Before we get started I'm going to go over
18 some rights that you have prior to entering a guilty
19 plea, some of which you give up. Additionally, I'm
20 going to go over your Post-Sentencing and Appellate
21 Rights.

22 In some cases, the judge will choose to go to
23 sentencing in your cases. In other cases, some of
24 you are here, and have fast track revocations.
25 There's a difference between the rights you have

1 subsequent to those two proceedings, which I'll
2 differentiate at the time that I go over them, okay?
3 Please pay attention, and if you have any questions,
4 please let me know, your attorney, or the judge when
5 you come before him.

6 First, you do have a right to an attorney to
7 represent you, including one appointed free of charge
8 if you're unable to afford an attorney, and if you
9 meet the guidelines of the Public Defender's office.

10 You have a right to a trial by jury, and
11 you're presumed innocent until and unless the
12 Commonwealth proves your guilt beyond a reasonable
13 doubt. This right to a trial includes your
14 participation with your attorney to select a jury of
15 12 members of this community, and the jury's verdict
16 must be unanimous. By pleading guilty or no contest
17 here today, you're forever giving up your right to a
18 jury trial as I've just explained.

19 Now, when you come before the judge, we're
20 going to be going over the maximum and minimum
21 penalties in your cases as well as any plea bargain
22 if one exists. However, the judge is not bound by
23 the terms of a plea bargain unless he chooses to
24 accept it. He'll announce his decision at the
25 conclusion of the plea colloquy which follows your

1 signing of this sheet, which has your rights on it.

2 similarly, if the Commonwealth has agreed to
3 make a sentencing recommendation in any of your
4 cases, the judge is not bound by the terms of that
5 sentencing recommendation. The judge has the ability
6 to sentence you outside and above or below that
7 sentencing recommendation, and should he choose to do
8 that, that is not grounds for you to withdraw your
9 guilty plea.

10 If you're a foreign national or naturalized
11 citizen, a plea of guilty or conviction of certain
12 crimes may result in your deportation from the United
13 States. Does anyone have any questions at this
14 point?

15 No response.

16 MS. LASLEY: Moving on to your Post-Sentencing
17 and Appellate Rights: As I mentioned, the judge
18 might choose to go to sentencing in some or all of
19 your cases. If that's the case, you do have the
20 right to file a Post-Sentence Motion and include a
21 request for a new trial, a challenge to your guilty
22 or no contest plea, a request for an arrest of
23 judgment, a request for modification of your
24 sentence, and a challenge to your revocation if
25 you're here for that or you're resentencing.

1 A Post-Sentence Motion must be in writing,
2 include all of your requests, and be filed with the
3 Clerk of Courts on the first floor of this building
4 within thirty -- I'm sorry, within ten days of the
5 date of your sentencing or resentencing.

6 You also have a right to file an appeal to the
7 Superior Court seated in Pittsburgh. You do that by
8 filing a Notice of Appeal within thirty days of the
9 date of your sentence with the Clerk of Courts on the
10 first floor of this building.

11 Now, if you're here for original sentencing
12 and you choose to file a Post-Sentence Motion, you
13 then must file your Notice of Appeal within thirty
14 days of the date that motion is decided. If the
15 Court fails to decide your motion for a hundred and
16 twenty days, it's considered automatically denied by
17 operation of law, and then you must file your Notice
18 of Appeal within thirty days of that date.

19 If you are here for a fast track revo and you
20 are revoked and resentenced on that docket number,
21 you should be aware that your Notice of Appeal is due
22 thirty days from the date of your resentencing,
23 regardless of whether or not you decide to file --
24 I'm sorry, whether or not you decide to file a
25 Post-Sentence Motion.

1 Now, if you're indigent, you may proceed in
2 forma pauperis with counsel assigned to represent you
3 without charge if you meet the guidelines of the
4 Public Defender's Office.

5 Finally, if you're sentenced here today to an
6 incarceration sentence, you may be entitled to have
7 bail set or modified pursuant to Rule 521(B), but
8 that will be subject to a separate hearing while your
9 appeal is pending.

10 Does anyone have any questions?

11 (No response.)

12 (Whereupon, all defendants present were duly
13 sworn.)

14 MS. HIRZ: Good morning, Your Honor.

15 THE COURT: Morning.

16 MS. HIRZ: Your Honor, this is the time set
17 for the plea for Jerimiah Van Tassel at Docket 2154
18 of 2016.

19 Sir, you were present in court earlier when
20 Attorney Lasley reviewed the rights you have and the
21 rights that you're giving up today, correct?

22 MR. VAN TASSEL: Yes.

23 MS. HIRZ: Do you have any questions, sir,
24 about those rights?

25 MR. VAN TASSEL: No.

1 MS. HIRZ: Sir, I'm going to go over with you
2 the maximum penalties at this time. Count 2 carries
3 a \$25,000 fine, 10 years incarceration; Count 3 is a
4 \$50,000 fine, 40 years incarceration; Count 4 is a
5 \$25,000 fine, 20 years incarceration; and Count 5 and
6 Count 8 both carry a \$15,000 fine, 7 years
7 incarceration; for a total possible maximum fine of
8 \$130,000, 84 years incarceration.

9 Do you have any questions about those maximum
10 penalties, sir?

11 MR. VAN TASSEL: No.

12 MS. HIRZ: Understanding this case, you will
13 be pleading no contest to Counts 2, 3, 4, and 8, and
14 you will be pleading guilty to Count 5. In exchange,
15 with the Court's permission, the Commonwealth will
16 nolle pros or dismiss all remaining counts with costs
17 on you. And you understand, sir, that by pleading no
18 contest, you are exposed to sentence as though you
19 pled guilty, and you were just indicating that you
20 were not pleading guilty to those counts, but you
21 were just not going to fight the Commonwealth's case
22 against; is you that your understanding, sir, no
23 contest?

24 MR. VANTASSEL: Yes.

25 MS. HIRZ: Do you have any questions over

1 anything that I have reviewed so far?

2 MR. VAN TASSEL: No.

3 MS. HIRZ: Is this your signature on the line
4 marked defendant, sir, acknowledging your
5 understanding of everything that we've gone over?

6 MR. VAN TASSEL: Yes.

7 MS. HIRZ: All right. Thank you. I'm going
8 to start -- show you your Criminal Information, sir,
9 which sets forth legal definition and factual basis
10 for the charges against you. Count 2 will be amended
11 to reflect statutory sexual assault, felony of the
12 second degree, which alleges that on or about
13 December 2015, through May of 2016, in the County of
14 Erie, you did engage in sexual intercourse with your
15 daughter, and you were 11 years older than her at the
16 time and not married, specifically, you did have sex
17 with your daughter, initials DOB, age nine at the
18 time of the offense, this occurred at 5321 Loomis
19 Street, continuing course of conduct at Lot 231 in
20 North East Township, thereby you did commit the crime
21 of statutory sexual assault, felony of the second
22 degree; how do you plead to Count 2? No contest?

23 MR. VAN TASSEL: No contest.

24 MS. HIRZ: Count 3 alleges on the same date
25 and location, you did engage in deviate sexual

1 intercourse with another person less than 13 years of
2 age, specifically -- I'm sorry, your daughter, who
3 was nine years old at the time of the incidents,
4 initials TV, in that you did, in an ongoing course of
5 conduct, perform oral intercourse upon your daughter,
6 thereby committing the crime of involuntary sexual --
7 involuntary deviate sexual intercourse with a child,
8 felony of the first degree. How do you plead to
9 Count 3, sir?

10 MR. VAN TASSEL: No contest.

11 MS. HIRZ: Count 4 alleges on the same date
12 and location, you did engage in penetration, however
13 slight, of the genitals of another person, without
14 that person's consent, and the person was under 13 at
15 the time, your daughter, TV, nine years old at the
16 time, and that you did in an ongoing course of
17 conduct, digitally penetrate her vagina, thereby
18 committing aggravated indecent assault of a child,
19 felony of the first degree; how do you plead to Count
20 4, sir?

21 MR. VAN TASSEL: No contest.



Kenneth J. Gamble
Erie County
Clerk of Records

Office of Clerk of Courts

Erie County Courthouse • 140 West Sixth Street • Erie Pennsylvania 16501 • 814 / 451-6221

August 28, 2019

RE: Jeremiah Vantassel
2154/2016

Dear Attorney Hathaway:

Pursuant to Pa.R.Crim.Pr. 576(A)(4) please find enclosed herewith a copy of Petition to Correct the Record received from Jeremiah Vantassel for whom you appear as counsel of record. Would you kindly review same for any action you deem appropriate. If you no longer represent the defendant please contact the Clerk of Courts.

Sincerely,

Kenneth Gamble
Erie County
Clerk of Records

/sc

Enclosure

cc: District Attorney
cc: File
cc: Jeremiah Vantassel – SCI Albion #NL0329

AUG 28 2019

Jeremiah – Lyle; Van Tassel :
Vs. :
COMMONWEALTH OF PENNSYLVANIA :
Vs. :
JEREMIAH LYLE VAN TASSEL :

IN THE COURT OF COMMON
PLEAS, EIRE COUNTY,
PENNSYLVANIA, CRININAL
DIVISION, DOCKIT # 2154 - 2016

RECEIVED

PITITION TO CORRECT THE RECORDED

AUG 22 2019

CLERK OF COURTS
CRIMINAL DIVISION

Under necessity, now comes the there'd party intervener appearing by special appearance, and NOT general appearance, Jeremiah- Lyle; Van Tassel, living Man here in Petitioner, Executor/ administrator of the Trust / Estate, Defendant JEREMIAH LYLE VAN TASSEL. To correct the record and clarify definition for all party's involved, Petitioner states the following:

On the 9th of April, 2019 an ORDER OF THE CORT appointed Attorney William j. Hathaway as counsel for, Jeremiah L. Van Tassel

A MOTION FOR TRANSCRIPTS AND EXTENTION FOR TIME was filed into the Erie county clerk of records clerk of courts by Attorney Hathaway on the 17th of April 2019, claiming that Jeremiah Lyle Van Tassel was the "Petitioner" and he his attorney.

Attorney Hathaway then filed a SUPPLENENT TO PETTION FOR POST CONVICTION RELIEF with the Erie county clerk or records clerk of courts on the 29th of July, once again clamming Jeremiah Lyle Van Tassel was the "Petitioner" and himself as attorney therefore.

These claims by Attorney William J. Hathaway are in error as the defendant in this matter is JEREMIAH LYLE VAN TASSEL. The ORDER OF THE COURT clearly appoints Attorney Hathaway to Jeremiah L. Van Tassel, this being a derivative of the defendant JEREMIAH LYLE VAN TASSEL, an Ensilages. NOT the here in Petitioner Jeremiah Lyle Van Tassel, Living Man.

For clarification and definitions of the Defendant JEREMIAH LYLE VAN TASSEL, Ensilages, and the herein Petitioner Jeremiah Lyle Van Tassel, Living Man see Petitioners ASSERVATION AND DECLERATION OF STATES, UCC-1 FINACING STATMENT, SECURITY AGRMENT, COMMON LAW COPYRIGHT and HOULD HARMLESS AND INDEMITY AGREEMENT. Filed with the Erie County Clerk of Courts Clerk of Records.

All the above listed documents outline and define the separation between the Defendant JEREMIAH LYLE VAN TASSEL and the Petitioner Jeremiah Lyle Van Tassel, living Man.

It is to the beast of my knowledge that all for mentioned documents are available upon request of the Erie county clerk of courts clerk of records office.

Petitioner believes that Attorney Hathaway's error is due to the similarities in spelling and not intended to go outside the order of the court.

As there is no Order issued by the Court appointing Attorney Hathaway to the Living Man Jeremiah Lyle Van Tassel, there for let the record show the errors in whom Attorney Hathaway claims to be appointed.

That Attorney Hathaway has been appointed to the defendant JEREMIAH LYLE VAN TASSEL, NOT the living Man Jeremiah Lyle Van Tassel.

That the Defendant JEREMIAH LYLE VAN TASSEL and the Petitioner Jeremiah Lyle Van Tassel, Living Man are separate and not the same.

That all parties involved have been given copy of this petition and per this petition Attorney Hathaway has been informed of his error wither intentional or accidental and should correct such errors and refrain from such in the future.

Ageist, 15th, 2019

Jeremiah - Lyle ; Van Tassel

Jeremiah - Lyle ; Van Tassel, Living Man

CERTIFICATE O SERVICE

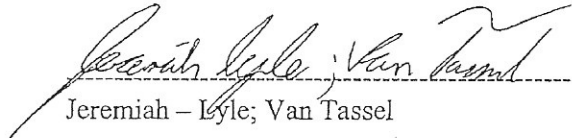
Elizabeth Anne Hirz
Assistant District Attorney
Erie County District Attorney's Office
140 West 6th street Erie, Pennsylvania
[16501]

Erie County Clerk of Court Clerk of Records
140 West 6th street Erie Pennsylvania
[16501]

Attorney William J. Hathaway
1903 West 8th street pmb # 261
Erie Pennsylvania [16505]

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to be furnished by process of service via U'S postal mail to the above listed persons and entities.

This 15th day of Ageist, 2019


Jeremiah - Lyle; Van Tassel

Smart Communications/PADOC

SCI- Albion

Name Detaviah Lyle Van Tassell Number WL-0329

PO Box 33028

St. Petersburg, FL 33733

Inmate Mail

PA Dept of
Corrections



U.S. POSTAGE PITNEY BOWES

ZIP 16401 \$ 000.50⁰
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Erie County Clerk of Court / Clerk of Records
Erie County Courthouse 146 West 6th Street
Erie, Pennsylvania
[16501]

1650151080 0021

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
v. : OF ERIE COUNTY, PENNSYLVANIA
: CRIMINAL DIVISION
:
JERIMIAH LYLE VANTASSEL : No. 2154 of 2016

MOTION FOR TRANSCRIPTS AND EXTENSION OF TIME

AND NOW, comes the Petitioner, Jerimiah Lyle Vantassel, by and through his attorney, William J. Hathaway, Esquire, and files this Motion for Transcripts and Extension of Time within which to file an Amended PCRA, if warranted, and states as follows:

1. The Petitioner, Jerimiah Lyle Vantassel, filed a pro se Motion for Post Conviction Collateral Relief on April 3, 2019.
2. Pursuant to court order dated April 9, 2019, the undersigned counsel was appointed as PCRA counsel and directed to file an Amended PCRA on or before May 24, 2019.
3. The Petitioner has asserted claims in regard to the jury trial and sentencing.
4. No direct appeal was taken as to this case and thus the case record has not been transcribed.
5. Counsel requires the transcription of the relevant case record for the purpose of conducting a complete and diligent review for purposes of discernment and presentment of any claims under the PCRA statute.
6. Counsel cannot comply with the present deadline in consideration of the necessity of securing the case transcripts.

WHEREFORE, the Petitioner, Jerimiah Lyle Vantassel, respectfully requests that this Court issue an order for the transcription of the case record and grant him an extension of

forty-five (45) days subsequent to the record filing of the transcripts within which to file an Amended PCRA, if warranted.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read "William J. Hathaway", written over a horizontal line.

William J. Hathaway, Esquire
1903 West 8th Street, PMB #261
Erie, Pennsylvania 16505
(814) 456-4433

Attorney for Petitioner,
Jerimiah Lyle Vantassel

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA
v. : CRIMINAL DIVISION
:
JERIMIAH LYLE VANTASSEL : No. 2154 of 2016

ORDER

AND NOW, this _____ day of April, 2019, upon consideration of the Motion for Transcripts and Extension of Time within which to file an Amended PCRA submitted by the Petitioner, it is hereby ORDERED, ADJUDGED and DECREED that said Petition is GRANTED. It is further ORDERED that the Petitioner shall have forty-five days subsequent to the record filing of all transcripts from docket number 2154 of 2016 within which to file an Amended PCRA, if warranted. It is further ORDERED that the Office of Court Reporters shall provide notice to counsel and to the Court upon the filing of record of said transcripts.

BY THE COURT:

Judge Daniel J. Brabender, Jr.

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
2019 JUL 29 AM 10:45 : OF ERIE COUNTY, PENNSYLVANIA
v. : CRIMINAL DIVISION
JERIMIAH LYLE VAN TASSEL :
: No. 2154 of 2016

SUPPLEMENT TO PETITION FOR POST CONVICTION RELIEF

AND NOW, comes the Petitioner, Jerimiah Lyle Van Tassel, by and through his attorney, William J. Hathaway, Esquire, and files this Supplement to PCRA Petition and states as follows:

The Petitioner, Jerimiah Lyle Van Tassel, filed a pro se PCRA Petition on April 3, 2019, which is hereby incorporated by reference. Upon being appointed as PCRA counsel, the undersigned filed a Motion for Extension and Transcripts, which was granted by the Court. The final transcripts have now been filed of record and this matter is now ripe for review and presentment to the Court.

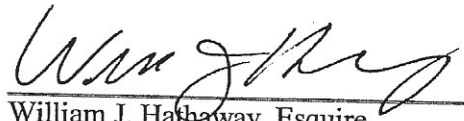
The Court engaged the Petitioner in a pro se colloquy on the record on November 30, 2017 for purposes of granting leave to the Defendant to represent himself pro se at the ensuing trial that ultimately commenced on April 17, 2018 and resulted in multiple convictions. The Petitioner then represented himself pro se at the sentencing on June 5, 2018 and the instant PCRA filing.

On or about June 16, 2017, the Court granted Attorney Eric Hackwelder's motion for leave to withdraw as counsel. As a consequence, the Defendant was left unrepresented from June 16, 2017 through July 10, 2017. The Court refused to grant court-appointed counsel or stand-by counsel per the requests of the Defendant for either option. The sole offer the Court made was for legal representation by Public Defender Ken Bickel, who had previously refused to assist the Defendant from the very origins of this case and

apprising the Defendant that "there was nothing he could do for him." This course of circumstances lead the Defendant to believe his only viable option was to proceed pro se. Notwithstanding, the pro se colloquy and the Defendant acceding to represent himself on the record, he was essentially coerced and induced into proceeding pro se by the Court action in failing to afford him with any other viable option other than to proceed with counsel who had declined to offer any vigorous and good faith defense on his behalf. This in toto was tantamount to depriving the Petitioner of his right to counsel at the jury trial.

The Petitioner further asserts that he was deprived of a fair trial in that the Court served to taint and prejudice the proceeding by displaying credibility assessment relative to the Defendant and the minor victim to the jury during the course of the trial. It is alleged that the Court instructed the jury that the victim had no reason to lie while further repeatedly citing that the Defendant conversely had reasons to lie in that he was facing incarceration. This served to undermine the truth-determining process in influencing the jury who were the triers of fact and tasked with adjudging credibility.

Respectfully submitted,



William J. Hathaway, Esquire
1903 West 8th Street, PMB #261
Erie, Pennsylvania 16505
(814) 456-4433

Attorney for Petitioner,
Jerimiah Lyle Van Tassel

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA
:
v. : CRIMINAL DIVISION
:
JERIMIAH LYLE VANTASSEL, :
PETITIONER : NO. 2154 of 2016

**NOTICE OF INTENT TO DISMISS PCRA
PURSUANT TO Pa.R.CRIM.P. 907(1)**

AND NOW, this 2nd day October, 2019, the Court, after an independent review of the record, consideration of Petitioner's *pro se* PCRA Petition filed April 3, 2019 and the Supplement to Petition for Post Conviction Relief filed by PCRA counsel on July 29, 2019, hereby concludes that Petitioner's claims are not cognizable and/or meritless and/or contradicted by the record. Because the claims can be addressed based on the existing record, there is no need for an evidentiary hearing.

FACTUAL/PROCEDURAL BACKGROUND

On April 19, 2018, following a three-day jury trial, Petitioner, Jeremiah Lyle VanTassel, was convicted of one count each of Rape of a Child, Sexual Assault, Involuntary Deviate Sexual Intercourse With a Child, Aggravated Indecent Assault, Corruption of Minors, and three counts of Indecent Assault.¹ The convictions arose from Petitioner's inappropriate course of sexual conduct toward a nine year-old child from December of 2015 through early May of 2016. The incidents occurred at Petitioner's residence in North East, Pennsylvania, while Petitioner was caring for the child.

¹ 18 Pa.C.S.A. §§ 3121(c), 3124.1, 3123(b), 3125(b), 6301(a)(a)(ii), and 3126(a)(7) (three counts), respectively.

On June 5, 2018, Petitioner was sentenced by the undersigned to an aggregate of 16.5 to 33 years of incarceration as follows:

Count One – Rape of a Child: 72 months to 144 months of incarceration;

Count Two – Sexual Assault: Merged with Count One;

Count Three – Involuntary Deviate Sexual Intercourse With a Child: 72 months to 144 months of Incarceration, consecutive to Count One;

Count Four – Aggravated Indecent Assault: 48 months to 96 months of incarceration, consecutive to Count Three;

Count Five – Corruption of Minors: 3 months to 6 months of incarceration, consecutive to Count Four;

Count Six – Indecent Assault: Merged with Count One;

Count Seven – Indecent Assault: Merged with Count Six; and

Count Eight – Indecent Assault: 3 months to 6 months of incarceration, consecutive to Count Five.

The sentences were within the standard ranges of the sentencing guidelines.

On April 3, 2019, Petitioner filed a *pro se* Motion for Post Conviction Collateral Relief averring a violation of the United States or Commonwealth of Pennsylvania constitutions and ineffective assistance of counsel. Petitioner claimed that following the June 16, 2017, withdrawal of plea counsel, he was unrepresented until July 18, 2017. Petitioner also averred the Court showed bias and hostility by instructing the jury the victim had no reason to lie and commented Defendant had reason to lie as he faced incarceration. *PCRA Pet.*, p. 4. On April 9, 2019, the Court appointed PCRA counsel who filed a Supplement to Petition for Post Conviction Relief on July 29, 2019. In the supplemental PCRA, counsel averred Petitioner was left unrepresented from June 16, 2017 through July 10, 2017 and the Court refused to grant court-appointed counsel or stand-by counsel per requests of Defendant for either option; the sole offer the Court made for legal representation was for representation by Public Defender Kenneth

Bickel; and the result was Petitioner “was essentially coerced and induced into proceeding *pro se*” by failing to afford Petitioner any other viable option other than to proceed with Attorney Bickel. Counsel further averred the Court instructed the jury the victim had no reason to lie and the Defendant conversely had reasons to lie in that he was facing incarceration. *Supp. PCRA*, p. 2.

The Court finds these averments are factually inaccurate and belied by the record. As to Petitioner’s claim that he was unrepresented between June 16, 2017, and July 18, 2017, the Court notes that no hearings occurred between these dates and the only document filed was a request from the Petitioner for a copy of his plea.

By way of further background, the Court notes that on May 3, 2017, just prior to the period in question, Petitioner entered counseled, negotiated, no contest pleas to Counts Two, Three, Four, Five and Eight, and the remaining charges were *nolle prossed*. *Plea Transcript*, 8-12. On June 15, 2017, then plea counsel, Attorney Hackwelder, filed a Motion to Withdraw as Counsel, advising Petitioner wanted to withdraw the pleas and there had been a “total breakdown of the attorney/client relationship.” The Court granted the motion on June 16, 2019.

A *pro se* colloquy took place on July 18, 2017, wherein Petitioner signed the Right to Counsel Waiver, signifying his desire to proceed *pro se*. The Court determined the waiver of counsel was knowing, voluntary and intelligent. Notwithstanding the July 18, 2017, *pro se* colloquy, in July, 2017, Petitioner subsequently applied for representation through the Office of the Public Defender.

On July 24, 2017, Kenneth Bickel, Esq., from the Office of the Public Defender, was appointed to represent Petitioner.² The sentencing hearing scheduled for August 30, 2017 with

² The application for public defender representation, with the notice of the appointment of Attorney Bickel, was filed with the Clerk of Courts on August 28, 2017.

regard to the pleas was continued to allow Attorney Bickel the opportunity to, *inter alia*, address Petitioner's request to withdraw the pleas.

On October 23, 2017, Petitioner's Motion to Withdraw Guilty Plea was granted and this matter was listed for trial.

On October 31, 2017, Petitioner, *pro se*, filed a "Defendant's Notice to the Court to Appear *Pro Se*". Concurrently, Petitioner filed "Defendant's Notice to the Court to Release Public Defender, citing "irreconcilable differences". On November 14, 2017, Attorney Bickel filed a Motion to Withdraw on the grounds that Petitioner had filed a motion to fire counsel and to proceed *pro se*. The Motion to Withdraw was granted on November 15, 2017. On November 27, 2017, Petitioner filed a "Motion to the Court to Appear Pro-Per/Pro-Se."

A second *pro se* colloquy was held on November 30, 2017, wherein Petitioner again signed the Right to Counsel Waiver and chose to represent himself.

Petitioner proceeded *pro se* at trial on April 17-19, 2018, wherein he was found guilty at Counts One through Eight. A third *pro se* colloquy took place prior to Petitioner's June 5, 2018, sentencing.

Ms. Hirz: And, your Honor, out of an abundance of caution, with your Honor's permission, I think we should do a right to waiver counsel for the sentencing.

The Court: Sure.

Ms. Hirz: To be for the record.

The Court: Okay.

Ms. Hirz: Are you – it is your desire to go forward without an attorney today, is that correct?

Mr. VanTassel: Yes.

Sent. Transcript, 6:2-8; 7:21-23. The entire colloquy is set out in the transcript of the sentencing proceeding, and is incorporated herein by reference. *Sent. Transcript*, 6-9.

Following the colloquy, Petitioner refused to sign the Waiver of Counsel form.

Mr. Van Tassel: I would choose not to sign these if that is an option.

The Court: Okay. Let's note for the record that the defendant is aware of his rights but is refusing to sign the document, indicating so. We can proceed.

Sent. Transcript 9:8-13.

Thus, the record demonstrates that Petitioner, on several occasions, expressed a desire to represent himself and to not be represented by counsel. On two occasions when Petitioner was represented by counsel he expressed a desire to no longer be represented, causing his counsel to withdraw their representation. Any claims that he was somehow prejudiced by his own repeatedly expressed desire to proceed *pro se* are specious and belied by the record.

Petitioner also contends the trial Court prejudiced the jury by instructing that the victim had no reason to lie and that Petitioner had reason to lie as he was facing incarceration. Any claim regarding the Court's instructions to the jury are waived for failure to raise it on direct appeal. *See 42 Pa.C.S.A. §§ 9543(a)(3), 9544(b)*. To the extent Petitioner attempts to frame the claim as a violation of his federal or state constitutional rights, the claim must also fail. Petitioner has not identified any constitutional right at issue. Moreover, the claim is belied by the record. Relying in pertinent part on Pennsylvania Suggested Standard Criminal Jury Instruction Nos. 4.13(B) and 3.09, during the Court's closing instructions to the jury the Court stated:

The Court: ...

Now, the testimony of [victim], that testimony standing alone, if it's believed by you, is sufficient proof upon which the Defendant can be found guilty of these crimes. The testimony

of a victim in a case such as this, it need not be supported by the other evidence to sustain a conviction. Thus you may find the Defendant guilty if the testimony of [victim] convinces you beyond a reasonable doubt that the Defendant is guilty.

Now, the Defendant also took the stand as a witness and in considering the Defendant's testimony you are to follow the general instructions I just gave to you concerning the credibility of any witness. And you should not disbelieve the Defendant's testimony merely because he is a defendant. But in weighing his testimony, however, you may consider the fact that he has a vital interest in the outcome of this case; of course he does, he's the Defendant. You may take the Defendant's interest into account, just as you would the interest of any other witness along with all the other facts and circumstances bearing on credibility and making up your minds of what weight to give Mr. Van Tassel's testimony. ...

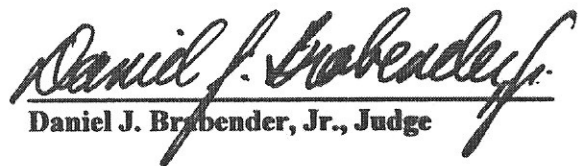
Jury Trial Day 3 Transcript, 79:11-25; 80:1-9.

Neither Petitioner, nor PCRA counsel, identifies where in the record of the trial the Court allegedly instructed the jury the victim had no reason to lie or Petitioner had a reason to lie as he was facing incarceration. A thorough review of the record did not reveal any such statements by the Court. As set forth above, the Court's instructions to the jury were appropriate and non-prejudicial. Thus, Petitioner's claims are without basis in fact and are meritless.

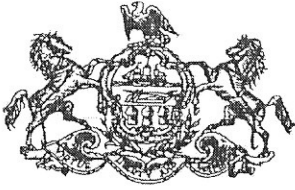
CONCLUSION

For the reasons stated herein, Petitioner's claims afford him no relief under the PCRA. Petitioner is hereby put on notice that his Motion for Post Conviction Collateral Relief will be dismissed after twenty (20) days from the date of this Notice. Within this same time period, Petitioner shall have the right to file any Objections to this Notice.

BY THE COURT:


Daniel J. Brabender, Jr., Judge

cc: Office of the District Attorney
William J. Hathaway, Esq., PMB # 261, 1903 West Eighth Street, Erie, PA 16505



Kenneth J. Gamble
Erie County
Clerk of Records

Office of Clerk of Courts

Erie County Courthouse • 140 West Sixth Street • Erie Pennsylvania 16501 • 814 / 451-6221

October 25, 2019

RE: Jerimiah VanTassel
2154/2016

Dear Attorney Hathaway:

Pursuant to Pa.R.Crim.Pr. 576(A)(4) please find enclosed herewith a copy of Notice to Dismiss PCRA Pursuant to Pa.R. Crim. 907 (1) received from Jerimiah VanTassel for whom you appear as counsel of record. Would you kindly review same for any action you deem appropriate. If you no longer represent the defendant please contact the Clerk of Courts.

Sincerely,

Kenneth Gamble
Erie County
Clerk of Records

/kab

Enclosure

cc: The Honorable Daniel Brabender
cc: District Attorney
cc: File
cc: Jerimiah VanTassel - SCI Albion -- NL0329

** Defendant raises issues with current counsel **

OCT 25 2019

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY CRIMINAL DIVISION

COMMONWEALTH :

V. :

JEREMIAH LYLE VAN TASSEL:

DOCKET NO: 2154 OF 2016

RECEIVED

OCT 28 2019

RE: NOTICE TO DISMISS PCRA PURSUANT TO Pa. R. CRIM. 907 (1) CLERK OF COURTS
CRIMINAL DIVISION

NOW comes the there'd party intervener by special appearance and under necessity, Jeremiah Lyle Van Tassel, living man herein petitioner. For the defendant JEREMIAH LYLE VAN TASSEL. In the interest of securing Defendants rights of appeal as well as to put forth objections and arguments to the courts decision to dismiss petitioners PCRA. To wit petitioner states as follows:

1). Concerning the withdraw of "plea counsel" (attorney Hakwelder) and defendants PCRA clime of ineffective assistance of counsel , is due to the improper with draw of attorney Hakwelder as the court did not determine at the time of withdraw wither defendant needed new counsel appointed was representing himself or obtaining new counsel per Rules of criminal procedure , Rule 120 (B) (3) . Shown by the the time frame pointed out by the court. This claim is meant to be separate from the claim of denying defendant affective counsel. Which would have been clear if attorney Hathaway had ever spoken to the petitioner.

2). Concerning the clams that defendant was denied counsel. A right to counsel waiver douse not abolish ones right to counsel if at a later time they fined if to be in there beast interest to obtaining such at a later time. Evident by the appointment of public defender Kenneth Bickel on July, 24, 2017. As for petitioners October, 31, 2017 notice to the court to appear pro se petitioner filet it necessary to file such for the court to hear his notice to release public defender, due to the formation of " irreconcilable differences". Some of which were evident at the October, 23, 2017 hiring to determine petitioners Motion to withdraw plea. Where attorney Bickel refused to ashier petitioner he would defend his right as well as refused to file motions on behalf of petitioner upon request, without ever discussing these maters withe the petitioner before bringing it before the court. Thus making petitioners October, 31, 2017 as well as the November, 27, 2017 petition to appear pro se out of necessity not a desire to be without counsel. This is evidenced by petitioner requesting standby counsel at the November, 30, 2017 colloquy where he was not only denied standby counsel but also denied appointed counsel. Only given the options of having Attorney Bickel once more represent him, in violation of COM V. THEODORE MARK CROWTHER 241Pa. super. 446; 361A 2d 861: 1976. The facet the court performed a third pro se colloquy does not excuse the court previous error in denying petitioner affective counsel nor would petitioner have any reason to believe he would receive any deferent response from the court. the record states that this was dome " out of a abundance of caution " If this was for another purpose then to cover for the courts previous error then Sayed colloquy would have been done before trial proceedings April, 17, 2018.

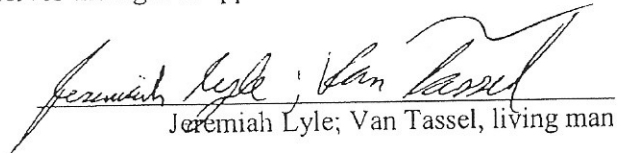
OCT 25 2019

3). Thou petitioner distinctly recalls the court implying motive. The court noun the less erred when they instructed the jury that it may "consider the fact that he has a vital interest in the outcome of this case ". As put forth by the case (UNITED STATES V. GAINES, 2d Cir., No. 04-5616-cr 7/20/06) " In future cases, district courts should not instruct juries to the effect that a testifying defendant has a deep personal interest in the case. Rather, a witness's interest in the outcome of the case ought to be addressed in the courts general charge concerning witness credibility. If the defendant has testified, that charge can easily be modified to tell the jury to evaluate the defendant's testimony in the same way it judges the testimony of other witnesses." The fazing "deep personal interest is easily synonyms with a vital interest as the principle set here in is that a judge should refrain from outlining a defendants interest as this fact is known to a jury and to point it out in such a way is only to imply a possibility of guilt. As for the courts claim that this mater is waved as it was not raised in a direct appeal is not only a admission of guilt to the courts error but inaccurate as the petitioner could not have objected to this at trill with out first having previous knolling of a president set or statues violated with the courts refusing to grant affective counsel and the hostel attitude toured the petitioner from the court even though petitioner found the instructions to the jury shocking he could not of known of the courts error at that time.

4). The court appointed PCRA counsel attorney Hathaway, was and is ineffective assistance of counsel. Where counsel my not need to discus all the miner matters in a case with a client they are required to provide them with "counsel" on meager decisions that are enviably up to the client. There fore one would fined it shocking that on determining petitioners PCRA hade merit engulf to file a supplement petition, counsel would not only choose not to contact the petitioner but refuse to answer any letters sent to him by the petitioner.

AS the courts have ignored petitioners request to compel counsel to furnish copies of transcripts. I herein request a copy of all transcripts on the record in the clerk of courts office. So I may bring fourth a more complete argument. In closing petitioner tacks exception to all maters raised in the courts Notice to dismiss and reserves the right to appeal on all matters therein.

Oct, 19, 2019


Jeremiah Lyle; Van Tassel, living man

Smart Communications/PADOC

SCI- ALBION

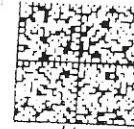
Name Christopher Kyle Van Tassel

PO Box 33028

St. Petersburg, FL 33733

Number NL 0329

Inmate Mail
PA Dept of
Corrections



US POSTAGE PAID PERMIT NO. 1000 ST. PETERSBURG, FL 33733

\$ 000.50⁰

Office of clerk of Courts/Records

Erie County Courthouse, 140 West 6th Street

Erie, Pennsylvania

[16501]