

04-614-CD
JACOB MICHAEL HARRIS vs. RONALD I COLLINS, et al.

Jacob Harris vs Ronald Collins et al
2004-614-CD

Date: 10/15/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 12:40 PM

ROA Report

Page 1 of 1

Case: 2004-00614-CD

Current Judge: No Judge

Jacob Michael Harris vs. Ronald L. Collins, Sobel, Collins & Knaresboro

Civil Other

Date	Judge
05/03/2004	Filing: Writ of Summons Paid by: Hitchings, Joseph L. Esq (attorney for Harris, Jacob Michael) Receipt number: 1878324 Dated: 05/03/2004 Amount: \$85.00 (Check) 2 CC & Writs to Shff. No Judge <i>X</i>
05/19/2004	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm No Judge <i>X</i>
08/02/2004	Complaint, filed by s/Joseph L. Hitchings, Esq. Two CC Sheriff No Judge <i>X</i>
09/10/2004	Entry of Appearance, on behalf of Defendants Ronald Collins and Sobel, Collins & Knaresboro, filed by s/David L. Haber, Esq. No CC Preliminary Objections, filed on behalf of Defendants by s/David L. Haber, Esq. No Judge <i>X</i> Praeclipe for Oral Argument, Re: Preliminary Objections filed on behalf of Defendant, filed by s/David L. Haber, Esq. No CC No Judge <i>X</i>
09/29/2004	Amended Complaint, AND NOW, this 28th day of September, 2004 comes No Judge <i>X</i> the Plaintiff, Jacob Michael Harris, and avers in support of his complaint against Defendants Ronald L. Collins, individually and Sobel, Collins, and Knaresboro as follows; (See Original) Filed by s/ Joseph L. Hitchings, Esquire. Certificate of Service, upon David L. Haber, Esquire. 2 CC to Atty.
10/05/2004	Filing: Judgment Paid by: Haber, David L. Esq (attorney for Collins, Ronald L.) Receipt number: 1887843 Dated: 10/05/2004 Amount: \$20.00 (Check) No Judge <i>X</i>
10/06/2004	Praeclipe for Non Pros filed by Atty. Haber. Notice to Plff. Stmt. to Atty. No Judge <i>X</i>
10/12/2004	Petition to Open and/or Strike Judgment of Non Pros, filed by s/Joseph L. Hitchings, Esq. One CC Attorney Certificate of Merit, filed by s/Joseph L. Hitchings, Esquire, No CC. No Judge <i>X</i> Certificate of Service, by 1st class mail upon David L. Haber, Esquire.

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 04-614-CQ
:
: CIVIL ACTION-LAW
:
: JURY TRIAL DEMANDED
:
:

FILED

MAY 03 2004

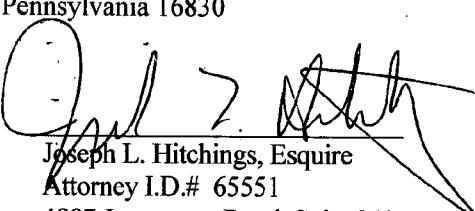
William A. Shaw
Prothonotary/Clerk of Courts

TO THE PROTHONOTARY:

Please issue a Writ of Summons and have the same served on the Defendants at the
address of:

218 South Second Street, Clearfield, Pennsylvania 16830

Date: 4-28-04



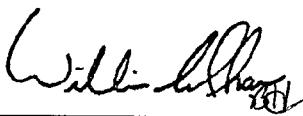
Joseph L. Hitchings, Esquire
Attorney I.D.# 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

WRIT OF SUMMONS

TO THE ABOVE MENTIONED NAMED DEFENDANTS:

YOU ARE NOTIFIED THAT THE ABOVE NAMED PLAINTIFF HAS
COMMENCED AN ACTION AGAINST YOU.

Date: 5/3/04


Prothonotary

By: _____
Deputy

FILED

Ang Hitchings

pd.85.00

31145801

MAY 03 2004

2ccs & Lmits to Sheriff

William A. Shaw

Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

HARRIS, JCOB MICHAEL

VS.

COLLINS, RONALD L. IND. & SOBEL, COLLINS & KNARESBORO

PRAECIPE & WRIT OF SUMMONS

Sheriff Docket # 15520

04-614-CD

SHERIFF RETURNS

NOW MAY 6, 2004 AT 10:40 AM SERVED THE WITHIN PRAECIPE & SUMMONS ON SOBEL, COLLINS & KNARESBORO, DEFENDANT AT EMPLOYMENT, 218 SOUTH SECOND ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOHN SOBEL, PARTNER A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING/HUNTER

NOW MAY 18, 2004 AT 11:45 AM SERVED THE WITHIN PRAECIPE & SUMMONS ON RONALD L. COLLINS, IND., DEFENDANT AT EMPLOYMENT, 218 SOUTH SECOND ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RONALD L. COLLINS A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
28.37	SHERIFF HAWKINS PAID BY: ATTY CK# 1377
20.00	SURCHARGE PAID BY: ATTY CK# 1378

Sworn to Before Me This

19 Day Of May 2004
William A. Shaw

So Answers,

Chester A. Hawkins
By: Mailey Hupp
Chester A. Hawkins
Sheriff

FILED

02:06 PM

MAY 19 2004

William A. Shaw
Prothonotary

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-614-CD
: CIVIL ACTION-LAW
: JURY TRIAL DEMANDED

FILED *acc*
11/22/04 Sheriff
AUG 02 2004

BS William A. Shaw
Prothonotary/Clerk of Courts

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, 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 PAPER 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING AN ATTORNEY.

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 OR NO FEE.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 ext. 5982

JACOB MICHAEL HARRIS, : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. :
RONALD L. COLLINS, individually and : NO. 04-614-CD
SOBEL, COLLINS & KNARESBORO : CIVIL ACTION-LAW
Defendants : JURY TRIAL DEMANDED
:

COMPLAINT

AND NOW, this day 28th day of July, 2004 comes the Plaintiff, Jacob Michael Harris, by and through his attorneys, McShane & Hitchings, LLC and Joseph L. Hitchings, Esquire, and avers in support of his complaint against Defendants Ronald L. Collins, individually and Sobel, Collins, and Knaresboro as follows;

1. Plaintiff, Jacob Michael Harris, is an adult individual residing at 338 West Main Street, Reynoldsville, Jefferson County, Pennsylvania 15851.
2. Defendant, Ronald L. Collins, is an attorney, licensed to practice law in the Commonwealth of Pennsylvania, with a professional address of 218 South Second Street, Clearfield, Pennsylvania 16830.
3. Sobel, Collins and Knaresboro is believed to be a partnership, operating a law firm located at 218 South Second Street, Clearfield, Pennsylvania 16830.
4. On or about January 6, 2003, Plaintiff while represented by Attorney Earl D. Lees, Jr., entered a guilty plea to two counts including the criminal charge of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County, Pennsylvania, Docket No. 02-251-CRA.

5. On March 6, 2003, Plaintiff was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of Clearfield County Department of Probation on count two (2) to be served consecutively.

6. Plaintiff's sentence was further conditioned on whether Plaintiff possessed "satisfactory employment."

7. At the time of his incarceration on March 6, 2003, Plaintiff maintained full time employment.

8. On or about March 27, 2003, the Commonwealth filed in Clearfield County Clerk of Courts office a "Motion for Reconsideration of Sentence", twenty-one (21) days after sentencing.

9. By letter dated April 4, 2003 David S Meholic, Court Administrator, advised Plaintiff's Counsel of Record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard before the Court on Tuesday, April 8, 2003.

10. On April 7, 2003, Plaintiff's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent the Plaintiff due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County's District Attorney's Office.

11. On April 7, 2003, Patrick Harris retained Defendant Ronald L. Collins, Esquire of the Defendant law firm, Sobel, Collins and Knaresboro to represent his son, the Plaintiff, at the Reconsideration of Sentence Hearing.

12. On April 8, 2003, the hearing on the Commonwealth's Motion for Reconsideration of Sentence was continued until April 17, 2003.

13. At the April 17, 2003 hearing, the Commonwealth alleged that the Plaintiff had tested positive for an illegal substance, however no the evidence to establish the positive test was presented. Following the hearing on April 17, 2003 the Court amended its present prior sentence of March 6, 2003, and ordered the Plaintiff to be incarcerated in a State Prison for a minimum term of six (6) months and a maximum of two (2) years.

14. Defendant, Ronald L. Collins represented the Plaintiff at the hearing on the Commonwealth's Motion for Reconsideration of Sentence.

15. Defendants were negligent in their representation of the Plaintiff in the following ways;

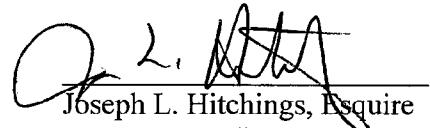
- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721(b)(1);
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substances;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff April 17, 2003 sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

16. As a direct and proximate result of the Defendants negligence in representing the Plaintiff in the criminal case, the Plaintiff suffered damages including lost income as a result of not being able to pursue work release, and having to serve an extended sentence in a state facility rather than in County Prison.

17. As a direct and proximate result of the negligence of the Defendants as set forth herein, the Plaintiff was incarcerated in a State Prison in excess of the six (6) months originally sentenced, and was subjected to physical and mental abuse while in the State facility.

WHEREFORE, Plaintiff Jacob Michael Harris demands judgment against the Defendants, Ronald L. Collins, individually, and Sobel, Collins, and Knaresboro in an amount in excess of twenty five thousand dollars (25,000.00) plus interest, costs, fees, and any other relief the court deems appropriate under the circumstances.

Respectfully Submitted,
MCSHANE & HITCHINGS

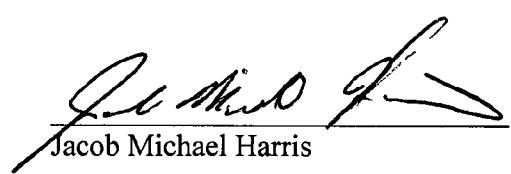


Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

7/20/04
Date


Jacob Michael Harris

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-614-CD
: CIVIL ACTION-LAW
: JURY TRIAL DEMANDED
:
:

CERTIFICATE OF SERVICE

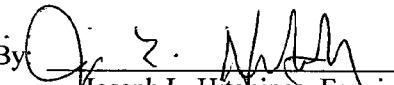
I, Joseph L. Hitchings of McShane & Hitchings, LLC, Attorney for the Plaintiff, Jacob Michael Harris, do hereby certify that I served a true and correct copy of the attached Complaint, by United States Mail, First Class, postage prepaid upon the counsel listed below:

Ronald L. Collins, Esquire
Sobel, Collins & Knaresboro
218 South 2nd Street
Clearfield, Pennsylvania 16830

Respectfully Submitted,
MCSHANE & HITCHINGS, LLC

Date: 7-28-04

By


Joseph L. Hitchings, Esquire
Attorney for Plaintiff
Supreme Court ID# 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
Telephone: (717) 657-3900
Fax: (717) 657-2060

FILED

AUG 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

FILED NO^o
m/11/3961
SEP 10 2004
B
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRAECIPE FOR APPEARANCE

TO: Prothonotary

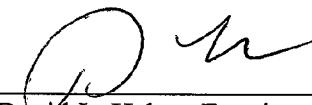
Kindly enter my appearance on behalf of the defendants, Ronald Collins
and Sobel, Collins & Knaresboro, with regard to the above-captioned matter.

JURY TRIAL DEMANDED.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By



David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

CERTIFICATE OF SERVICE

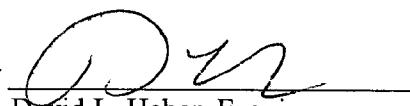
I HEREBY, that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** has been served upon the following by First Class United States Mail, postage pre-paid, overnight mail, or hand delivery on September 9th, 2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By


David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

FILED

SEP 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

(PA)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRELIMINARY OBJECTIONS

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

FILED *No cc*
m113962
SEP 10 2004
BS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRELIMINARY OBJECTIONS

And now, comes Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C. and files the following Preliminary Objections:

1. The plaintiff filed the within legal malpractice claim against Defendants Ronald Collins and Sobel, Collins & Knaresboro.
2. Defendant Ronald Collins represented the plaintiff in a criminal matter in the Court of Common Pleas of Clearfield County at docket number 02-251-CRA.
3. Defendant Collins only represented the plaintiff following his guilty plea and initial sentencing. Defendant Collins represented the plaintiff with regard to a Motion for Reconsideration of Sentencing filed by the Commonwealth.
4. During the guilty plea entered by the plaintiff, and the initial sentencing, the plaintiff was represented by attorney Earl D. Lees, Jr.
5. Plaintiff alleges that on January 6, 2003, while being represented by attorney Lees he plead guilty to two counts including the charge of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County.

6. On March 6, 2003, plaintiff was sentenced to a term of two years of probation under the supervision of the Clearfield County Department of Probation with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of the Clearfield County Department of Probation on count two (2) to be served consecutively. (Paragraph 5 of the Complaint.)
7. Plaintiff's sentence was conditioned on plaintiff possessing satisfactory employment. Plaintiff further alleges that at the time of his incarceration of March 6, 2003, he maintained full-time employment.
8. On or about March 7, 2003, it is alleged that the Commonwealth filed a Motion for Reconsideration of Sentencing.
9. Plaintiff's counsel was advised that argument was scheduled before the court on April 8, 2003.
10. The plaintiff further alleges that on April 7, 2003, his father was notified by attorney Lees that he could no longer represent since he had accepted employment with the Clearfield County District Attorney's office.
11. The plaintiff further alleges that on April 7 his father retained the defendants to represent him at the reconsideration of sentence hearing.
12. It is further alleged that the hearing on the Motion for Reconsideration of Sentencing was continued to April 17, 2003.
13. It is further alleged that at the hearing on April 17, 2003, the plaintiff was resentenced to a minimum term of six (6) months and a maximum of two (2) years at a state prison.

14. It is further alleged by plaintiff as the defendants were negligent as to the representation of the plaintiff at the hearing in the following ways:

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721 (b)(i).
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff on April 17, 2003, sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

(Paragraph 15 of Complaint.)

15. The plaintiff alleges he lost income due to the inability to pursue work release while incarcerated in the state facility and that he also suffered physical and mental abuse while in the state facility.

16. Under Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1987) in order to state a legal malpractice claim against an attorney representing a plaintiff in a criminal matter, the plaintiff must plead and prove:

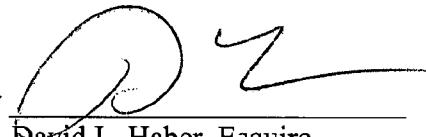
1. An attorney-client relationship;
2. The attorney showed reckless or wanton disregard to the criminal defendant's interest;
3. That the attorney's culpable conduct was the approximate cause of an injury suffered by the defendant/plaintiff (i.e., but for the attorney's conduct, the defendant/plaintiff would have obtained an acquittal or a complete dismissal of the charges);
4. As a result of the injury, the criminal defendant/plaintiff must have suffered damages;
5. The plaintiff must have pursued post trial remedies and obtained relief which was dependent upon attorney error.

17. The plaintiff cannot plead elements 2, 3 and 5 under Bailey v. Tucker and therefore no legal malpractice claim has been asserted. See also Slaughter v. Rushing, 453 Pa.Super. 379, 683 A.2d 1234 (Pa.Super. 1986).
18. The plaintiff has not plead the necessary elements for a legal malpractice claim arising out of the representation of the plaintiff in a criminal proceeding, and therefore the Preliminary Objections should be sustained and the Complaint should be dismissed with prejudice.

WHEREFORE, the Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, respectfully requests that their Preliminary Objections be sustained and the Complaint be dismissed with prejudice.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By 

David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **PRELIMINARY
OBJECTIONS** has been served upon the following by First Class United States Mail,
postage pre-paid, overnight mail, or hand delivery on September 7/1,
2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By



David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

FILED

SEP 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

ORDER OF COURT

AND NOW, to wit, on this _____ day of _____ 2004,
upon consideration of the Preliminary Objections filed by the Defendants; it is hereby
ORDERED that the Preliminary Objections are sustained and the Complaint is dismissed
with prejudice.

BY THE COURT

J.

~~FILED~~
SEP 10 2004
William A. Strat
Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

**PRAECLPSE FOR ORAL
ARGUMENT**

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

FILED NO
M 11:39 AM CC
SEP 10 2004
B6
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

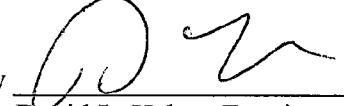
PRAECIPE FOR ORAL ARGUMENT

TO: Prothonotary

Kindly schedule the Preliminary Objections filed by the Defendants for oral argument before the court.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By 

David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **PRAECIPE FOR ORAL ARGUMENT** has been served upon the following by First Class United States Mail, postage pre-paid, overnight mail, or hand delivery on September 9th, 2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By 
David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

FILED

SEP 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

JACOB MICHAEL HARRIS, : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. : NO. 04-614-CD
RONALD L. COLLINS, individually and : CIVIL ACTION-LAW
SOBEL, COLLINS & KNARESBORO : JURY TRIAL DEMANDED
Defendants :
:

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, 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 PAPER 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING AN ATTORNEY.

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 OR NO FEE.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 ext. 5982

FILED EGR
M 12:03 PM 2004 to Atty -
SEP 29 2004

William A. Shaw
Prothonotary

JACOB MICHAEL HARRIS, : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. :
RONALD L. COLLINS, individually and : NO. 04-614-CD
SOBEL, COLLINS & KNARESBORO :
Defendants : CIVIL ACTION-LAW
: JURY TRIAL DEMANDED
:
:

AMENDED COMPLAINT

AND NOW, this day 28th day of September, 2004 comes the Plaintiff, Jacob Michael Harris, by and through his attorneys, McShane & Hitchings, LLC and Joseph L. Hitchings, Esquire, and avers in support of his complaint against Defendants Ronald L. Collins, individually and Sobel, Collins, and Knaresboro as follows;

1. Plaintiff, Jacob Michael Harris, is an adult individual residing at 338 West Main Street, Reynoldsville, Jefferson County, Pennsylvania 15851.
2. Defendant, Ronald L. Collins, is an attorney, licensed to practice law in the Commonwealth of Pennsylvania, with a professional address of 218 South Second Street, Clearfield, Pennsylvania 16830.
3. Defendant, Sobel, Collins and Knaresboro is believed to be a partnership, operating a law firm located at 218 South Second Street, Clearfield, Pennsylvania 16830.
4. On or about January 6, 2003, Plaintiff while represented by Attorney Earl D. Lees, Jr., entered a guilty plea to two counts including the criminal charge

of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County, Pennsylvania, Docket No. 02-251-CRA.

5. On March 6, 2003, Plaintiff was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of Clearfield County Department of Probation on count two (2) to be served consecutively.

6. Plaintiff's sentence was further conditioned on whether Plaintiff possessed "satisfactory employment."

7. At the time of his incarceration on March 6, 2003, Plaintiff maintained full time employment.

8. On or about March 27, 2003, the Commonwealth filed in Clearfield County Clerk of Courts office a "Motion for Reconsideration of Sentence", twenty-one (21) days after sentencing.

9. By letter dated April 4, 2003 David S Meholic, Court Administrator, advised Plaintiff's Counsel of Record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard before the Court on Tuesday, April 8, 2003.

10. On April 7, 2003, Plaintiff's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent the Plaintiff due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County's District Attorney's Office.

11. On April 7, 2003, Patrick Harris retained Defendant Ronald L. Collins, Esquire of the Defendant law firm, Sobel, Collins and Knaresboro to represent his son, the Plaintiff, at the Reconsideration of Sentence Hearing.

12. On April 8, 2003, the hearing on the Commonwealth's Motion for Reconsideration of Sentence was continued until April 17, 2003.

13. At the April 17, 2003 hearing, the Commonwealth alleged that the Plaintiff had tested positive for an illegal substance, however no the evidence to establish the positive test was presented. Following the hearing on April 17, 2003 the Court amended its present prior sentence of March 6, 2003, and ordered the Plaintiff to be incarcerated in a State Prison for a minimum term of six (6) months and a maximum of two (2) years.

14. Defendant, Ronald L. Collins represented the Plaintiff at the hearing on the Commonwealth's Motion for Reconsideration of Sentence.

15. Defendants were negligent in their representation of the Plaintiff in the following ways;

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721(b)(1);
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substances;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights;
- e. By failing to file a direct Appeal of the Plaintiff's April 17, 2003 sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

- f. By failing to adequately, competently and vigorously represent the Plaintiff in the criminal matter; and
- g. By failing to protect the Plaintiff's Federal and State Constitutional and due process rights.

16. As a direct and proximate result of the Defendants negligence in representing the Plaintiff in the criminal case, the Plaintiff suffered damages including lost income as a result of not being able to pursue work release, and having to serve an extended sentence in a state facility rather than in County Prison.

17. As a direct and proximate result of the negligence of the Defendants as set forth herein, the Plaintiff was incarcerated in a State Prison in excess of the six (6) months originally sentenced, and was subjected to physical and mental abuse while in the State facility.

18. No evidence was presented to support the allegations of the Commonwealth in their untimely Motion to Modify Sentencing, nor did the Plaintiff or his Counsel stipulate to the allegations, but rather believes and therefore avers that he is innocent of those allegations.

19. On or shortly after November 11, 2003, Plaintiff filed a Petition under the Post Conviction Relief Act, alleging among other things, ineffective assistance of counsel against the Defendants. A true and correct copy of Plaintiff's Petition under the Post Conviction Relief Act is attached hereto, incorporated herein by reference and marked as Exhibit "A".

20. As a result of the Plaintiff filing his Petition under the Post Conviction Relief Act, and District Attorney's acknowledgement of the illegal sentence, Plaintiff and the District Attorney's Office stipulated that Plaintiff's Petition under the Post Conviction Relief Act be granted; the Plaintiff was resentenced, given credit for time served and immediately released from prison. A true and correct copy of the Order of Senior Judge John K. Reilly, Jr. granting Plaintiff's Petition and the transcript of proceedings are attached hereto, incorporated herein by reference and marked as Exhibit "B".

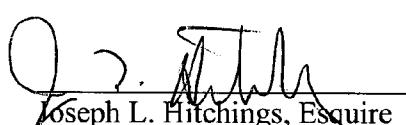
21. The relief which the Plaintiff obtained pursuant to his Petition under the Post Conviction Relief Act was dependant on the errors and negligence of the Defendant's as set forth herein.

22. The Defendants showed a complete and utter disregard of Plaintiff's rights and interests, as witnessed by their negligence in representation of the Plaintiff, and their failure to protect the Plaintiff's Constitutional and due process rights.

23. But for the negligence of the Defendants, Plaintiff would not have been sentenced to state prison, and he would not have suffered the damages as set forth herein.

WHEREFORE, Plaintiff Jacob Michael Harris demands judgment against the Defendants, Ronald L. Collins, individually, and Sobel, Collins, and Knaresboro in an amount in excess of twenty five thousand dollars (25,000.00) plus interest, costs, fees, and any other relief the court deems appropriate under the circumstances.

Respectfully Submitted,
MCSHANE & HITCHINGS



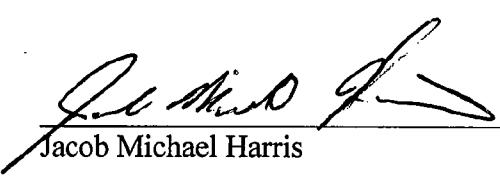
Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

9/26/09

Date



Jacob Michael Harris

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JACOB MICHAEL HARRIS

NOV 18 2003

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO.: 02-251-CRA
: CHARGES: POSSESSION WITH INTENT
: TO DELIVER COCAINE; CONSPIRACY TO
: DELIVER COCAINE

Attest.

William L. Lavery
Prothonotary/
Solicitor
TO THE HONORABLE JOHN K. REILLY, JR., PRESIDENT JUDGE OF SAID COURT:

PETITION UNDER THE POST CONVICTION RELIEF ACT

AND NOW, this 10th day of November, 2003, comes the above-named defendant, Jacob Michael Harris, by and through his attorney, Michael D. Matter, Esquire, Lavery, Faherty, Young & Patterson, P.C., and respectfully represents the following:

1. Jacob Harris is currently incarcerated in a Pennsylvania State Correctional Institution in Somerset, Pennsylvania.
2. On or about January 06, 2003, Petitioner/Defendant (hereinafter, "Petitioner") pled guilty to the above-captioned offenses.
3. On March 06, 2003, with the aid of a presentence investigation, Petitioner was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months to be served in the Clearfield County jail on Count 1; and to a term of one (1) year of probation under the supervision of Clearfield County Department of Probation on Count 2, to be served consecutive to Count 1.
4. Petitioner was to "absolutely refrain from possession or use of alcoholic beverages and shall undergo such drug and alcohol counseling at Gateway Institute and Clinic, as shall be required," effective immediately. (March 06, 2003 Sentencing Order, Exhibit A; March 06, 2003 Sentencing Transcript, Exhibit B)

5. Petitioner's sentence was further conditioned on whether Petitioner possessed "satisfactory employment". (Exhibit B)
6. At sentencing on March 06, 2003, Petitioner was represented by Earle D. Lees, Jr., Esquire.
7. According to Petitioner's docket sheets from the Clearfield County Clerk of Courts Office, no praecipe to withdraw as counsel was filed by Attorney Lees. Therefore, and pursuant to Pa.R.Crim.P. §120, Attorney Lees was counsel of record for defendant's post sentence motion and appellate time periods. (See Exhibit C)
8. Petitioner was incarcerated the same day of sentencing, March 06, 2003.
9. Petitioner maintained employment at the time of his incarceration that was available to him during his probation. (Exhibit D)
10. Notwithstanding Petitioner's employment status, a thorough review of the sentencing transcript of March 06, 2003 reveals that Work Release was not a condition of Petitioner's sentence. (Exhibit B)
11. On March 27, 2003, the Commonwealth filed and the Clearfield County Clerk of Courts received a Motion for Reconsideration of Sentence, twenty-one (21) days after sentencing. (See Exhibit E)
12. By letter dated April 04, 2003, David S. Meholick, Court Administrator, advised Petitioner's counsel of record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard on Tuesday, April 08, 2003. (Exhibit F)
13. On April 07, 2003, Petitioner's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent Petitioner due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County District Attorney's Office.
14. Also on April 07, 2003, Patrick Harris retained Ronald L. Collins, Esquire, of Sobel, Collins & Knaresboro to represent his son at his Reconsideration of Sentence hearing.

15. On April 08, 2003, Petitioner's hearing on the Commonwealth Motion for Reconsideration was continued until April 17, 2003. (Exhibit C)

16. In its Motion for Reconsideration, the Commonwealth alleged that Petitioner tested positive for illegal substances. (Exhibit E)

17. After a thorough review of the transcript from the April 17, 2003 sentencing, undersigned counsel could find no evidence of record, other than a naked allegation, that Petitioner, in fact, tested positive for illegal substances. (April 17, 2003 Sentencing Transcript, Exhibit G)

18. There is no record of a stipulation by sentencing counsel as to the existence of a reliable, positive drug test.

19. There is no mention on the record of what illegal substance Petitioner allegedly tested positive.

20. Even assuming, *arguendo*, that the alleged positive drug test did exist and was reliable, that would not prove that Petitioner violated any of the terms of the original sentence of March 06, 2003. Moreover, the appropriate judicial procedure to address a violation of probation or parole is a revocation proceeding, not an untimely Motion for Reconsideration filed by the Commonwealth. See 42 Pa. C.S.A. §§ 9771, 9773.

21. Additionally, the Commonwealth's averment 5, Motion for Reconsideration, reads: "The Defendant is unemployed and remains incarcerated in the County jail". (See Exhibit E)

22. In fact, Petitioner did have employment at the time the Commonwealth filed its Motion for Reconsideration.

23. On April 17, 2003, upon consideration of the Commonwealth's Motion for Reconsideration of Sentence, this Honorable Court amended the Court's sentence of March 06, 2003 as follows:

a. PWI-Cocaine: "that the Defendant be incarcerated at the Western Diagnostic and Classification Center in Pittsburgh, Pennsylvania, for a term the minimum which shall be six (6) months and the maximum of which shall be two (2) years.

b. Conspiracy: "that the Defendant serve a period of Probation of one (1) year under the supervision and control of the Pennsylvania Board of Probation and Parole, to be served consecutive to that sentence entered for Possession with Intent to Deliver Cocaine."

24. At Petitioner's sentencing on April 17, 2003, Petitioner was represented by Attorney Collins of Sobel, Collins & Knaresboro.

25. There is no record, according to the docket entries, of Attorney Collins ever filing a formal entry or withdrawal of appearance with the court, nor is there any record of Attorney Lees ever filing a formal withdrawal of appearance after March 06, 2003.

26. A thorough review of the sentencing transcript of April 17, 2003 reveals that Petitioner was not advised of his post-sentencing rights. (Exhibit G)

27. Undersigned counsel alleges that defendant is eligible for relief under the Post Conviction Relief Act due to the following:

a. A violation of the Constitution of Pennsylvania or laws of this Commonwealth or the Constitution of the United States which, in the circumstance of the particular case, so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.

b. Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth determining process that no reliable determination of guilt or innocence could have taken place.

28. Specifically, undersigned counsel claims the following issues entitle defendant to relief:

a. Sentencing counsel was ineffective for failing to seek withdrawal or withdrawing from defendant's case following sentencing.

b. Sentencing counsel was ineffective for failing to file Post Sentence Motions on behalf of defendant in compliance with Pa.R.Crim.P. §720.

c. Sentencing counsel's inaction in withdrawing from defendant's case stripped defendant of the ability to preserve issues for appeal in post sentence motions that would be waived, if not raised, in that manner

d. Sentencing counsel's failure to withdraw from defendant's case effectively stripped defendant of his appellate rights vis-à-vis the ability to appeal the denial of any of defendant's issues which would have been raised in post sentence motions including but not limited to the discretionary aspects of sentencing.

e. Sentencing counsel was ineffective for failing to timely object to or appeal the Commonwealth's untimely Motion for Reconsideration which was filed in violation of Pa.R.Crim.P. §721(B)(1) requiring a Commonwealth Motion for Modification of Sentence be filed within 10 days after imposition of sentence.

f. Sentencing counsel was ineffective for failing to advise Petitioner of his post-sentencing rights.

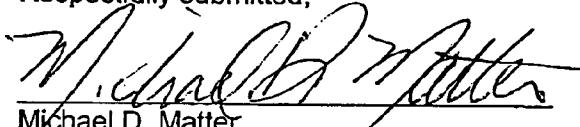
g. Sentencing counsel was ineffective for failing to file a direct appeal of Petitioner's April 17, 2003 sentence at the request of Petitioner and Petitioner's family. Commonwealth v. Lantzy, 736 A.2d 564 (Pa. 1999) (*Holding* – An unjustified failure by counsel to file a requested direct appeal denies the accused the assistance of counsel guaranteed by the federal and state constitutions and constitutes prejudice for purposes of section 9453(a)(2)(ii).)

29. Petitioner alleges that present allegations have been neither previously litigated nor are waived and are cognizable under the PCRA.

30. Petitioner alleges that the defendant has been convicted of crimes under the laws of the Commonwealth of Pennsylvania and is currently serving a sentence of imprisonment in Pennsylvania for said crimes.

31. Relief that the petitioner seeks is reinstatement of his appellate rights. In the alternative, the petitioner seeks an evidentiary hearing on the allegations contained within this petition. Commonwealth v. White, 449 Pa.Super. 386, 674 A.2d 253 (1996) (*Holding* - A PCRA hearing may only be denied if defendant's claim is patently frivolous and without trace of support either in record or from other evidence).

Respectfully submitted,


Michael D. Matter
Lavery, Faherty, Young & Patterson, P.C.
Attorney for Petitioner

D. CCT

B-10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

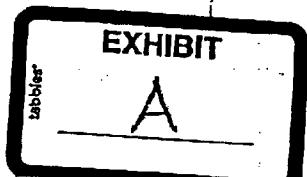
VS.

: NO. 02-251-CRA

JACOB MICHAEL HARRIS :

SEN T E N C E

NOW, this 6th day of March, 2003, Defendant having entered Pleas of Guilty to charges of Possession with Intent to Deliver Cocaine and Conspiracy to Deliver Cocaine, Ungraded Felonies under the Controlled Substance, Drug, Device and Cosmetic Act; he being fully and competently represented by counsel and the Court being satisfied that he has knowingly and intelligently entered said Pleas, it is the SENTENCE of this Court that, on the charge of Possession with Intent to Deliver, he pay for the benefit of Clearfield County the sum of Five Hundred (\$500.00) Dollars, together with costs of prosecution; that he be and remain on Probation for a period of two (2) years under the supervision and control of the Clearfield County Department of Probation Services, Adult Division, among the terms and conditions of which shall be that he serve six (6) months in the Clearfield County Jail; that, effective immediately, he shall absolutely refrain from the possession or use of alcoholic beverages; he to undergo such drug and alcohol counseling at Gateway Institute and Clinic as shall be required, together with any follow-up for which he shall pay costs; that



he complete forty (40) hours of community service; and make restitution in an amount to be determined by this Court.

On the charge of Conspiracy to Deliver, that he pay for the benefit of Clearfield County the sum of Four Hundred (\$400.00) Dollars, together with costs of prosecution; that he be and remain on Probation under the supervision and control of the Clearfield County Department of Probation Services, Adult Division, for a period of one (1) year, to be served consecutive to that entered above and upon the same terms and conditions.

BY THE COURT,

/s/JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAR 24 2003

Attest

William J. Lavery
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CRIMINAL ACTION

007-1

COMMONWEALTH OF PENNSYLVANIA :

v. : NO. 02-251-CRA

JACOB MICHAEL HARRIS :

TRANSCRIPT OF PROCEEDINGS

SENTENCING

HELD BEFORE THE HONORABLE

JOHN K. REILLY, JR., PRESIDENT JUDGE

on Thursday, March 6, 2003

A P P E A R A N C E S

FOR THE COMMONWEALTH:

PAUL E. CHERRY, ESQUIRE

FOR THE DEFENDANT:

EARLE D. LEES, JR., ESQUIRE

Reported by: Cathy Warrick Provost,

Registered Merit Reporter

EXHIBIT

B

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

2 THE COURT: Now to all Defendants who are here for
3 sentencing morning, once sentence is imposed, you have certain
4 rights to appeal the sentence, and the District Attorney is
5 going to read them to you now.

6 Please listen to them, because you'll be asked if
7 you heard and understood them at the time sentence is imposed.

8 ATTORNEY CHERRY: This is to inform you that this
9 is a final Order of this Court with regard to the charges filed
10 against you to your individual information numbers.

11 You have the right to file post-sentence motions
12 and must do so within ten days from this date. You also have
13 the right to appeal this final Order and must do so within 30
14 days from this date or, if post-sentence motions are filed,
15 within 30 days of a ruling on such motions.

16 You have the right to the assistance of counsel in
17 the preparation of such motions and appeal. You also have the
18 right, if indigent, to proceed in form of pauperis and be
19 provided free counsel for your motions and appeal.

20 If you file post-sentence motions or appeal, you
21 have the right to request bail pending their resolution.

22 This Court must rule on any post-sentence motions
23 within 120 days of the date of filing. Otherwise, such motions
24 shall be considered denied.

25 And then His Honor will ask you, once you've been

1 sentenced, if you understood the rights I just stated to you.

2 (Recess while other cases are being called)

3 ATTORNEY CHERRY: Commonwealth versus Jacob Michael
4 Harris. Your Honor, this case is filed at Information No.
5 02-251-CRA.

6 Mr. Harris is charged with the offense of
7 manufacture, delivery or possession with intent to manufacture
8 or deliver, a felony; and criminal conspiracy to commit
9 manufacture, delivery or possession with intent to manufacture
10 or deliver, a felony.

11 A plea agreement was reached where he'd plead
12 guilty to the charges for a minimum term of incarceration of
13 six months, with the maximum to the Court. Fines, costs,
14 restitution, all other terms up to the Court.

15 The Defendant was in possession of less than two
16 grams of cocaine.

17 THE COURT: Mr. Lees.

18 ATTORNEY LEES: That's correct, Your Honor. I'd
19 point out to the Court that my client cooperated with the PSP,
20 resulted in two more arrests, and also has no prior record.
21 And he has a full-time job, which I could offer the Court at
22 this time.

23 THE COURT: I notice he didn't bother to contact
24 the Adult Probation Department for a presentence investigation.

25 ATTORNEY LEES: My client advised me he called

1 three times and left messages on their answering machines, or
2 voice mail, and told them, gave them a number to call him back,
3 and they never got ahold of him.

4 THE COURT: Any information along those lines?

5 PROBATION OFFICER KIEL: Not that I have any
6 recollection of, Your Honor, no.

7 THE COURT: All right.

8 ATTORNEY CHERRY: I will say that he did cooperate
9 with PSP and did help in other charges being filed.

10 THE COURT: Let me see your letter. Where does he
11 work? Where is your employment?

12 MR. HARRIS: Right now I work in Scottdale, but I
13 can be transferred over to Green Tree over into Kersey.

14 THE COURT: All right. To that caption, Now this
15 6th day of March, 2003, Defendant having entered Pleas of
16 guilty to charges of possession with intent to deliver cocaine
17 and conspiracy to deliver cocaine, both ungraded felonies under
18 the Controlled Substance, Drug Device and Cosmetic Act; he
19 being fully and competently represented by counsel and the
20 Court being satisfied that he has knowingly and intelligently
21 entered said Pleas, it is the sentence of this Court that, on
22 the charge of possession with intent to deliver, he pay for the
23 benefit of Clearfield County the sum of \$500, together with
24 costs of prosecution; that he be and remain on probation under
25 the supervision of the Department of Probation Services, Adult

1 Division, for a period of two years upon condition that he
2 serve six months in the Clearfield County Jail.

3 Effective immediately, he shall absolutely refrain
4 from possession or use of alcoholic beverages and shall undergo
5 such drug and alcohol counseling at Gateway Institute and
6 Clinic, as shall be required, together with follow-up, for
7 which he shall pay costs; that he shall complete 40 hours of
8 community service; and make restitution in an amount to be
9 determined by this Court.

10 On the charge of conspiracy to deliver, that he pay
11 for the benefit of Clearfield County the sum of \$400, together
12 with costs of prosecution; that he be and remain on probation
13 under the Department of Probation Services, Adult Division, for
14 a period of one year, to be served consecutive to that entered
15 above and upon the same terms and conditions. By The Court.

16 Now, I want a report on his employment. If it's
17 satisfactory, the sentence will stand. But if it is not, then
18 I'm going to bring you back in here and I'm going to amend this
19 sentence to a state institution. Understand?

20 MR. HARRIS: That's fine.

21 THE COURT: Now, did you hear the instructions read
22 by the District Attorney?

23 MR. HARRIS: Yes.

24 THE COURT: Did you understand them?

25 MR. HARRIS: Yes.

1 THE COURT: Do you have any question about his
2 them?

3 MR. HARRIS: No, sir.

4 -- END OF PROCEEDINGS --

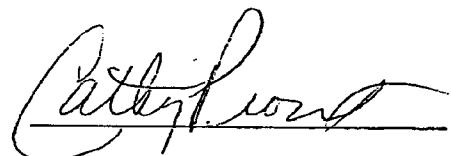
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6 -- C E R T I F I C A T E --

7 I hereby certify that the proceedings and evidence
8 are contained fully and accurately in the notes taken by me
9 upon the hearing of the within matter, and that this transcript
10 is a correct copy of the same.

11

12 Date: September 23, 2003



13 Cathy Warrick Provost, RMR

14

Official Court Reporter

15

16

17

18

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22

23

24

25

Date: 10/28/2003

Clearfield County Court of Common Pleas

User: SRAINEY

Time: 03:14 PM

ROA Report

Page 1 of 1

Case: 2002-0000251-CR Current Judge: John K. Reilly Jr.
 Defendant: Harris, Jacob Michael
 Commonwealth of Pennsylvania vs. Jacob Michael Harris
 Criminal

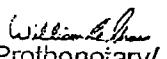
OCT 30

2500-1961

Date		Judge
03/14/2002	Criminal Complaint received from District Justice Office. Arraignment Waiver Form, filed	No Judge No Judge
03/28/2002	INFORMATION, filed	John K. Reilly Jr.
04/02/2002	Notice of Applicable Mandatory Sentence, filed 2 CC DA	John K. Reilly Jr.
01/06/2003	Plea Agreement, Filed	John K. Reilly Jr.
	Guilty Plea Colloquy, filed	John K. Reilly Jr.
03/12/2003	Offender Supervision Fee Notice of Fee Change, filed (take off 6 mo. Sup. Fee)	No Judge
03/20/2003	SENTENCE, filed. Now, 3/6/03, Def. having entered a Guilty Plea to Possession with Intent to Deliver Cocaine, SENTENCE of this Court that Def. pay \$500.00 plus costs, serve 2 yrs. county probation with condition of 6 mos. incarceration in CCJ, def. to refrain from use/possession alcohol, complete 40 hours community service and make restitution determined by the Court. Charge of Conspiracy to Deliver, Ungraded Felony., Def. to pay \$400.00 plus costs, def to serve 1 yr. probation to be served consecutive with above sentence. BY THE COURT/s/JKR cc: CA, DA, PO, Atty. Lees, Vict/Witns., Jail, Def., PSP-Wdlnd. (see file for original)	John K. Reilly Jr.
03/21/2003	Probation Order filed.	John K. Reilly Jr.
03/27/2003	Motion For Reconsideration of Sentence, filed 4 CC DA	John K. Reilly Jr.
04/04/2003	Rule to Show Cause, filed. Now, 4/4/03, upon consideration of Motion for Reconsideration, Rule Returnable scheduled for 4/8/03 at 2:00 p.m. BY THE COURT/s/JKR cc: 2 Atty. Chester	John K. Reilly Jr.
04/10/2003	ORDER, filed. cc to CA,DA,PO,E. LEES, ESQ. NOW 4/8/03. It is the ORDER of this Court that Motion for Reconsideration of Sentence be and is hereby continued.	John K. Reilly Jr.
04/17/2003	Offender Supervision Fee Notice of Fee Change, filed (take off 30 mo. Sup. Fee) ORDER, filed. cc to CA,DA,PO,ATTY. LEES,SHFF,JAIL, PSP-WDLND. NOW 4/17/03. It is the ORDER of this Court that the Court's sentence of March 6, 2003 be and is hereby amended to read that on the charge of Possession with Intent to Deliver Cocaine, an Ungraded Felony, that the Defendant be incarcerated at the WDCC in Pittsburgh, Pa., for a term the minimum of which shall be 6 months and the maximum of which shall be 2 years. It is the-further-ORDER of this Court that on the charge of Conspiracy to Deliver, an ungraded Felony, that the Defendant serve a period of probation of 1 year under the supervision and control of the PA State Board of Probation and Parole, to be served consecutive to that sentence entered for Possession with Intent to Deliver Cocaine. This shall be sufficient authority for the SHFF of CC to transport defendant.	No Judge John K. Reilly Jr. I hereby certify this to be a true and attested copy of the original statement filed in this case.
06/12/2003	Sheriff Return of Service filed. Sheriff Costs \$58.97	John K. Reilly Jr.
10/10/2003	Transcript of Proceedings, filed Sentencing	John K. Reilly Jr.

OCT 20 2003

Attest.


 William L. Lavery
 Prothonotary/
 Clerk of Courts

John K. Reilly Jr.

John K. Reilly Jr.

EXHIBIT

C

**BETTER MANAGEMENT CORPORATION OF OHIO, INC.**

755 Boardman-Canfield Road, H-1

P.O. Box 9755

Youngstown, Ohio 44513

PHONE 330/758-6318 FAX 330/758-7169

February 5, 2003

Re: Jacob Harris

To whom this may concern,

This letter is in regards to Mr. Jake Harris. BMC of Ohio is a small company its success is based on its employees. The tipping operation, in which Mr. Harris belongs, is based on a one man per unit operation. This operation is responsible for the off loading of cargo during a continuous 12-hour work shift. Mr. Harris will be supervised during this shift by the working face manager and the on site BMC of Ohio supervisor and cannot at any time leave his post. He is a vital part of this company's operations at the Greentree facility.

Mr. Harris has been employed by BMC as a full time employee for over a period of two years and is considered to be an excellent responsible employee; his attendance record speaks for its self with zero days missed due to illness. Just recently Mr. Harris has been place in temporary charge of a tipping operation in Scottdale, Pa., this operation is pending the decision of the court.

If it would all be possible I Gary L. Brunckhorst of BMC of Ohio do hereby ask the court to consider the employment record of Mr. Harris and his responsibility to himself and this company. We at BMC consider Mr. Harris to be a good honest hard working person and have never had any difficulties with him during his employment.

Sincerely,



Gary L. Brunckhorst
Operations Manager Field Division
BMC of Ohio

EXHIBIT

D

tabber

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CRIMINAL DIVISION)

COMMONWEALTH OF PENNSYLVANIA

v.

NO. 02-251-CRA

JACOB MICHAEL HARRIS

MOTION FOR RECONSIDERATION OF SENTENCE

Now, comes the Commonwealth of Pennsylvania, by and through, William A. Shaw, Jr., First Assistant District Attorney, of Clearfield County, and in support of the foregoing motion for Reconsideration of Sentence, avers as follows:

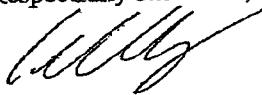
1. By order dated March 6, 2003, the above captioned Defendant was sentenced to a period of probation among the terms and condition of which that the Defendant serve 6 months in the Clearfield County Jail.
2. At the time of sentencing, this Honorable Court permitted the Defendant to remain in the county jail only upon condition that the Defendant have employment.
3. Upon arriving at the county jail, the Defendant was drug tested and positive for controlled substances.
4. Because the Defendant was positive for controlled substances when he reported to the county jail, the Defendant is ineligible for work release.
5. The Defendant is unemployed and remains incarcerated in the county jail.
6. Pursuant to this Court's instruction at the time of sentencing, the Commonwealth respectfully requests that this Honorable Court modify the Defendant's sentence to a minimum period of incarceration of 6 months, maximum period of incarceration of 2 years to be served at the Western Diagnostic and Classification Center.

EXHIBIT

E

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court
modify the Defendant's sentence.

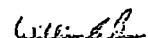
Respectfully submitted,


WILLIAM A. SHAW, JR., ESQUIRE
First Assistant District Attorney

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 27 2003

Attest.


Prothonotary
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CRIMINAL DIVISION)

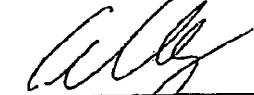
COMMONWEALTH OF PENNSYLVANIA :
V. : NO. 02-251-CRA
JACOB MICHAEL HARRIS :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving a copy of Commonwealth's Motion for Reconsideration of Sentence upon the person and in the manner indicated below:

First-Class Mail

Earle D. Lees, Jr., Esquire
109 N Brady Street
DuBois, PA 15801
(one copy)



William A. Shaw, Jr., Esquire
First Assistant District Attorney
Office of the District Attorney
230 East Market Street
Clearfield, PA. 16830

Dated: 3-27-03



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

April 4, 2003

Earle D. Lees, Jr., Esquire
Attorney at Law
109 North Brady Street
DuBois, PA 15801

Commonwealth vs Jacob Michael Harris
No. 2002-0000251-CRA

Dear Mr. Lees:

This is to advise you that Commonwealth's Motion for Reconsideration of Sentence filed in the above captioned case is scheduled to be heard in Motions Court on Tuesday, April 8, 2003 at 2:00 P.M. in Court Room No. 1 of the Clearfield County Courthouse.

Respectfully yours,


David S. Meholic
Court Administrator

DSM/cem

cc: District Attorney
Adult Probation

EXHIBIT

F

5 COMMONWEALTH OF PENNSYLVANIA :

6 -VS- : No. 02-251-CRA

7 JACOB MICHAEL HARRIS

10 PROCEEDINGS: Commonwealth's Motion
11 for Reconsideration of
12 Sentence
13
14 BEFORE: HONORABLE JOHN K. REILLY, JR.
15 President Judge
16
17 DATE: Thursday, April 17, 2003
18
19 PLACE: Clearfield County Courthouse
20 Courtroom No. 1
21 Clearfield, Pennsylvania
22
23 TAKEN BY: Thomas D. Snyder, RPR
24 Official Court Reporter

21 APPEARANCES:

22 WILLIAM A. SHAW, JR., ESQUIRE
23 First Assistant District Attorney
For - Commonwealth

24 RONALD L. COLLINS, ESQUIRE
Sobel, Collins & Knaresboro
25 For - Defendant

2

1 PROCEEDINGS

2 ATTORNEY SHAW: Your Honor, this matter is at
3 02-251-CRA. It's the Commonwealth's motion for
4 reconsideration. In a nutshell, at the time of sentencing,
5 you permitted the Defendant to stay here at the county jail
6 upon condition that he have employment.

7 The problem was he went to the county jail, was
8 hot for -- positive for drugs in his urine. He can't go out
9 and work, so he's being housed out there without employment
10 at county expense. So the Commonwealth has filed a motion
11 to seek to modify his sentence to a state sentence.

12 THE COURT: Mr. Collins.

13 ATTORNEY COLLINS: Your Honor, there's certain
14 circumstances I need to let the Court know of in regards to
15 the hot urine. Can we approach the bench?

16 (A discussion was held off the record at
17 sidebar.)

18 THE COURT: What I'm going to do is I'm going to
19 amend the sentence to provide for service of the period of
20 incarceration in the state -- at the Western Diagnostic and
21 Classification Center in Pittsburgh, Pennsylvania. You have
22 Mr. Sankey contact me, and I'll --

23 ATTORNEY COLLINS: Your Honor, if I could --

24 THE COURT: -- listen to what he has to say.

25 ATTORNEY COLLINS: Your Honor, if I could, Jacob

3

1 does have employment.

2 THE COURT: Now, wait. No, no. He reported to
3 the jail with a hot urine.

4 ATTORNEY COLLINS: I understand.

5 THE COURT: That's not only a violation of the
6 terms and conditions of the work release program but also
7 the sentence that was imposed.

8 ATTORNEY COLLINS: I understand that.

9 THE COURT: I'll speak to Mr. Sankey; and if he
10 can convince me that that was the case, then I'll reconsider
11 this. All right.

12

13 END OF PROCEEDINGS

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C E R T I F I C A T E

2

3 I hereby certify that the proceedings and
4 evidence are contained fully and accurately in the notes
5 taken by me in the proceedings of the above cause and that
6 this copy is a correct transcript of the same.

7

8

9

10 Date

Thomas D SnyderThomas D. Snyder, RPR
Official Court Reporter

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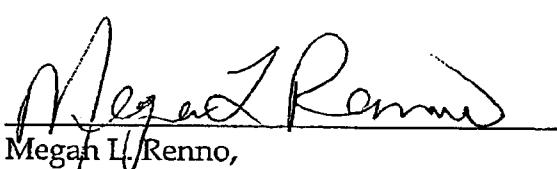
CERTIFICATE OF SERVICE

I, Megan L. Renno, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 11th day of November, 2003, I served a true and correct copy of the foregoing Petition Under the Post Conviction Relief Act via U.S. First Class mail, postage prepaid, addressed as follows:

Earl D. Lees, Jr., Esquire
109 North Brady Street
DuBois, PA 15801

Ronald L. Collins, Esquire
Sobel, Collins & Knaresboro
218 South Second Street
Clearfield, PA 16830

Paul Cherry, District Attorney
Clearfield County District Attorney's Office
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830



Megan L. Renno,
Legal Secretary to Michael D. Matter, Esquire

EXHIBIT B

RECEIVED

FEB 27 2004

✓ 2500-1961

M. Maier

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

VS : NO. 02-251-CRA

JACOB MICHAEL HARRIS :

O R D E R

NOW, this 24th day of February, 2004, this being the day and date set for hearing into the above-captioned Petition under the Post Conviction Relief Act; upon agreement of the parties, it is the ORDER of this Court that said Petition be and is hereby granted. The Sentencing Order of this Court dated April 17, 2003, and March 6, 2003, shall be and are hereby vacated and the Defendant permitted to withdraw his Pleas of Guilty.

BY THE COURT,

/s/JOHN K. REILLY, JR.

John K. Reilly, Jr.
Senior Judge
Specially Presiding

Attest

William J. Reilly
Prothonotary/
Clerk of Courts

FEB 28 2004

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION

APR - 6 2004

COMMONWEALTH OF PENNSYLVANIA :

✓2500-1961

V. : NO. 02-251-CRA

JACOB MICHAEL HARRIS :

TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

HELD BEFORE THE HONORABLE

JOHN K. REILLY, JR., SENIOR JUDGE

on Tuesday, February 24, 2004

A P P E A R A N C E SFOR THE COMMONWEALTH:

F. CORTEZ BELL III, ESQUIRE

FOR THE DEFENDANT:

MICHAEL D. MATTER, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

1 **INDEX TO WITNESSES**

2 BY THE

3 DIRECT: CROSS: REDIRECT: RECROSS: COURT:4
5 JACOB MICHAEL HARRIS -- -- -- -- 66
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1 -- PROCEEDINGS --

2 THE COURT: I believe we're here on your petition,
3 Mr. Matter.

4 ATTORNEY MATTER: Yes, Your Honor. We filed a
5 Petition for Post Conviction Relief, it was filed November 18,
6 2003. And I believe that we've reached an agreement with the
7 District Attorney's Office. I'll defer to Mr. Bell for that.

8 ATTORNEY BELL: Your Honor, what has been said thus
9 far is, correct. We're here today for purposes of an
10 evidentiary hearing with regard to the Post Conviction Relief
11 Act petition.

12 We have reached an agreement on behalf of the
13 Commonwealth and the Defense, I believe. That agreement would
14 be that the Commonwealth would consent to the granting of the
15 Post Conviction Relief Act petition.

16 We would also agree to the vacation of the current
17 Sentence that was imposed by this Court and allowing the
18 Defendant to withdraw his plea of guilt which led to the
19 Sentence which he is currently serving.

20 As a result of that, it's my understanding the
21 Defense would immediately reenter a plea agreement, the plea
22 agreement being consistent with that plea agreement previously
23 entered on January 3rd, 2003, in all terms except for the
24 period of incarceration. A period of incarceration would be 11
25 and a half months to 23 and a half months at the Clearfield

1 County Jail.

2 It's my understanding that we would apply time
3 credit at this point in time, and that would allow this
4 particular Defendant to be released on that Sentence.

5 In addition to that, Your Honor, there were two
6 charges on the Information, one dealing with a manufacture,
7 delivery, possession with intent to deliver a controlled
8 substance; the other one was a criminal conspiracy.

9 It's my understanding, in light of the agreement
10 that we have reached, that there will be a consecutive one-year
11 probationary period imposed, that being consecutive to the 11
12 and a half to 23 months.

13 THE COURT: One year?

14 ATTORNEY BELL: Yes.

15 THE COURT: All right. Mr. Matter.

16 ATTORNEY MATTER: That's my understanding of the
17 agreement, as well, Your Honor.

18 THE COURT: All right. Mr. Harris, did you hear
19 what the District Attorney said?

20 MR. HARRIS: Yes, sir.

21 THE COURT: And what your attorney said?

22 MR. HARRIS: Yes, sir.

23 THE COURT: Did you understand that?

24 MR. HARRIS: Yes, sir.

25 THE COURT: Is that what you want to do?

1 MR. HARRIS: Yes, sir.

2 THE COURT: To that caption, Now this 24th day of
3 February, 2004, this being the day and date set for hearing
4 into the above-captioned Petition Under the Post Conviction
5 Relief Act; upon agreement of the parties, it is the Order of
6 this Court that said Petition be and is hereby granted.

7 The Sentencing Order of this Court dated April
8 17th, 2003, and March 6, 2003, shall be and are hereby vacated
9 and the Defendant permitted to withdraw his plea of guilt --
10 pleas of guilty. By The Court.

11 Now, do you want to -- do you need a colloquy on
12 the reentry of the plea?

13 ATTORNEY BELL: Your Honor, I didn't think about
14 that. We probably should at least have some form of colloquy,
15 because that's required on all pleas. I can run over and get
16 our standard plea agreement form and colloquy.

17 THE COURT: All right. We'll recess pending that.

18 ATTORNEY BELL: I apologize, Your Honor, I didn't
19 think of that.

20 THE COURT: That's all right. No problem.

21 (recess)

22 ATTORNEY BELL: Thank you, Your Honor. We're back
23 in session and I have handed a completed negotiated plea
24 agreement and guilty plea colloquy executed by Mr. Harris and
25 his counsel, which I would present to the Court for the Court's

1 review.

2 Your Honor, the terms of that plea agreement also
3 indicate that he would plead guilty to a minimum period of
4 incarceration of 11 and a half months' incarceration consistent
5 with our standard form that says the maximum's up to the Court.

6 I believe we discussed in chambers what the maximum
7 would be. Additionally, there would be a period of one year
8 consecutive probation on the second charge.

9 THE COURT: Mr. Matter.

10 ATTORNEY MATTER: Your Honor, I did have the
11 opportunity to review the entire colloquy with Mr. Harris. He
12 reviewed it first himself by reading over it and initialing
13 each page, and then afterwards I also reviewed the rights he
14 would be waiving and the rights that remain with him. And he's
15 agreed to the plea agreement.

16 JACOB MICHAEL HARRIS,

17 having first been duly sworn, was examined and
18 testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q. You are Jacob M. Harris?

22 A. Yes, sir.

23 Q. You are the Defendant in these proceedings?

24 A. Yes, sir.

25 Q. Mr. Harris, did you hear the plea agreement as

1 stated by the District Attorney?

2 A. Yes, sir.

3 Q. Is that your understanding of it?

4 A. Yes, sir.

5 Q. And is that what you want to do?

6 A. Yes, sir.

7 Q. I show you this guilty plea agreement. Is this
8 your signature at the bottom?

9 A. Yes, sir.

10 Q. Did you place it there?

11 A. Yes, sir.

12 Q. And I show you this guilty plea colloquy. Is this
13 your signature at the bottom?

14 A. Yes, sir.

15 Q. And are these your initials prior to each of the 21
16 paragraphs?

17 A. Yes, sir.

18 Q. Did you place your initials there?

19 A. Yes, I did, sir.

20 Q. Did you read those paragraphs?

21 A. Yes, sir.

22 Q. Did you understand them?

23 A. Yes, sir.

24 Q. Do you have any questions about them?

25 A. No, sir.

1 Q. Do you understand that by entering these pleas of
2 guilty you're giving up your rights, constitutional rights and
3 other rights, as set forth in these paragraphs?

4 A. Yes, sir.

5 Q. And that you are waiving these rights?

6 A. Yes.

7 Q. Are you satisfied with the representation you have
8 received from your attorney?

9 A. Yes, I am, sir.

10 Q. Do you have any complaints about the manner in
11 which this prosecution against you has proceeded?

12 A. No.

13 Q. Are you presently under the influence of drugs or
14 alcohol?

15 A. No, sir.

16 Q. Is there any reason you can think of that would
17 prevent from you understanding the nature of these proceedings?

18 A. No.

19 THE COURT: All right. Anything further?

20 ATTORNEY BELL: Nothing further from the
21 Commonwealth, Your Honor.

22 THE COURT: Mr. Matter?

23 ATTORNEY MATTER: Your Honor, I would just -- I
24 note from the original Sentence, if Your Honor had an intention
25 to order any drug and alcohol treatment, he has completed

1 Court-ordered drug and alcohol treatment while he's been at
2 SCI-Somerset. I did present that to Mr. Bell for review. I'll
3 present it to the Court.

4 THE COURT: What you want to do is give that to the
5 Adult Probation Department. I am going to order it at the
6 discretion of his supervising probation officer. I would guess
7 that may be enough, but I don't want to make that
8 determination.

9 ATTORNEY MATTER: Fair enough, Your Honor. Thank
10 you.

11 THE COURT: To that caption, Now this 24th day of
12 February, 2004, Defendant having entered pleas of guilty to
13 charges of possession with intent to deliver cocaine and
14 conspiracy to deliver cocaine, ungraded felonies under the
15 Controlled Substance, Drug, Device and Cosmetic Act; he being
16 fully and competently represented by counsel and the Court
17 being satisfied that he has knowingly and intelligently entered
18 said plea, it is the Sentence of this Court that, on the charge
19 of possession with intent to deliver, he pay for the benefit of
20 Clearfield County the sum of \$500, together with costs of
21 prosecution; that he be incarcerated in the Clearfield County
22 Jail for a term the minimum of which shall be 11 and one-half
23 months and the maximum of which shall be 23 and one-half
24 months.

25 Effective immediately, he shall absolutely refrain

1 from the possession or use of alcoholic beverages and undergo
2 such drug and alcohol counseling as shall be required by his
3 supervising probation officer for which he shall pay costs;
4 that he complete 40 hours of community service; and make -- do
5 we have any restitution here, Mr. Bell?

6 ATTORNEY BELL: Yes, Your Honor, there was
7 restitution involved.

8 THE COURT: What amount?

9 ATTORNEY BELL: I believe the Pennsylvania State
10 Police, Your Honor, in the amount of \$280, plus there was
11 laboratory fees in addition to that in the amount of \$90. So,
12 a total of \$370.

13 THE COURT: All to the state police?

14 ATTORNEY BELL: All to the Pennsylvania State
15 Police.

16 THE COURT: Restitution in the amount of \$370 to
17 the Pennsylvania State Police.

18 On the charge of conspiracy to deliver, that he pay
19 for the benefit of Clearfield County the sum of one dollar,
20 together with costs of prosecution; that he be and remain on
21 probation under the supervision and control of the Department
22 of Probation Services, Adult Division, for a period of one
23 year, said period of probation to be served consecutive to that
24 period of incarceration entered above and upon the same terms
25 and conditions. By The Court.

1 ATTORNEY BELL: Mr. Harris, this is to advise you
2 that this is a final Order of this Court with regard to the
3 charges filed against you to Information No. 02-251-CRA. You
4 have the right to file post-sentence motions and must do so
5 within ten days from this date.

6 You also have a right to appeal this final Order
7 and you must do so within 30 days from this date or, if
8 post-sentence motions are filed, within 30 days of a ruling on
9 such motions.

10 You have the right to the assistance of counsel in
11 the preparation of such motions and appeal. You also have the
12 right, if indigent, to proceed in forma pauperis and to be
13 provided free counsel for your motions and appeal. If you file
14 post-sentence motions or an appeal, you have the right to
15 request bail pending their resolution.

16 This Court must rule on any post-sentence motions
17 within 120 days of the date of filing. Otherwise, such motions
18 shall be considered denied.

19 Do you understand the rights I have just stated to
20 you?

21 MR. HARRIS: Yes.

22 ATTORNEY BELL: Thank you. Thank you, Your Honor.

23 ATTORNEY MATTER: One last thing, Your Honor. With
24 regard to the restitution, the restitution has already been
25 paid by the co-defendant.

1 THE COURT: In full?

2 ATTORNEY MATTER: Yes.

3 THE COURT: That satisfies that.

4 ATTORNEY MATTER: Okay. Thank you, Your Honor.

5 -- END OF PROCEEDINGS --

6

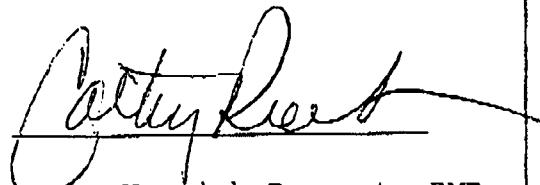
7 -- C E R T I F I C A T E --

8

9 I hereby certify that the proceedings and evidence
10 are contained fully and accurately in the notes taken by me
11 upon the hearing of the within matter, and that this transcript
12 is a correct copy of the same.

13

14 Date: April 5, 2004



15 Cathy Warrick Provost, RMR

16

17 Official Court Reporter

18

19

20

21

22

23

24

25

JACOB MICHAEL HARRIS,
Plaintiff,
vs.
RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 04-614-CD
:
: CIVIL ACTION-LAW
:
: JURY TRIAL DEMANDED
:
:

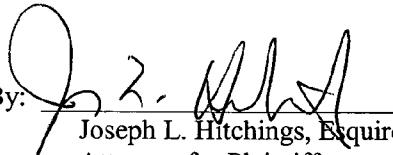
CERTIFICATE OF SERVICE

I, Joseph L. Hitchings of McShane & Hitchings, LLC, Attorney for the Plaintiff, Jacob Michael Harris, do hereby certify that I served a true and correct copy of the attached Amended Complaint, by United States Mail, First Class, postage prepaid upon the counsel listed below:

David L. Haber, Esquire
Weinhamer, Schadel & Haber
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

Respectfully Submitted,
MCSHANE & HITCHINGS, LLC

Date: 9-17-04

By: 
Joseph L. Hitchings, Esquire
Attorney for Plaintiff
Supreme Court ID# 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
Telephone: (717) 657-3900
Fax: (717) 657-2060

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRAECIPE FOR NON PROS

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

FILED
10/5/04 2004
Nature to file with the City
OCT 05 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRAECIPE FOR NON PROS

TO: Prothonotary

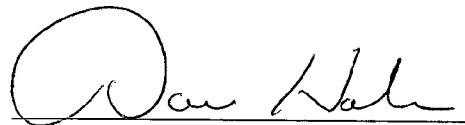
Purported Defendants, Ronald Collins and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C., without waiving service, sets forth the following Praecipe for Judgment Non-Pros for failure to file a Certificate of Merit in the above-captioned action at the above number:

Enter judgment of non-pros against Plaintiff, Jacob Michael Harris, in the professional liability claim against purported Defendants, Ronald Collins and Sobel, Collins & Knaresboro, in the above-captioned matter.

I, the undersigned, certify that the plaintiff named above have asserted a professional liability claim against the defendants named above who are licensed professionals, that no Certificate Of Merit has been filed within the time required by Pa. R.C.P. 1042.3, and that there is no motion to extend the time for filing the Certificate pending before the court.

Date

10/04/04



CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **PRAECIPE FOR NON
PROS** has been served upon the following by First Class United States Mail, postage
pre-paid, overnight mail, or hand delivery on October 4th, 2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By



David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

NOTICE OF JUDGMENT

TO: Plaintiff Defendant Garnishee Additional Defendant

You are hereby notified that a Judgment of Non Pros has been entered against you
on _____

Decree Nisi in Equity
 Final Decree in Equity
 Judgment of Confession Verdict
 Default Non-Suit
 Non Pros Arbitration Award

William A. Shaw, Prothonotary

If you have any questions concerning the above, please contact:

Name of Attorney/Filing Party: David L. Haber, Esquire

Address: Weinheimer, Scahdel & Haber, PC, 602 Law and Finance Building,
429 Fourth Avenue, Pittsburgh PA 15219-1503

Telephone Number (412) 765-3399

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Jacob Michael Harris
Plaintiff(s)

No.: 2004-00614-CD

Real Debt: \$

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Ronald L. Collins
Sobel, Collins & Knaresboro
Defendant(s)

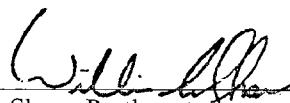
Entry: \$20.00

Instrument: Judgment of Non Pros

Date of Entry: October 6, 2004

Expires:

Certified from the record this 6th day of October, 2004



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

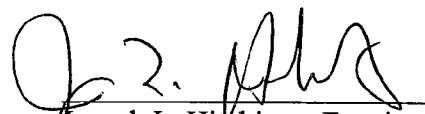
RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 04-614-CD
:
: CIVIL ACTION-LAW
:
: JURY TRIAL DEMANDED
:
:

CERTIFICATE OF MERIT

As to Defendant Ronald L. Collins, I, Joseph L. Hitchings, Esquire, certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was the cause in bringing about the harm.

Respectfully Submitted,
MCSHANE & HITCHINGS


Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

FILED NO cc
m11.22.04
OCT 12 2004

William A. Schow
Prothonotary Clerk of Courts

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 04-614-CD
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: CIVIL ACTION-LAW
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: JURY TRIAL DEMANDED
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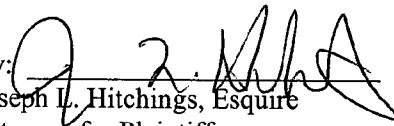
CERTIFICATE OF SERVICE

I, Joseph L. Hitchings of McShane & Hitchings, LLC, Attorney for the Plaintiff, Jacob Michael Harris do hereby certify that I served a true and correct copy of the attached Complaint, by United States Mail, First Class, postage prepaid upon the individuals listed below:

David L. Haber, Esquire
Weinhamer, Schadel & Haber
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

Respectfully Submitted,
MCSHANE & HITCHINGS, LLC

Date: 10-8-04

By: 
Joseph L. Hitchings, Esquire
Attorney for Plaintiffs
Supreme Court ID# 65557
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
Fax: (717) 657-2060

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-614-CD
: CIVIL ACTION-LAW
: JURY TRIAL DEMANDED

FILED

10/12/04 BPA

OCT 12 2004

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty Hitchings

PETITION TO OPEN AND/OR STRIKE JUDGMENT OF NON PROS

AND NOW this 8th day of October 2004, comes the Plaintiff,
Jacob Michael Harris, by and through his attorneys, McShane & Hitchings, LLC, and
Joseph L. Hitchings, Esquire, and avers in support of his Petition to Open and/or Strike
Non Pror Judgment as follows:

1. The above captioned action filed by the Plaintiff, Jacob Michael Harris alleges professional malpractice against his former counsel Ronald L. Collins individually and the law firm of Sobel, Collins & Knaresboro.
2. This action was initiated by the filing of a Praecept for Writ of Summons on May 3, 2004.
3. A Complaint against the Defendants was filed in the Prothonotary's Office of the Clearfield County Court of Common Pleas on August 2, 2004.
4. On or about September 9, 2004, David L. Haber counsel for the Defendants filed Preliminary Objections to the Complaint and a Supporting Brief, A ture and correct copy of the Preliminary Objections and the Supporting Brief are attached hereto as Exhibit "A".

5. The Preliminary Objections alleged that no legal malpractice claim had been asserted against the Defendants and sought to have the Complaint in its entirety dismissed.

6. On September 29, 2004, Plaintiff filed in the Prothonotary's Office of Clearfield County an Amended Complaint attempting to address the issues raised in Defendant's Preliminary Objections, including additional allegations to support the claims for legal malpractice. A true and correct copy of the Amended Complaint is attached hereto as Exhibit "B".

7. On or about October 5, 2004, Defendant filed a Praeclipe for *Non Pros* resulted the alleged failure to file a Certificate of Merit in the above captioned matter. The Judgment of *Non Pros* was entered by the Clearfield County Prothonotary on October 6, 2004. A true and correct copy of the Notice of Judgment is attached hereto as Exhibit "C".

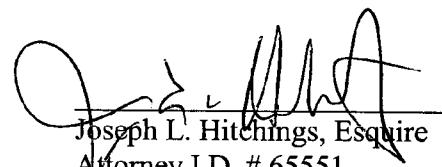
8. As a result of the filing of the Amended Complaint, Defendant has sixty (60) days within which to file a Certificate of Merit to be in compliance with Pa. R.C. 1042.3. See, Herman v. Pristine Pines of Franklin Park, Inc., 64 Pa. D & C 4th 14 (Alleghany County, J. Wettick, 2003).

9. Plaintiff believes and therefore avers that under either Pa. R.C.P. 237.3 or Pa. R.C.P. 3051, the *Non Pros* Judgment must be opened and/or stricken, as the Petition is timely filed, there is reasonable explanation or legitimate excuse for the alleged delay, and the Plaintiff has plead a meritorious cause of action in his Amended Complaint.

10. Simultaneously with the filing of this Petition, Plaintiff has filed a Certificate of Merit for each Defendant in this matter.

WHEREFORE, Plaintiff, Jacob Michael Harris respectfully requests that this Honorable Court open and/or strike the Judgment of *Non Pros* entered in this action.

Respectfully Submitted,
MCSHANE & HITCHINGS



Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 04-614-CD
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: CIVIL ACTION-LAW
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: JURY TRIAL DEMANDED
:
:

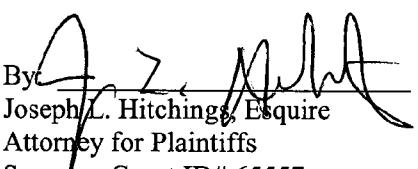
CERTIFICATE OF SERVICE

I, Joseph L. Hitchings of McShane & Hitchings, LLC, Attorney for the Plaintiff, Jacob Michael Harris do hereby certify that I served a true and correct copy of the attached Complaint, by United States Mail, First Class, postage prepaid upon the individuals listed below:

David L. Haber, Esquire
Weinhamer, Schadel & Haber
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

Respectfully Submitted,
MCSHANE & HITCHINGS, LLC

Date: 10-8-04

By 
Joseph L. Hitchings, Esquire
Attorney for Plaintiffs
Supreme Court ID# 65557
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
Fax: (717) 657-2060

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRELIMINARY OBJECTIONS

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRELIMINARY OBJECTIONS

And now, comes Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C. and files the following Preliminary Objections:

1. The plaintiff filed the within legal malpractice claim against Defendants Ronald Collins and Sobel, Collins & Knaresboro.
2. Defendant Ronald Collins represented the plaintiff in a criminal matter in the Court of Common Pleas of Clearfield County at docket number 02-251-CRA.
3. Defendant Collins only represented the plaintiff following his guilty plea and initial sentencing. Defendant Collins represented the plaintiff with regard to a Motion for Reconsideration of Sentencing filed by the Commonwealth.
4. During the guilty plea entered by the plaintiff, and the initial sentencing, the plaintiff was represented by attorney Earl D. Lees, Jr.
5. Plaintiff alleges that on January 6, 2003, while being represented by attorney Lees he plead guilty to two counts including the charge of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County.

6. On March 6, 2003, plaintiff was sentenced to a term of two years of probation under the supervision of the Clearfield County Department of Probation with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of the Clearfield County Department of Probation on count two (2) to be served consecutively. (Paragraph 5 of the Complaint.)
7. Plaintiff's sentence was conditioned on plaintiff possessing satisfactory employment. Plaintiff further alleges that at the time of his incarceration of March 6, 2003, he maintained full-time employment.
8. On or about March 7, 2003, it is alleged that the Commonwealth filed a Motion for Reconsideration of Sentencing.
9. Plaintiff's counsel was advised that argument was scheduled before the court on April 8, 2003.
10. The plaintiff further alleges that on April 7, 2003, his father was notified by attorney Lees that he could no longer represent since he had accepted employment with the Clearfield County District Attorney's office.
11. The plaintiff further alleges that on April 7 his father retained the defendants to represent him at the reconsideration of sentence hearing.
12. It is further alleged that the hearing on the Motion for Reconsideration of Sentencing was continued to April 17, 2003.
13. It is further alleged that at the hearing on April 17, 2003, the plaintiff was resentenced to a minimum term of six (6) months and a maximum of two (2) years at a state prison.

14. It is further alleged by plaintiff as the defendants were negligent as to the representation of the plaintiff at the hearing in the following ways:

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721 (b)(i).
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff on April 17, 2003, sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

(Paragraph 15 of Complaint.)

15. The plaintiff alleges he lost income due to the inability to pursue work release while incarcerated in the state facility and that he also suffered physical and mental abuse while in the state facility.

16. Under Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1987) in order to state a legal malpractice claim against an attorney representing a plaintiff in a criminal matter, the plaintiff must plead and prove:

1. An attorney-client relationship;
2. The attorney showed reckless or wanton disregard to the criminal defendant's interest;
3. That the attorney's culpable conduct was the approximate cause of an injury suffered by the defendant/plaintiff (i.e., but for the attorney's conduct, the defendant/plaintiff would have obtained an acquittal or a complete dismissal of the charges);
4. As a result of the injury, the criminal defendant/plaintiff must have suffered damages;
5. The plaintiff must have pursued post trial remedies and obtained relief which was dependent upon attorney error.

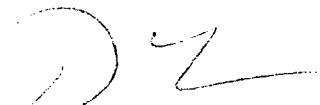
17. The plaintiff cannot plead elements 2, 3 and 5 under Bailey v. Tucker and therefore no legal malpractice claim has been asserted. See also Slaughter v. Rushing, 453 Pa.Super. 379, 683 A.2d 1234 (Pa.Super. 1986).

18. The plaintiff has not plead the necessary elements for a legal malpractice claim arising out of the representation of the plaintiff in a criminal proceeding, and therefore the Preliminary Objections should be sustained and the Complaint should be dismissed with prejudice.

WHEREFORE, the Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, respectfully requests that their Preliminary Objections be sustained and the Complaint be dismissed with prejudice.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By 
David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

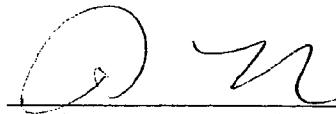
CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **PRELIMINARY
OBJECTIONS** has been served upon the following by First Class United States Mail,
postage pre-paid, overnight mail, or hand delivery on September 7/1,
2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By 
David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS, CIVIL ACTION

Plaintiff, No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

ORDER OF COURT

AND NOW, to wit, on this _____ day of _____ 2004,
upon consideration of the Preliminary Objections filed by the Defendants; it is hereby
ORDERED that the Preliminary Objections are sustained and the Complaint is dismissed
with prejudice.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

**BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS**

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

And now, comes Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C. and files the following Brief in Support of their Preliminary Objections:

I. History of the Case

The plaintiff filed the within legal malpractice claim against Defendants Ronald Collins and Sobel, Collins & Knaresboro. Defendant Ronald Collins represented the plaintiff in a criminal matter in the Court of Common Pleas of Clearfield County at docket number 02-251-CRA. The defendants only represented the plaintiff following the plaintiff's guilty plea and original sentence. The plaintiff pled guilty to charges including possession with intent to deliver cocaine. The plaintiff was represented during his guilty plea and original sentence by Earl D. Lees, Jr. The defendants only represented the plaintiff after the Commonwealth filed a Motion for Reconsideration of Sentence.

On March 6, 2003, the plaintiff was sentenced to a term of two (2) years of probation under the supervision of the Clearfield County Department of Probation with the condition that the first six (6) months be served in the Clearfield County Jail on count one and to a term of one

Civil Division No. 04-614-CD
year probation under the supervision of Clearfield County Department of Probation on count two
(2) to be served consecutively. The sentence was also conditioned on the plaintiff possessing
satisfactory employment which he alleges that he had on March 6, 2003, at the time of his
incarceration.

On or about March 27, 2003, the Commonwealth filed a Motion for Reconsideration
which was originally scheduled for argument on April 8, 2003. On April 7, 2003, the plaintiff
alleges that his father was notified by attorney Lees that he could no longer represent him due to
him accepting employment with the Clearfield County District Attorney's office. It is further
alleged that on April 7 plaintiff's father retained defendants to represent plaintiff at the
reconsideration of sentence hearing. The hearing was rescheduled to April 17, 2003, and at that
time plaintiff was sentenced to a minimum term of six (6) months to a maximum term of two (2)
years at a state prison.

It is alleged that the defendants were negligent in the representation of the plaintiff at the
hearing in the following ways:

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion
to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721 (b)(i).
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal
substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive
drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff on April 17, 2003, sentence
despite the fact that both the Plaintiff and Plaintiff's family requested that an
Appeal be filed.

(Paragraph 15 of Complaint.)

The plaintiff seeks damages relative to loss of income since he was unable to pursue
work release and also physical and mental abuse while incarcerated at the state prison.

Civil Division No. 04-614-CD

The defendants have filed Preliminary Objections to the Complaint and this brief is filed in support of those Preliminary Objections.

II. Statement of Question Involved

Which the plaintiff's failure to allege that he was innocent of the criminal charges and that he pursued post trial remedies and obtained relief which was conditioned on attorney error precludes a legal malpractice claim arising out of the representation of the plaintiff in a criminal proceeding under Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1987).

III. Copy of relevant documents to be involved

A copy of the Complaint is attached.

IV. Argument

Our Supreme Court, in Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (Pa. 1987), has clearly stated the elements for bringing a legal malpractice action against an attorney who represents a plaintiff in criminal proceedings. The court held that the malpractice plaintiff must plead and prove:

- (1) An attorney client relationship;
- (2) The attorney showed reckless or wanton disregard of the criminal defendant's interest;
- (3) That the attorney's culpable conduct was the proximate cause of an injury suffered by the defendant/plaintiff, i.e., "but for" the attorney's conduct, the defendant/plaintiff would have obtained an **acquittal** or a **complete dismissal** of the charges.

Civil Division No. 04-614-CD

- (4) As a result of the injury, the criminal defendant/plaintiff must have suffered damages.
- (5) The plaintiff must have pursued post-trial remedies and obtained relief which was dependent upon attorney error;

Id. at 250-51, 621 A.2d at 114-15, *emphasis added*.

In Bailey, the Court found that allegations of attorney malpractice arising from representation in a criminal matter require different considerations than those in an underlying civil matter. Id. 533 Pa. at 246, 621 A.2d at 112. The court found this because policy considerations apply in the context of criminal proceedings that do not exist in civil cases. The Court explained:

Unlike in the civil litigation area, a client does not come before the criminal justice system under the care of his counsel alone; he comes with full panoply of rights, powers, and privileges. These rights and privileges not only protect the client from abuses of the system but are designed to protect the client from a deficient representative. Thus, whereas in a civil matter a case once lost is lost forever, in a criminal matter a defendant is entitled to a second chance (perhaps even a third or fourth chance) to insure that an injustice has not been committed. For these reasons we are constrained to recognize that criminal malpractice trespass actions are distinct from civil legal malpractice trespass actions, and as a result the elements to sustain such a cause of action must likewise differ.

Id., 533 Pa. at 250, 621 A.2d at 114. Because of these rights and policy considerations, the court in Bailey held that "we require that as an element to a cause of action in trespass against a defense attorney whose dereliction was the sole proximate cause of the defendant's unlawful conviction, **the defendant must prove that he is innocent of the crime or any lesser included offense.**" Bailey, 533 Pa. at 247, 621 A.2d at 113. (Emphasis added).

The Superior Court has held that this standard applies to malpractice plaintiffs when suing their attorneys arising out of post-plea proceedings. Slaughter v Rushing, 453 Pa.Super.

Civil Division No. 04-614-CD

379, 683 A.2d 1234 (Pa.Super. 1996). In Slaughter, an inmate initiated legal malpractice actions sounding in trespass against criminal attorneys who had represented him in post-plea proceedings and against the attorney who was appointed to represent the defendant as PCRA counsel. The plaintiff did not allege facts tending to show he was innocent of the criminal charges. The court held that under Bailey, the complaint was properly dismissed. The court stated:

In this case, appellant's complaints do not allege facts that purport to show he is innocent of all the criminal charges filed against him. Nor has appellant demonstrated that appellees' culpably negligent representation was the proximate cause of his conviction in the sense that "but for" the attorney conduct, appellant would have obtained an acquittal or complete dismissal of the criminal charges. Furthermore, appellant's complaints do not aver that he pursued all available post-trial remedies and obtained relief predicated upon attorney error. We agree with the trial court that under these circumstances, the complaints in trespass alleging malpractice by the defendants/appellees must be dismissed for failure to state a cause of action.

Slaughter, 453 Pa.Super. At 383-84, 683 A.2d at 1234. The instant matter is identical in all material respects. Here the plaintiff pled guilty when he was represented by another attorney. The plaintiff can not plead he was innocent of all charges and that the conduct of defendants was the cause of his guilty plea. He avers that Defendant Collins failed to properly challenge a Motion to Reconsider Sentence. The plaintiff also fails to allege that he obtained post-trial relief based on ineffective assistance of counsel. Therefore, plaintiff has failed to state a cause of action for legal malpractice and his complaint should be dismissed with prejudice.

V. Conclusion

The plaintiff has failed to allege the necessary elements to support a claim of legal malpractice arising out of the representation of a plaintiff in a criminal proceeding under Bailey v. Tucker. The court does not permit a criminal defendant to shift the loss cause

by his criminal conduct to a lawyer. Here the plaintiff is attempting to shift the burden of his sentence to a lawyer, exactly what Bailey v. Tucker precludes. The plaintiff is not innocent of the criminal charges and a lawyer cannot be made to pay for the plaintiff's violation of the criminal laws of Pennsylvania.

WHEREFORE, the Defendants Ronald Collins and Sobel, Collins & Knaresboro, respectfully request that their Preliminary Objections be sustained and that the Complaint be dismissed with prejudice.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By 

David L. Haber, Esquire

Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

9-07-2004 11:06AM FROM SOBEL COLLINS KNARES 814 765 6210

P. 3

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
DefendantsIN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 04-614-CD

CIVIL ACTION-LAW

JURY TRIAL DEMANDED

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, 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 have money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING AN ATTORNEY.

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 OR NO FEE.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE

230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 ext. 5982

0

9-07-2004 11:06AM

FROM SOBEL COLLINS KNARES 814 765 6210

P.4

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
DefendantsIN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 04-614-CD

CIVIL ACTION-LAW

JURY TRIAL DEMANDED

COMPLAINT

AND NOW, this day 28th day of July, 2004 comes the Plaintiff, Jacob Michael Harris, by and through his attorneys, McShane & Hitchings, LLC and Joseph L. Hitchings, Esquire, and avers in support of his complaint against Defendants Ronald L. Collins, individually and Sobel, Collins, and Knaresboro as follows;

1. Plaintiff, Jacob Michael Harris, is an adult individual residing at 338 West Main Street, Reynoldsville, Jefferson County, Pennsylvania 15851.
2. Defendant, Ronald L. Collins, is an attorney, licensed to practice law in the Commonwealth of Pennsylvania, with a professional address of 218 South Second Street, Clearfield, Pennsylvania 16830.
3. Sobel, Collins and Knaresboro is believed to be a partnership, operating a law firm located at 218 South Second Street, Clearfield, Pennsylvania 16830.
4. On or about January 6, 2003, Plaintiff while represented by Attorney Earl D. Lees, Jr., entered a guilty plea to two counts including the criminal charge of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County, Pennsylvania, Docket No. 02-251-CRA.

0
9-07-2004 11:07AM FROM SOBEL COLLINS KNARES 814 765 6210

P. 5

5. On March 6, 2003, Plaintiff was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of Clearfield County Department of Probation on count two (2) to be served consecutively.

6. Plaintiff's sentence was further conditioned on whether Plaintiff possessed "satisfactory employment."

7. At the time of his incarceration on March 6, 2003, Plaintiff maintained full time employment.

8. On or about March 27, 2003, the Commonwealth filed in Clearfield County Clerk of Courts office a "Motion for Reconsideration of Sentence", twenty-one (21) days after sentencing.

9. By letter dated April 4, 2003 David S Meholic, Court Administrator, advised Plaintiff's Counsel of Record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard before the Court on Tuesday, April 8, 2003.

10. On April 7, 2003, Plaintiff's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent the Plaintiff due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County's District Attorney's Office.

11. On April 7, 2003, Patrick Harris retained Defendant Ronald L. Collins, Esquire of the Defendant law firm, Sobel, Collins and Knaresboro to represent his son, the Plaintiff, at the Reconsideration of Sentence Hearing.

12. On April 8, 2003, the hearing on the Commonwealth's Motion for Reconsideration of Sentence was continued until April 17, 2003.

13. At the April 17, 2003 hearing, the Commonwealth alleged that the Plaintiff had tested positive for an illegal substance, however no the evidence to establish the positive test was presented. Following the hearing on April 17, 2003 the Court amended its present prior sentence of March 6, 2003, and ordered the Plaintiff to be incarcerated in a State Prison for a minimum term of six (6) months and a maximum of two (2) years.

14. Defendant, Ronald L. Collins represented the Plaintiff at the hearing on the Commonwealth's Motion for Reconsideration of Sentence.

15. Defendants were negligent in their representation of the Plaintiff in the following ways:

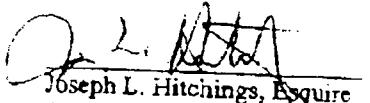
- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721(b)(1);
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff April 17, 2003 sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

16. As a direct and proximate result of the Defendants negligence in representing the Plaintiff in the criminal case, the Plaintiff suffered damages including lost income as a result of not being able to pursue work release, and having to serve an extended sentence in a state facility rather than in County Prison.

17. As a direct and proximate result of the negligence of the Defendants as set forth herein, the Plaintiff was incarcerated in a State Prison in excess of the six (6) months originally sentenced, and was subjected to physical and mental abuse while in the State facility.

WHEREFORE, Plaintiff Jacob Michael Harris demands judgment against the Defendants, Ronald L. Collins, individually, and Sobel, Collins, and Knaresboro in an amount in excess of twenty five thousand dollars (25,000.00) plus interest, costs, fees, and any other relief the court deems appropriate under the circumstances.

Respectfully Submitted
MC SHANE & HITCHINGS



Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2050
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS** has been served upon the following by First Class United States Mail, postage pre-paid, overnight mail, or hand delivery on September September, 2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By 

David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

EXHIBIT A

EXHIBIT B

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 04-614-CD
:
: CIVIL ACTION-LAW
:
: JURY TRIAL DEMANDED
:
:

FILED

12:03

SEP 29 2004

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, 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 PAPER 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING AN ATTORNEY.

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 OR NO FEE.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 ext. 5982

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

SEP 29 2004

Attest.

W. A. H.
Prothonotary/
Clerk of Courts

JACOB MICHAEL HARRIS, : IN THE COURT OF COMMON PLEAS OF
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. :
NO. 04-614-CD
RONALD L. COLLINS, individually and : CIVIL ACTION-LAW
SOBEL, COLLINS & KNARESBORO :
Defendants : JURY TRIAL DEMANDED

AMENDED COMPLAINT

AND NOW, this day 28th day of September, 2004 comes the Plaintiff, Jacob Michael Harris, by and through his attorneys, McShane & Hitchings, LLC and Joseph L. Hitchings, Esquire, and avers in support of his complaint against Defendants Ronald L. Collins, individually and Sobel, Collins, and Knaresboro as follows;

1. Plaintiff, Jacob Michael Harris, is an adult individual residing at 338 West Main Street, Reynoldsville, Jefferson County, Pennsylvania 15851.
2. Defendant, Ronald L. Collins, is an attorney, licensed to practice law in the Commonwealth of Pennsylvania, with a professional address of 218 South Second Street, Clearfield, Pennsylvania 16830.
3. Defendant, Sobel, Collins and Knaresboro is believed to be a partnership, operating a law firm located at 218 South Second Street, Clearfield, Pennsylvania 16830.
4. On or about January 6, 2003, Plaintiff while represented by Attorney Earl D. Lees, Jr., entered a guilty plea to two counts including the criminal charge

of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County, Pennsylvania, Docket No. 02-251-CRA.

5. On March 6, 2003, Plaintiff was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of Clearfield County Department of Probation on count two (2) to be served consecutively.

6. Plaintiff's sentence was further conditioned on whether Plaintiff possessed "satisfactory employment."

7. At the time of his incarceration on March 6, 2003, Plaintiff maintained full time employment.

8. On or about March 27, 2003, the Commonwealth filed in Clearfield County Clerk of Courts office a "Motion for Reconsideration of Sentence", twenty-one (21) days after sentencing.

9. By letter dated April 4, 2003 David S Meholic, Court Administrator, advised Plaintiff's Counsel of Record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard before the Court on Tuesday, April 8, 2003.

10. On April 7, 2003, Plaintiff's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent the Plaintiff due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County's District Attorney's Office.

11. On April 7, 2003, Patrick Harris retained Defendant Ronald L. Collins, Esquire of the Defendant law firm, Sobel, Collins and Knaresboro to represent his son, the Plaintiff, at the Reconsideration of Sentence Hearing.

12. On April 8, 2003, the hearing on the Commonwealth's Motion for Reconsideration of Sentence was continued until April 17, 2003.

13. At the April 17, 2003 hearing, the Commonwealth alleged that the Plaintiff had tested positive for an illegal substance, however no the evidence to establish the positive test was presented. Following the hearing on April 17, 2003 the Court amended its present prior sentence of March 6, 2003, and ordered the Plaintiff to be incarcerated in a State Prison for a minimum term of six (6) months and a maximum of two (2) years.

14. Defendant, Ronald L. Collins represented the Plaintiff at the hearing on the Commonwealth's Motion for Reconsideration of Sentence.

15. Defendants were negligent in their representation of the Plaintiff in the following ways;

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721(b)(1);
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substances;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights;
- e. By failing to file a direct Appeal of the Plaintiff's April 17, 2003 sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

- f. By failing to adequately, competently and vigorously represent the Plaintiff in the criminal matter; and
- g. By failing to protect the Plaintiff's Federal and State Constitutional and due process rights.

16. As a direct and proximate result of the Defendants negligence in representing the Plaintiff in the criminal case, the Plaintiff suffered damages including lost income as a result of not being able to pursue work release, and having to serve an extended sentence in a state facility rather than in County Prison.

17. As a direct and proximate result of the negligence of the Defendants as set forth herein, the Plaintiff was incarcerated in a State Prison in excess of the six (6) months originally sentenced, and was subjected to physical and mental abuse while in the State facility.

18. No evidence was presented to support the allegations of the Commonwealth in their untimely Motion to Modify Sentencing, nor did the Plaintiff or his Counsel stipulate to the allegations, but rather believes and therefore avers that he is innocent of those allegations.

19. On or shortly after November 11, 2003, Plaintiff filed a Petition under the Post Conviction Relief Act, alleging among other things, ineffective assistance of counsel against the Defendants. A true and correct copy of Plaintiff's Petition under the Post Conviction Relief Act is attached hereto, incorporated herein by reference and marked as Exhibit "A".

20. As a result of the Plaintiff filing his Petition under the Post Conviction Relief Act, and District Attorney's acknowledgement of the illegal sentence, Plaintiff and the District Attorney's Office stipulated that Plaintiff's Petition under the Post Conviction Relief Act be granted; the Plaintiff was resentenced, given credit for time served and immediately released from prison. A true and correct copy of the Order of Senior Judge John K. Reilly, Jr. granting Plaintiff's Petition and the transcript of proceedings are attached hereto, incorporated herein by reference and marked as Exhibit "B".

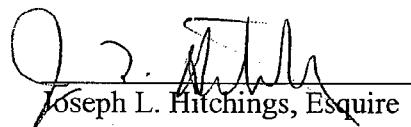
21. The relief which the Plaintiff obtained pursuant to his Petition under the Post Conviction Relief Act was dependant on the errors and negligence of the Defendant's as set forth herein.

22. The Defendants showed a complete and utter disregard of Plaintiff's rights and interests, as witnessed by their negligence in representation of the Plaintiff, and their failure to protect the Plaintiff's Constitutional and due process rights.

23. But for the negligence of the Defendants, Plaintiff would not have been sentenced to state prison, and he would not have suffered the damages as set forth herein.

WHEREFORE, Plaintiff Jacob Michael Harris demands judgment against the Defendants, Ronald L. Collins, individually, and Sobel, Collins, and Knaresboro in an amount in excess of twenty five thousand dollars (25,000.00) plus interest, costs, fees, and any other relief the court deems appropriate under the circumstances.

Respectfully Submitted,
MCSHANE & HITCHINGS

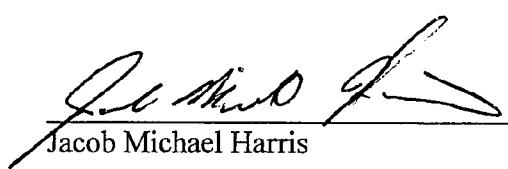


Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

9/26/09
Date


Jacob Michael Harris

COMMONWEALTH OF PENNSYLVANIA

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JACOB MICHAEL HARRIS

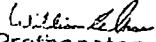
NOV 18 2003

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

NO.: 02-251-CRA

CHARGES: POSSESSION WITH INTENT
TO DELIVER COCAINE; CONSPIRACY TO
DELIVER COCAINE

Attest.


Prothonotary

TO THE HONORABLE JOHN K. REILLY, JR., PRESIDENT JUDGE OF SAID COURT:

PETITION UNDER THE POST CONVICTION RELIEF ACT

AND NOW, this 10th day of November, 2003, comes the above-named defendant, Jacob Michael Harris, by and through his attorney, Michael D. Matter, Esquire, Lavery, Faherty, Young & Patterson, P.C., and respectfully represents the following:

1. Jacob Harris is currently incarcerated in a Pennsylvania State Correctional Institution in Somerset, Pennsylvania.
2. On or about January 06, 2003, Petitioner/Defendant (hereinafter, "Petitioner") pled guilty to the above-captioned offenses.
3. On March 06, 2003, with the aid of a presentence investigation, Petitioner was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months to be served in the Clearfield County jail on Count 1; and to a term of one (1) year of probation under the supervision of Clearfield County Department of Probation on Count 2, to be served consecutive to Count 1.
4. Petitioner was to "absolutely refrain from possession or use of alcoholic beverages and shall undergo such drug and alcohol counseling at Gateway Institute and Clinic, as shall be required," effective immediately. (March 06, 2003 Sentencing Order, Exhibit A; March 06, 2003 Sentencing Transcript, Exhibit B)

5. Petitioner's sentence was further conditioned on whether Petitioner possessed "satisfactory employment". (Exhibit B)
6. At sentencing on March 06, 2003, Petitioner was represented by Earle D. Lees, Jr., Esquire.
7. According to Petitioner's docket sheets from the Clearfield County Clerk of Courts Office, no praecipe to withdraw as counsel was filed by Attorney Lees. Therefore, and pursuant to Pa.R.Crim.P. §120, Attorney Lees was counsel of record for defendant's post sentence motion and appellate time periods. (See Exhibit C)
8. Petitioner was incarcerated the same day of sentencing, March 06, 2003.
9. Petitioner maintained employment at the time of his incarceration that was available to him during his probation. (Exhibit D)
10. Notwithstanding Petitioner's employment status, a thorough review of the sentencing transcript of March 06, 2003 reveals that Work Release was not a condition of Petitioner's sentence. (Exhibit B)
11. On March 27, 2003, the Commonwealth filed and the Clearfield County Clerk of Courts received a Motion for Reconsideration of Sentence, twenty-one (21) days after sentencing. (See Exhibit E)
12. By letter dated April 04, 2003, David S. Meholic, Court Administrator, advised Petitioner's counsel of record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard on Tuesday, April 08, 2003. (Exhibit F)
13. On April 07, 2003, Petitioner's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent Petitioner due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County District Attorney's Office.
14. Also on April 07, 2003, Patrick Harris retained Ronald L. Collins, Esquire, of Sobel, Collins & Knaresboro to represent his son at his Reconsideration of Sentence hearing.

15. On April 08, 2003, Petitioner's hearing on the Commonwealth Motion for Reconsideration was continued until April 17, 2003. (Exhibit C)

16. In its Motion for Reconsideration, the Commonwealth alleged that Petitioner tested positive for illegal substances. (Exhibit E)

17. After a thorough review of the transcript from the April 17, 2003 sentencing, undersigned counsel could find no evidence of record, other than a naked allegation, that Petitioner, in fact, tested positive for illegal substances. (April 17, 2003 Sentencing Transcript, Exhibit G)

18. There is no record of a stipulation by sentencing counsel as to the existence of a reliable, positive drug test.

19. There is no mention on the record of what illegal substance Petitioner allegedly tested positive.

20. Even assuming, *arguendo*, that the alleged positive drug test did exist and was reliable, that would not prove that Petitioner violated any of the terms of the original sentence of March 06, 2003. Moreover, the appropriate judicial procedure to address a violation of probation or parole is a revocation proceeding, not an untimely Motion for Reconsideration filed by the Commonwealth. See 42 Pa. C.S.A. §§ 9771, 9773.

21. Additionally, the Commonwealth's averment 5, Motion for Reconsideration, reads: "The Defendant is unemployed and remains incarcerated in the County jail". (See Exhibit E)

22. In fact, Petitioner did have employment at the time the Commonwealth filed its Motion for Reconsideration.

23. On April 17, 2003, upon consideration of the Commonwealth's Motion for Reconsideration of Sentence, this Honorable Court amended the Court's sentence of March 06, 2003 as follows:

a. PWI-Cocaine: "that the Defendant be incarcerated at the Western Diagnostic and Classification Center in Pittsburgh, Pennsylvania, for a term the minimum which shall be six (6) months and the maximum of which shall be two (2) years.

b. Conspiracy: "that the Defendant serve a period of Probation of one (1) year under the supervision and control of the Pennsylvania Board of Probation and Parole, to be served consecutive to that sentence entered for Possession with Intent to Deliver Cocaine."

24. At Petitioner's sentencing on April 17, 2003, Petitioner was represented by Attorney Collins of Sobel, Collins & Knaresboro.

25. There is no record, according to the docket entries, of Attorney Collins ever filing a formal entry or withdrawal of appearance with the court, nor is there any record of Attorney Lees ever filing a formal withdrawal of appearance after March 06, 2003.

26. A thorough review of the sentencing transcript of April 17, 2003 reveals that Petitioner was not advised of his post-sentencing rights. (Exhibit G)

27. Undersigned counsel alleges that defendant is eligible for relief under the Post Conviction Relief Act due to the following:

a. A violation of the Constitution of Pennsylvania or laws of this Commonwealth or the Constitution of the United States which, in the circumstance of the particular case, so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.

b. Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth determining process that no reliable determination of guilt or innocence could have taken place.

28. Specifically, undersigned counsel claims the following issues entitle defendant to relief:

a. Sentencing counsel was ineffective for failing to seek withdrawal or withdrawing from defendant's case following sentencing.

b. Sentencing counsel was ineffective for failing to file Post Sentence Motions on behalf of defendant in compliance with Pa.R.Crim.P. §720.

c. Sentencing counsel's inaction in withdrawing from defendant's case stripped defendant of the ability to preserve issues for appeal in post sentence motions that would be waived, if not raised, in that manner

d. Sentencing counsel's failure to withdraw from defendant's case effectively stripped defendant of his appellate rights vis-à-vis the ability to appeal the denial of any of defendant's issues which would have been raised in post sentence motions including but not limited to the discretionary aspects of sentencing.

e. Sentencing counsel was ineffective for failing to timely object to or appeal the Commonwealth's untimely Motion for Reconsideration which was filed in violation of Pa.R.Crim.P. §721(B)(1) requiring a Commonwealth Motion for Modification of Sentence be filed within 10 days after imposition of sentence.

f. Sentencing counsel was ineffective for failing to advise Petitioner of his post-sentencing rights.

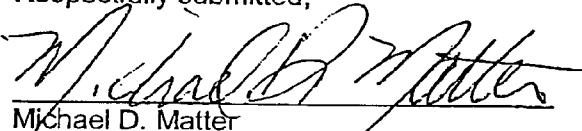
g. Sentencing counsel was ineffective for failing to file a direct appeal of Petitioner's April 17, 2003 sentence at the request of Petitioner and Petitioner's family. Commonwealth v. Lantzy, 736 A.2d 564 (Pa. 1999) (*Holding* – An unjustified failure by counsel to file a requested direct appeal denies the accused the assistance of counsel guaranteed by the federal and state constitutions and constitutes prejudice for purposes of section 9453(a)(2)(ii).)

29. Petitioner alleges that present allegations have been neither previously litigated nor are waived and are cognizable under the PCRA.

30. Petitioner alleges that the defendant has been convicted of crimes under the laws of the Commonwealth of Pennsylvania and is currently serving a sentence of imprisonment in Pennsylvania for said crimes.

31. Relief that the petitioner seeks is reinstatement of his appellate rights. In the alternative, the petitioner seeks an evidentiary hearing on the allegations contained within this petition. Commonwealth v. White, 449 Pa.Super. 386, 674 A.2d 253 (1996) (*Holding* - A PCRA hearing may only be denied if defendant's claim is patently frivolous and without trace of support either in record or from other evidence).

Respectfully submitted,


Michael D. Matter
Lavery, Faherty, Young & Patterson, P.C.
Attorney for Petitioner

D. OCCJ

B-10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

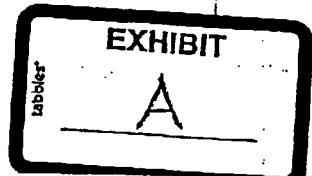
VS.

: NO. 02-251-CRA

JACOB MICHAEL HARRIS :

SEN T E N C E

NOW, this 6th day of March, 2003, Defendant having entered Pleas of Guilty to charges of Possession with Intent to Deliver Cocaine and Conspiracy to Deliver Cocaine, Ungraded Felonies under the Controlled Substance, Drug, Device and Cosmetic Act; he being fully and competently represented by counsel and the Court being satisfied that he has knowingly and intelligently entered said Pleas, it is the SENTENCE of this Court that, on the charge of Possession with Intent to Deliver, he pay for the benefit of Clearfield County the sum of Five Hundred (\$500.00) Dollars, together with costs of prosecution; that he be and remain on Probation for a period of two (2) years under the supervision and control of the Clearfield County Department of Probation Services, Adult Division, among the terms and conditions of which shall be that he serve six (6) months in the Clearfield County Jail; that, effective immediately, he shall absolutely refrain from the possession or use of alcoholic beverages; he to undergo such drug and alcohol counseling at Gateway Institute and Clinic as shall be required, together with any follow-up for which he shall pay costs; that



he complete forty (40) hours of community service; and make restitution in an amount to be determined by this Court.

On the charge of Conspiracy to Deliver, that he pay for the benefit of Clearfield County the sum of Four Hundred (\$400.00) Dollars, together with costs of prosecution; that he be and remain on Probation under the supervision and control of the Clearfield County Department of Probation Services, Adult Division, for a period of one (1) year, to be served consecutive to that entered above and upon the same terms and conditions.

BY THE COURT,

/s/JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAR 24 2003

Attest

William L. L.
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CRIMINAL ACTION

001 - 1

COMMONWEALTH OF PENNSYLVANIA :

v. : NO. 02-251-CRA

JACOB MICHAEL HARRIS :

TRANSCRIPT OF PROCEEDINGS

SENTENCING

HELD BEFORE THE HONORABLE
JOHN K. REILLY, JR., PRESIDENT JUDGE
on Thursday, March 6, 2003

A P P E A R A N C E S

FOR THE COMMONWEALTH:

PAUL E. CHERRY, ESQUIRE

FOR THE DEFENDANT:

EARLE D. LEES, JR., ESQUIRE

Reported by: Cathy Warrick Provost,

Registered Merit Reporter

EXHIBIT

B

1

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

2

3 THE COURT: Now to all Defendants who are here for
4 sentencing morning, once sentence is imposed, you have certain
5 rights to appeal the sentence, and the District Attorney is
6 going to read them to you now.

7

8 Please listen to them, because you'll be asked if
9 you heard and understood them at the time sentence is imposed.

10

11 ATTORNEY CHERRY: This is to inform you that this
12 is a final Order of this Court with regard to the charges filed
13 against you to your individual information numbers.

14

15 You have the right to file post-sentence motions
16 and must do so within ten days from this date. You also have
17 the right to appeal this final Order and must do so within 30
18 days from this date or, if post-sentence motions are filed,
19 within 30 days of a ruling on such motions.

20

21 You have the right to the assistance of counsel in
22 the preparation of such motions and appeal. You also have the
23 right, if indigent, to proceed in form of pauperis and be
24 provided free counsel for your motions and appeal.

25

If you file post-sentence motions or appeal, you
have the right to request bail pending their resolution.

26

This Court must rule on any post-sentence motions
within 120 days of the date of filing. Otherwise, such motions
shall be considered denied.

27

And then His Honor will ask you, once you've been

1 sentenced, if you understood the rights I just stated to you.

2 (Recess while other cases are being called)

3 ATTORNEY CHERRY: Commonwealth versus Jacob Michael
4 Harris. Your Honor, this case is filed at Information No.
5 02-251-CRA.

6 Mr. Harris is charged with the offense of
7 manufacture, delivery or possession with intent to manufacture
8 or deliver, a felony; and criminal conspiracy to commit
9 manufacture, delivery or possession with intent to manufacture
10 or deliver, a felony.

11 A plea agreement was reached where he'd plead
12 guilty to the charges for a minimum term of incarceration of
13 six months, with the maximum to the Court. Fines, costs,
14 restitution, all other terms up to the Court.

15 The Defendant was in possession of less than two
16 grams of cocaine.

17 THE COURT: Mr. Lees.

18 ATTORNEY LEES: That's correct, Your Honor. I'd
19 point out to the Court that my client cooperated with the PSP,
20 resulted in two more arrests, and also has no prior record.
21 And he has a full-time job, which I could offer the Court at
22 this time.

23 THE COURT: I notice he didn't bother to contact
24 the Adult Probation Department for a presentence investigation.

25 ATTORNEY LEES: My client advised me he called

1 three times and left messages on their answering machines, or
2 voice mail, and told them, gave them a number to call him back,
3 and they never got ahold of him.

4 THE COURT: Any information along those lines?

5 PROBATION OFFICER KIEL: Not that I have any
6 recollection of, Your Honor, no.

7 THE COURT: All right.

8 ATTORNEY CHERRY: I will say that he did cooperate
9 with PSP and did help in other charges being filed.

10 THE COURT: Let me see your letter. Where does he
11 work? Where is your employment?

12 MR. HARRIS: Right now I work in Scottdale, but I
13 can be transferred over to Green Tree over into Kersey.

14 THE COURT: All right. To that caption, Now this
15 6th day of March, 2003, Defendant having entered Pleas of
16 guilty to charges of possession with intent to deliver cocaine
17 and conspiracy to deliver cocaine, both ungraded felonies under
18 the Controlled Substance, Drug Device and Cosmetic Act; he
19 being fully and competently represented by counsel and the
20 Court being satisfied that he has knowingly and intelligently
21 entered said Pleas, it is the sentence of this Court that, on
22 the charge of possession with intent to deliver, he pay for the
23 benefit of Clearfield County the sum of \$500, together with
24 costs of prosecution; that he be and remain on probation under
25 the supervision of the Department of Probation Services, Adult

1 Division, for a period of two years upon condition that he
2 serve six months in the Clearfield County Jail.

3 Effective immediately, he shall absolutely refrain
4 from possession or use of alcoholic beverages and shall undergo
5 such drug and alcohol counseling at Gateway Institute and
6 Clinic, as shall be required, together with follow-up, for
7 which he shall pay costs; that he shall complete 40 hours of
8 community service; and make restitution in an amount to be
9 determined by this Court.

10 On the charge of conspiracy to deliver, that he pay
11 for the benefit of Clearfield County the sum of \$400, together
12 with costs of prosecution; that he be and remain on probation
13 under the Department of Probation Services, Adult Division, for
14 a period of one year, to be served consecutive to that entered
15 above and upon the same terms and conditions. By The Court.

16 Now, I want a report on his employment. If it's
17 satisfactory, the sentence will stand. But if it is not, then
18 I'm going to bring you back in here and I'm going to amend this
19 sentence to a state institution. Understand?

20 MR. HARRIS: That's fine.

21 THE COURT: Now, did you hear the instructions read
22 by the District Attorney?

23 MR. HARRIS: Yes.

24 THE COURT: Did you understand them?

25 MR. HARRIS: Yes.

1 THE COURT: Do you have any question about his
2 them?

3 MR. HARRIS: No, sir.

4 -- END OF PROCEEDINGS --

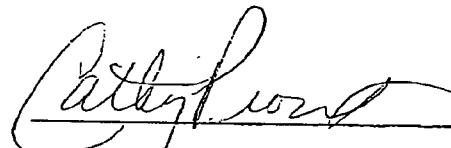
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6 -- C E R T I F I C A T E --

7 I hereby certify that the proceedings and evidence
8 are contained fully and accurately in the notes taken by me
9 upon the hearing of the within matter, and that this transcript
10 is a correct copy of the same.

11

12 Date: September 23, 2003



13 Cathy Warrick Provost, RMR

14

15 Official Court Reporter

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Date: 10/28/2003

Clearfield County Court of Common Pleas

User: SRAINEY

Time: 03:14 PM

ROA Report

Page 1 of 1

Case: 2002-0000251-CR Current Judge: John K. Reilly Jr.

Defendant: Harris, Jacob Michael

Commonwealth of Pennsylvania vs. Jacob Michael Harris

Criminal

OCT 30

2500-1961

Date

Judge

3/14/2002	Criminal Complaint received from District Justice Office. Arraignment Waiver Form, filed	No Judge No Judge
3/28/2002	INFORMATION, filed	John K. Reilly Jr.
4/02/2002	Notice of Applicable Mandatory Sentence, filed 2 CC DA	John K. Reilly Jr.
1/06/2003	Plea Agreement, Filed Guilty Plea Colloquy, filed	John K. Reilly Jr. John K. Reilly Jr.
3/12/2003	Offender Supervision Fee Notice of Fee Change, filed (take off 6 mo. Sup. Fee)	No Judge
3/20/2003	SENTENCE, filed. Now, 3/6/03, Def. having entered a Guilty Plea to Possession with Intent to Deliver Cocaine, SENTENCE of this Court that Def. pay \$500.00 plus costs, serve 2 yrs. county probation with condition of 6 mos. incarceration in CCJ, def. to refrain from use/possession alcohol, complete 40 hours community service and make restitution determined by the Court. Charge of Conspiracy to Deliver, Ungraded Felony., Def. to pay \$400.00 plus costs, def to serve 1 yr. probation to be served consecutive with above sentence. BY THE COURT/s/JKR cc: CA, DA, PO, Atty. Lees, Vict/Witns., Jail, Def., PSP-Wdlnd. (see file for original)	John K. Reilly Jr.
3/21/2003	Probation Order filed.	John K. Reilly Jr.
3/27/2003	Motion For Reconsideration of Sentence, filed 4 CC DA	John K. Reilly Jr.
4/04/2003	Rule to Show Cause, filed. Now, 4/4/03, upon consideration of Motion for Reconsideration, Rule Returnable scheduled for 4/8/03 at 2:00 p.m. BY THE COURT/s/JKR cc: 2 Atty. Chester	John K. Reilly Jr.
4/10/2003	ORDER, filed. cc to CA, DA, PO, E. LEES, ESQ. NOW 4/8/03. It is the ORDER of this Court that Motion for Reconsideration of Sentence be and is hereby continued.	John K. Reilly Jr.
4/17/2003	Offender Supervision Fee Notice of Fee Change, filed (take off 30 mo. Sup. Fee) ORDER, filed. cc to CA, DA, PO, ATTY. LEES, SHFF, JAIL, PSP-WDLND. NOW 4/17/03. It is the ORDER of this Court that the Court's sentence of March 6, 2003 be and is hereby amended to read that on the charge of Possession with Intent to Deliver Cocaine, an Ungraded Felony, that the Defendant be incarcerated at the WDCC in Pittsburgh, Pa., for a term the minimum of which shall be 6 months and the maximum of which shall be 2 years. It is the further ORDER of this Court that on the charge of Conspiracy to Deliver, an ungraded Felony, that the Defendant serve a period of probation of 1 year under the supervision and control of the PA State Board of Probation and Parole, to be served consecutive to that sentence entered for Possession with Intent to Deliver Cocaine. This shall be sufficient authority for the SHFF of CC to transport defendant.	No Judge John K. Reilly Jr.
6/12/2003	Sheriff Return of Service filed. Sheriff Costs \$58.97	Attest.
0/10/2003	Transcript of Proceedings, filed Sentencing	John K. Reilly Jr. John K. Reilly Jr.

Attest.

William J. Reilly
Prothonotary/
Clerk of Courts

OCT 26 2003

EXHIBIT

C

**BETTER MANAGEMENT CORPORATION OF OHIO, INC.**

755 Boardman-Canfield Road, H-1

P.O. Box 9755

Youngstown, Ohio 44513

PHONE 330/758-6318 FAX 330/758-7169

February 5, 2003

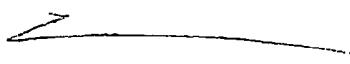
Re: Jacob Harris

To whom this may concern,

This letter is in regards to Mr. Jake Harris. BMC of Ohio is a small company its success is based on its employees. The tipping operation, in which Mr. Harris belongs, is based on a one man per unit operation. This operation is responsible for the off loading of cargo during a continuous 12-hour work shift. Mr. Harris will be supervised during this shift by the working face manager and the on site BMC of Ohio supervisor and cannot at any time leave his post. He is a vital part of this company's operations at the Greentree facility. Mr. Harris has been employed by BMC as a full time employee for over a period of two years and is considered to be an excellent responsible employee; his attendance record speaks for its self with zero days missed due to illness. Just recently Mr. Harris has been place in temporary charge of a tipping operation in Scottdale, Pa., this operation is pending the decision of the court.

If it would all be possible I Gary L. Brunckhorst of BMC of Ohio do hereby ask the court to consider the employment record of Mr. Harris and his responsibility to himself and this company. We at BMC consider Mr. Harris to be a good honest hard working person and have never had any difficulties with him during his employment.

Sincerely,



Gary L. Brunckhorst
Operations Manager Field Division
BMC of Ohio

EXHIBIT

D

tabler

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CRIMINAL DIVISION)

COMMONWEALTH OF PENNSYLVANIA

v.

NO. 02-251-CRA

JACOB MICHAEL HARRIS

MOTION FOR RECONSIDERATION OF SENTENCE

Now, comes the Commonwealth of Pennsylvania, by and through, William A. Shaw, Jr., First Assistant District Attorney, of Clearfield County, and in support of the foregoing motion for Reconsideration of Sentence, avers as follows:

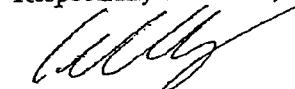
1. By order dated March 6, 2003, the above captioned Defendant was sentenced to a period of probation among the terms and condition of which that the Defendant serve 6 months in the Clearfield County Jail.
2. At the time of sentencing, this Honorable Court permitted the Defendant to remain in the county jail only upon condition that the Defendant have employment.
3. Upon arriving at the county jail, the Defendant was drug tested and positive for controlled substances.
4. Because the Defendant was positive for controlled substances when he reported to the county jail, the Defendant is ineligible for work release.
5. The Defendant is unemployed and remains incarcerated in the county jail.
6. Pursuant to this Court's instruction at the time of sentencing, the Commonwealth respectfully requests that this Honorable Court modify the Defendant's sentence to a minimum period of incarceration of 6 months, maximum period of incarceration of 2 years to be served at the Western Diagnostic and Classification Center.

EXHIBIT

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WHEREFORE, the Commonwealth respectfully requests that this Honorable Court modify the Defendant's sentence.

Respectfully submitted,

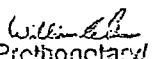


WILLIAM A. SHAW, JR., ESQUIRE
First Assistant District Attorney

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 27 2003

Attest.


William A. Shaw, Jr.
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CRIMINAL DIVISION)

COMMONWEALTH OF PENNSYLVANIA

v.

NO. 02-251-CRA

JACOB MICHAEL HARRIS

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving a copy of Commonwealth's Motion for Reconsideration of Sentence upon the person and in the manner indicated below:

First-Class Mail

Earle D. Lees, Jr., Esquire
109 N Brady Street
DuBois, PA 15801
(one copy)



William A. Shaw, Jr., Esquire
First Assistant District Attorney
Office of the District Attorney
230 East Market Street
Clearfield, PA. 16830

Dated: 3-27-03



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

April 4, 2003

Earle D. Lees, Jr., Esquire
Attorney at Law
109 North Brady Street
DuBois, PA 15801

Commonwealth vs Jacob Michael Harris
No. 2002-0000251-CRA

Dear Mr. Lees:

This is to advise you that Commonwealth's Motion for Reconsideration of Sentence filed in the above captioned case is scheduled to be heard in Motions Court on Tuesday, April 8, 2003 at 2:00 P.M. in Court Room No. 1 of the Clearfield County Courthouse.

Respectfully yours,

A handwritten signature in black ink, appearing to read "David S. Meholick".
David S. Meholick
Court Administrator

DSM/cem

cc: District Attorney
Adult Probation

EXHIBIT

A handwritten signature in black ink, appearing to read "F".

1 IN THE COURT OF COMMON PLEAS
2 OF CLEARFIELD COUNTY, PENNSYLVANIA
3 CRIMINAL ACTION

5 COMMONWEALTH OF PENNSYLVANIA

6 -VS- : No. 02-251-CRA

7 JACOB MICHAEL HARRIS

0 PROCEEDINGS: Commonwealth's Motion
1 for Reconsideration of
2 Sentence
3
4 BEFORE: HONORABLE JOHN K. REILLY, JR.
5 President Judge
6
7 DATE: Thursday, April 17, 2003
8
9 PLACE: Clearfield County Courthouse
10 Courtroom No. 1
11 Clearfield, Pennsylvania
12
13 TAKEN BY: Thomas D. Snyder, RPR
14 Official Court Reporter
15
16

21 APPEARANCES:

22 WILLIAM A. SHAW, JR., ESQUIRE
23 First Assistant District Attorney
For - Commonwealth

24 RONALD L. COLLINS, ESQUIRE
Sobel, Collins & Knaresboro
25 For - Defendant

EXHIBIT

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PROCEEDINGS

2 ATTORNEY SHAW: Your Honor, this matter is at
3 02-251-CRA. It's the Commonwealth's motion for
4 reconsideration. In a nutshell, at the time of sentencing,
5 you permitted the defendant to stay here at the county jail
6 upon condition that he have employment.

7 The problem was he went to the county jail, was
8 hot for -- positive for drugs in his urine. He can't go out
9 and work, so he's being housed out there without employment
10 at county expense. So the Commonwealth has filed a motion
11 to seek to modify his sentence to a state sentence.

12 THE COURT: Mr. Collins.

13 ATTORNEY COLLINS: Your Honor, there's certain
14 circumstances I need to let the Court know of in regards to
15 the hot urine. Can we approach the bench?

16 (A discussion was held off the record at
17 sidebar.)

18 THE COURT: What I'm going to do is I'm going to
19 amend the sentence to provide for service of the period of
20 incarceration in the state -- at the Western Diagnostic and
21 Classification Center in Pittsburgh, Pennsylvania. You have
22 Mr. Sankey contact me, and I'll --

23 ATTORNEY COLLINS: Your Honor, if I could --

24 THE COURT: -- listen to what he has to say.

25 ATTORNEY COLLINS: Your Honor, if I could, Jacob

3

1 does have employment.

2 THE COURT: Now, wait. No, no. He reported to
3 the jail with a hot urine.

4 ATTORNEY COLLINS: I understand.

5 THE COURT: That's not only a violation of the
6 terms and conditions of the work release program but also
7 the sentence that was imposed.

8 ATTORNEY COLLINS: I understand that.

9 THE COURT: I'll speak to Mr. Sankey; and if he
10 can convince me that that was the case, then I'll reconsider
11 this. All right.

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13 END OF PROCEEDINGS

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1 C E R T I F I C A T E
23 I hereby certify that the proceedings and
4 evidence are contained fully and accurately in the notes
5 taken by me in the proceedings of the above cause and that
6 this copy is a correct transcript of the same.7
8
9 10/2/03Thomas D. Snyder

10 Date

Thomas D. Snyder, RPR
Official Court Reporter11
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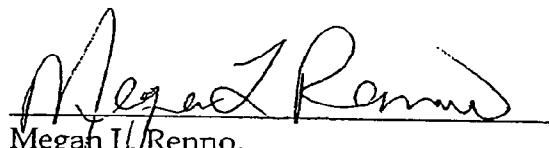
CERTIFICATE OF SERVICE

I, Megan L. Renno, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 11th day of November, 2003, I served a true and correct copy of the foregoing Petition Under the Post Conviction Relief Act via U.S. First Class mail, postage prepaid, addressed as follows:

Earl D. Lees, Jr., Esquire
109 North Brady Street
DuBois, PA 15801

Ronald L. Collins, Esquire
Sobel, Collins & Knaresboro
218 South Second Street
Clearfield, PA 16830

Paul Cherry, District Attorney
Clearfield County District Attorney's Office
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830



Megan L. Renno,

Legal Secretary to Michael D. Matter, Esquire

RECEIVED

FEB 27 2004

✓2500-1961

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

VS : NO. 02-251-CRA

JACOB MICHAEL HARRIS :

O R D E R

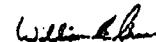
NOW, this 24th day of February, 2004, this being the day and date set for hearing into the above-captioned Petition under the Post Conviction Relief Act; upon agreement of the parties, it is the ORDER of this Court that said Petition be and is hereby granted. The Sentencing Order of this Court dated April 17, 2003, and March 6, 2003, shall be and are hereby vacated and the Defendant permitted to withdraw his Pleas of Guilty.

BY THE COURT,

/s/JOHN K. REILLY, JR.

John K. Reilly, Jr.
Senior Judge
Specially Presiding

Attest.


William E. Reilly
Prothonotary/
Clerk of Courts

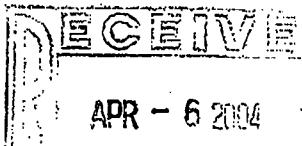
FEB 28 2004

Copy

IN THE COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION



COMMONWEALTH OF PENNSYLVANIA :

V. : NO. 02-251-CRA

JACOB MICHAEL HARRIS :

TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

HELD BEFORE THE HONORABLE

JOHN K. REILLY, JR., SENIOR JUDGE

on Tuesday, February 24, 2004

APPEARANCESFOR THE COMMONWEALTH:

F. CORTEZ BELL III, ESQUIRE

FOR THE DEFENDANT:

MICHAEL D. MATTER, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter

1 INDEX TO WITNESSES2
3 DIRECT: CROSS: REDIRECT: RECROSS: COURT:
45 JACOB MICHAEL HARRIS -- -- -- -- 6
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-- PROCEEDINGS --

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THE COURT: I believe we're here on your petition, Mr. Matter.

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ATTORNEY MATTER: Yes, Your Honor. We filed a

Petition for Post Conviction Relief, it was filed November 18, 2003. And I believe that we've reached an agreement with the District Attorney's Office. I'll defer to Mr. Bell for that.

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ATTORNEY BELL: Your Honor, what has been said thus far is correct. We're here today for purposes of an evidentiary hearing with regard to the Post Conviction Relief Act petition.

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We have reached an agreement on behalf of the Commonwealth and the Defense, I believe. That agreement would be that the Commonwealth would consent to the granting of the Post Conviction Relief Act petition.

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We would also agree to the vacation of the current Sentence that was imposed by this Court and allowing the Defendant to withdraw his plea of guilt which led to the Sentence which he is currently serving.

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As a result of that, it's my understanding the

Defense would immediately reenter a plea agreement, the plea

agreement being consistent with that plea agreement previously

entered on January 3rd, 2003, in all terms except for the

period of incarceration. A period of incarceration would be 11

and a half months to 23 and a half months at the Clearfield

1 County Jail.

2 It's my understanding that we would apply time
3 credit at this point in time, and that would allow this
4 particular Defendant to be released on that Sentence.

5 In addition to that, Your Honor, there were two
6 charges on the Information, one dealing with a manufacture,
7 delivery, possession with intent to deliver a controlled
8 substance; the other one was a criminal conspiracy.

9 It's my understanding, in light of the agreement
10 that we have reached, that there will be a consecutive one-year
11 probationary period imposed, that being consecutive to the 11
12 and a half to 23 months.

13 THE COURT: One year?

14 ATTORNEY BELL: Yes.

15 THE COURT: All right. Mr. Matter.

16 ATTORNEY MATTER: That's my understanding of the
17 agreement, as well, Your Honor.

18 THE COURT: All right. Mr. Harris, did you hear
19 what the District Attorney said?

20 MR. HARRIS: Yes, sir.

21 THE COURT: And what your attorney said?

22 MR. HARRIS: Yes, sir.

23 THE COURT: Did you understand that?

24 MR. HARRIS: Yes, sir.

25 THE COURT: Is that what you want to do?

1 MR. HARRIS: Yes, sir.

2 THE COURT: To that caption, Now this 24th day of
3 February, 2004, this being the day and date set for hearing
4 into the above-captioned Petition Under the Post Conviction
5 Relief Act; upon agreement of the parties, it is the Order of
6 this Court that said Petition be and is hereby granted.

7 The Sentencing Order of this Court dated April
8 17th, 2003, and March 6, 2003, shall be and are hereby vacated
9 and the Defendant permitted to withdraw his plea of guilt --
10 pleas of guilty. By The Court.

11 Now, do you want to -- do you need a colloquy on
12 the reentry of the plea?

13 ATTORNEY BELL: Your Honor, I didn't think about
14 that. We probably should at least have some form of colloquy,
15 because that's required on all pleas. I can run over and get
16 our standard plea agreement form and colloquy.

17 THE COURT: All right. We'll recess pending that.

18 ATTORNEY BELL: I apologize, Your Honor, I didn't
19 think of that.

20 THE COURT: That's all right. No problem.

21 (recess)

22 ATTORNEY BELL: Thank you, Your Honor. We're back
23 in session and I have handed a completed negotiated plea
24 agreement and guilty plea colloquy executed by Mr. Harris and
25 his counsel, which I would present to the Court for the Court's

1 review.

2 Your Honor, the terms of that plea agreement also
3 indicate that he would plead guilty to a minimum period of
4 incarceration of 11 and a half months' incarceration consistent
5 with our standard form that says the maximum's up to the Court.

6 I believe we discussed in chambers what the maximum
7 would be. Additionally, there would be a period of one year
8 consecutive probation on the second charge.

9 THE COURT: Mr. Matter.

10 ATTORNEY MATTER: Your Honor, I did have the
11 opportunity to review the entire colloquy with Mr. Harris. He
12 reviewed it first himself by reading over it and initialing
13 each page, and then afterwards I also reviewed the rights he
14 would be waiving and the rights that remain with him. And he's
15 agreed to the plea agreement.

16 JACOB MICHAEL HARRIS,

17 having first been duly sworn, was examined and
18 testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q. You are Jacob M. Harris?

22 A. Yes, sir.

23 Q. You are the Defendant in these proceedings?

24 A. Yes, sir.

25 Q. Mr. Harris, did you hear the plea agreement as

1 stated by the District Attorney?

2 A. Yes, sir.

3 Q. Is that your understanding of it?

4 A. Yes, sir.

5 Q. And is that what you want to do?

6 A. Yes, sir.

7 Q. I show you this guilty plea agreement. Is this
8 your signature at the bottom?

9 A. Yes, sir.

10 Q. Did you place it there?

11 A. Yes, sir.

12 Q. And I show you this guilty plea colloquy. Is this
13 your signature at the bottom?

14 A. Yes, sir.

15 Q. And are these your initials prior to each of the 21
16 paragraphs?

17 A. Yes, sir.

18 Q. Did you place your initials there?

19 A. Yes, I did, sir.

20 Q. Did you read those paragraphs?

21 A. Yes, sir.

22 Q. Did you understand them?

23 A. Yes, sir.

24 Q. Do you have any questions about them?

25 A. No, sir.

1 Q. Do you understand that by entering these pleas of
2 guilty you're giving up your rights, constitutional rights and
3 other rights, as set forth in these paragraphs?

4 A. Yes, sir.

5 Q. And that you are waiving these rights?

6 A. Yes.

7 Q. Are you satisfied with the representation you have
8 received from your attorney?

9 A. Yes, I am, sir.

10 Q. Do you have any complaints about the manner in
11 which this prosecution against you has proceeded?

12 A. No.

13 Q. Are you presently under the influence of drugs or
14 alcohol?

15 A. No, sir.

16 Q. Is there any reason you can think of that would
17 prevent from you understanding the nature of these proceedings?

18 A. No.

19 THE COURT: All right. Anything further?

20 ATTORNEY BELL: Nothing further from the
21 Commonwealth, Your Honor.

22 THE COURT: Mr. Matter?

23 ATTORNEY MATTER: Your Honor, I would just -- I
24 note from the original Sentence, if Your Honor had an intention
25 to order any drug and alcohol treatment, he has completed

1 Court-ordered drug and alcohol treatment while he's been at
2 SCI-Somerset. I did present that to Mr. Bell for review. I'll
3 present it to the Court.

4 THE COURT: What you want to do is give that to the
5 Adult Probation Department. I am going to order it at the
6 discretion of his supervising probation officer. I would guess
7 that may be enough, but I don't want to make that
8 determination.

9 ATTORNEY MATTER: Fair enough, Your Honor. Thank
10 you.

11 THE COURT: To that caption, Now this 24th day of
12 February, 2004, Defendant having entered pleas of guilty to
13 charges of possession with intent to deliver cocaine and
14 conspiracy to deliver cocaine, ungraded felonies under the
15 Controlled Substance, Drug, Device and Cosmetic Act; he being
16 fully and competently represented by counsel and the Court
17 being satisfied that he has knowingly and intelligently entered
18 said plea, it is the Sentence of this Court that, on the charge
19 of possession with intent to deliver, he pay for the benefit of
20 Clearfield County the sum of \$500, together with costs of
21 prosecution; that he be incarcerated in the Clearfield County
22 Jail for a term the minimum of which shall be 11 and one-half
23 months and the maximum of which shall be 23 and one-half
24 months.

25 Effective immediately, he shall absolutely refrain

1 from the possession or use of alcoholic beverages and undergo
2 such drug and alcohol counseling as shall be required by his
3 supervising probation officer, for which he shall pay costs;
4 that he complete 40 hours of community service; and make -- do
5 we have any restitution here, Mr. Bell?

6 ATTORNEY BELL: Yes, Your Honor, there was
7 restitution involved.

8 THE COURT: What amount?

9 ATTORNEY BELL: I believe the Pennsylvania State
10 Police, Your Honor, in the amount of \$280, plus there was
11 laboratory fees in addition to that in the amount of \$90. So,
12 a total of \$370.

13 THE COURT: All to the state police?

14 ATTORNEY BELL: All to the Pennsylvania State
15 Police.

16 THE COURT: Restitution in the amount of \$370 to
17 the Pennsylvania State Police.

18 On the charge of conspiracy to deliver, that he pay
19 for the benefit of Clearfield County the sum of one dollar,
20 together with costs of prosecution; that he be and remain on
21 probation under the supervision and control of the Department
22 of Probation Services, Adult Division, for a period of one
23 year, said period of probation to be served consecutive to that
24 period of incarceration entered above and upon the same terms
25 and conditions. By The Court.

1 ATTORNEY BELL: Mr. Harris, this is to advise you
2 that this is a final Order of this Court with regard to the
3 charges filed against you to Information No. 02-251-CRA. You
4 have the right to file post-sentence motions and must do so
5 within ten days from this date.

6 You also have a right to appeal this final Order
7 and you must do so within 30 days from this date or, if
8 post-sentence motions are filed, within 30 days of a ruling on
9 such motions.

10 You have the right to the assistance of counsel in
11 the preparation of such motions and appeal. You also have the
12 right, if indigent, to proceed in forma pauperis and to be
13 provided free counsel for your motions and appeal. If you file
14 post-sentence motions or an appeal, you have the right to
15 request bail pending their resolution.

16 This Court must rule on any post-sentence motions
17 within 120 days of the date of filing. Otherwise, such motions
18 shall be considered denied.

19 Do you understand the rights I have just stated to
20 you?

21 MR. HARRIS: Yes.

22 ATTORNEY BELL: Thank you. Thank you, Your Honor.

23 ATTORNEY MATTER: One last thing, Your Honor. With
24 regard to the restitution, the restitution has already been
25 paid by the co-defendant.

1 THE COURT: In full?

2 ATTORNEY MATTER: Yes.

3 THE COURT: That satisfies that.

4 ATTORNEY MATTER: Okay. Thank you, Your Honor.

5 -- END OF PROCEEDINGS --

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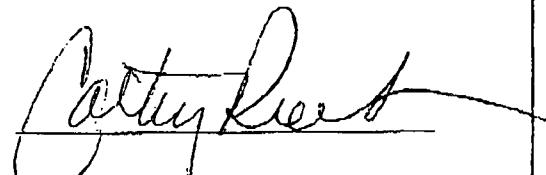
7 -- C E R T I F I C A T E --

8

9 I hereby certify that the proceedings and evidence
10 are contained fully and accurately in the notes taken by me
11 upon the hearing of the within matter, and that this transcript
12 is a correct copy of the same.

13

14 Date: April 5, 2004



15 Cathy Warrick Provost, RMR

16 Official Court Reporter

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JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO

Defendants

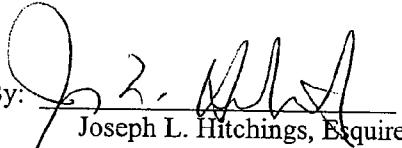
: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-614-CD
: CIVIL ACTION-LAW
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Joseph L. Hitchings of McShane & Hitchings, LLC, Attorney for the Plaintiff, Jacob Michael Harris, do hereby certify that I served a true and correct copy of the attached Amended Complaint, by United States Mail, First Class, postage prepaid upon the counsel listed below:

David L. Haber, Esquire
Weinhamer, Schadel & Haber
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

Respectfully Submitted,
MCSHANE & HITCHINGS, LLC

Date: 9-3-04
By: 

Joseph L. Hitchings, Esquire
Attorney for Plaintiff
Supreme Court ID# 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
Telephone: (717) 657-3900
Fax: (717) 657-2060

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS.

CIVIL ACTION

Plaintiff.

No. 04-614-CD

V₃

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO

Defendants

NOTICE OF JUDGMENT

TO: Plaintiff Defendant Garnishee Additional Defendant

You are hereby notified that a Judgment of Non Pros has been entered against you
on *October 1, 2026.*

William A. Shaw, Prothonotary

If you have any questions concerning the above, please contact:

Name of Attorney/Filing Party: David L. Haber, Esquire

Address: Weinheimer, Scahdel & Haber, PC, 602 Law and Finance Building,
429 Fourth Avenue, Pittsburgh PA 15219-1503

Telephone Number (412) 765-3399

EXHIBIT C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS.

CIVIL ACTION

Plaintiff,

No. 04-614-CD

V.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO

Defendants.

NOTICE OF JUDGMENT

TO: Plaintiff Defendant Garnishee Additional Defendant

You are hereby notified that a Judgment of Non Pros has been entered against you.

on

October 6, 2004

William A. Shaw, Prothonotary

W.M. M.

If you have any questions concerning the above, please contact:

Name of Attorney/Filing Party: David L. Haber, Esquire

Address: Weinheimer, Scahdel & Haber, PC, 602 Law and Finance Building,
429 Fourth Avenue, Pittsburgh PA 15219-1503

Telephone Number (412) 765-3399

FILED

OCT 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

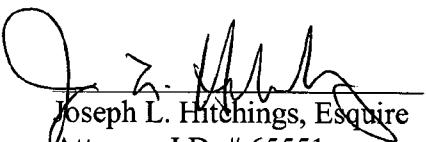
RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 04-614-CD
: CIVIL ACTION-LAW
: JURY TRIAL DEMANDED
:

CERTIFICATE OF MERIT

As to Defendant Sobel, Collins & Knaresboro, I, Joseph L. Hitchings, Esquire, certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was the cause in bringing about the harm.

Respectfully Submitted,
MCSHANE & HITCHINGS


Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

FILED
OCT 12 2004
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NO CC

William A. Shaw
Prothonotary/Clerk of Courts

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
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: NO. 04-614-CD
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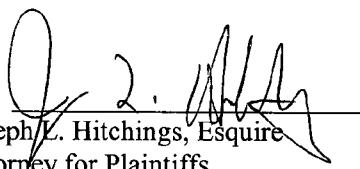
CERTIFICATE OF SERVICE

I, Joseph L. Hitchings of McShane & Hitchings, LLC, Attorney for the Plaintiff, Sobel, Collins & Knaresboro do hereby certify that I served a true and correct copy of the attached Complaint, by United States Mail, First Class, postage prepaid upon the individuals listed below:

David L. Haber, Esquire
Weinhamer, Schadel & Haber
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

Respectfully Submitted,
MCSHANE & HITCHINGS, LLC

Date: 10-8-04

By: 
Joseph L. Hitchings, Esquire
Attorney for Plaintiffs
Supreme Court ID# 65557
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
Fax: (717) 657-2060

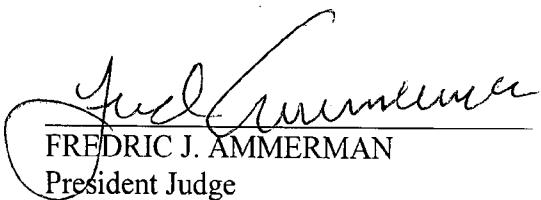
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JACOB MICHAEL HARRIS :
vs. : No. 04-614-CD
RONALD L. COLLINS, individually :
and SOBEL, COLLINS & :
KNARESBORO :
:

ORDER

NOW, this 19 day of October, 2004, upon consideration of
recusal of both Judges sitting in the 46th Judicial District, it is the ORDER of this
Court that the Court Administrator of Clearfield County refer the above-captioned
civil matter to Administrative Regional Unit II for assignment of a specially presiding
judicial authority.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED acc cIA
B# 01128301 cc Atty Hitchings
OCT 19 2004 cc Atty Hader

William A. Shaw
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

**ANSWER TO PLAINTIFF'S
PETITION TO OPEN AND/OR
STRIKE JUDGMENT OF NON
PROS**

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

FILED
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

ANSWER TO PLAINTIFF'S PETITION TO OPEN AND/OR STRIKE
JUDGMENT OF NON PROS

And now, comes Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C. and files the following Response to Plaintiff's Petition to Open and/or Strike Judgment of Non Pros:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted that Preliminary Objections to the Complaint and a supporting brief were filed. The exhibit is not attached to defendants copy of the Petition to Open and/or Strike Judgment of Non Pros.
5. Admitted.
6. Admitted that the plaintiff filed an Amended Complaint. A copy of the Amended Complaint was not attached to defendants' copy of the Petition.

7. Admitted. A copy of the Notice of Judgment was not attached to defendants copy as Exhibit "C".
8. Denied. Pennsylvania Rule of Civil Procedure 237.3 requires that the Certificate of Merit must be filed within sixty (60) days of the filing of the Complaint. The plaintiff is permitted to file a motion to extend the time period as long as the motion is filed within the sixty (60) day period. The filing of an Amended Complaint does not give the plaintiff a new sixty (60) day period in which to file the Certificate of Merit. Hoover v. Davila, _____ A.2d _____ (Pa.Super. 2004). (Opinion attached).
9. Denied. There is no basis under Pennsylvania Rule of Civil Procedure 3051 to open the Judgment of Non Pros. Plaintiff has not alleged a reasonable explanation or legitimate excuse for the delay in filing the Certificate of Merit. Furthermore, as set forth in the attached Preliminary Objections, the plaintiff cannot plead a claim for legal malpractice against the defendants under Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1997).
10. The plaintiff filed untimely Certificate of Merits, and the judgment of non pros was properly entered.

WHEREFORE, the Defendants respectfully request that the Plaintiff's Petition to Open and/or Strike the Judgment of Non Pros be denied.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By 
David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

2004 WL 1879849

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(Cite as: 2004 WL 1879849 (Pa.Super.))

Page 1

H
Briefs and Other Related Documents

Superior Court of Pennsylvania.

Larry HOOVER, Appellant

v.

Dr. Ramon A. DAVILA, M.D., Dr. Michael J. Jurenovich, D.O., Edward J. Uberti, D.O. and Dr. David A. Vermeire, M.D.

No. 1657 WDA 2003.

Aug. 13, 2004.

Background: Patient brought medical malpractice action against four doctors, alleging that they failed to diagnose him with an active draining sinus in the posterior aspect of his left thigh that caused osteomyelitis in his left femur. After prothonotary entered judgment of non pros, the Court of Common Pleas, Lawrence County, Civil Division, No. 10174 of 2003 C.A., J. Craig Cox, J., denied patient's petition to open or strike entry of judgment of non pros, and patient's motion to extend time for filing certificate of merit against one doctor. Patient appealed.

Holdings: The Superior Court, No. 1657 W.D.A. 2003, Ford Elliot, J., held that:

- (1) 60-day period for filing certificate of merit began to run on date of original complaint;
- (2) patient was not entitled to extension of time to file certificate; and
- (3) patient's explanation that he was unaware of requirement to file certificate did not justify late filing.

Affirmed.

[1] Appeal and Error

30k962 Most Cited Cases

The denial of a petition to open and/or strike judgment of non pros is subject to the abuse-of-discretion standard; an exercise of that

discretion will not be reversed on appeal unless there is proof of manifest abuse thereof.

[2] Health

198Hk804 Most Cited Cases

Sixty-day period for filing certificate of merit in medical malpractice action began to run on date of patient's filing of original complaint, not on date of reinstated complaint after failure to effect service. Rules Civ.Proc., Rule 1042.3, 42 Pa.C.S.A.

[3] Health

198Hk804 Most Cited Cases

The term "filing," as used in rule requiring certificate of merit to be filed in medical malpractice action within 60 days of the "filing" of the complaint, is the initial commencement of an action. Rules Civ.Proc., Rule 1042.3(a), 42 Pa.C.S.A.

[4] Process

313k44 Most Cited Cases

The reinstatement of a complaint simply continues the complaint's validity from the time of the original filing until the time service is made. Rules Civ.Proc., Rule 401(b), 42 Pa.C.S.A.

[5] Health

198Hk804 Most Cited Cases

Patient was not entitled to extension of time to file certificate of merit regarding one doctor in medical malpractice action, although patient had originally proceeded pro se, where 60-day period for requesting extension had already passed, and rule setting forth 60-day period clearly applied to both plaintiff's attorneys and unrepresented plaintiffs. Rules Civ.Proc., Rule 1042.3(d), 42 Pa.C.S.A.

[6] Health

198Hk804 Most Cited Cases

Patient's proffered explanation that he was unaware of the new rule of civil procedure requiring certificates of merit in medical malpractice cases, or that he did not understand the rule, did not amount to just cause for untimely filing of certificate, and thus, patient was not entitled to relief from judgment of non pros, although patient had originally proceeded pro se. Rules Civ.Proc., Rules 1042.6, 3051(b)(2), 42 Pa.C.S.A.

[7] Attorney and Client

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(Cite as: 2004 WL 1879849 (Pa.Super.))

45k62 Most Cited Cases

A pro se litigant is not absolved from complying with procedural rules.

Appeal from the Order, August 26, 2003, in the Court of Common Pleas of Lawrence County Civil Division at No. 10174 of 2003 C.A.

Daniel S. Soom, New Castle, for **Hoover**, appellant.

Daniel P. Carroll, Jr., Pittsburgh, for **Davila**, appellee.

Deborah Olszewski, Pittsburgh, for Jurenovich, appellee.

Before: FORD ELLIOTT, ORIE MELVIN, and TODD, JJ.

FORD ELLIOTT, J.

*1 ¶ 1 Appellant, Larry J. **Hoover**, appeals from the order entered August 26, 2003 in the Court of Common Pleas of Lawrence County that denied his motion for an extension of time for filing a certificate of merit and denied his petition seeking to strike or, alternatively, open the judgment of *non pros*. For the reasons that follow, we affirm.

¶ 2 The relevant facts and procedural history are as follows. Appellant initiated a medical malpractice action by filing a *pro se* complaint on February 12, 2003 against the four appellees--Doctors Michael J. Jurenovich ("Jurenovich"), Edward J. Uberti ("Uberti"), David Vermeire ("Vermeire"), and Ramon A. **Davila** ("Davila"). Appellant alleged that the appellees failed to diagnose him with an active draining sinus in the posterior aspect of his left thigh that caused osteomyelitis in his left femur. The complaint was reinstated on March 10, 2003 and on April 10, 2003. At no time either at the filing of the original complaint or within 60 days thereafter did appellant file the required certificate of merit as set forth in Pa.R.Civ.P. 1042.3 or file a motion seeking an extension of time to file this certificate.

¶ 3 Due to the fact that no certificates of merit were filed, nor was a motion to extend time for filing the certificates pending before the court, on April 29, 2003, Jurenovich, Uberti, and Vermeire filed a praecipe for entry of judgment of *non pros*

pursuant to Pa.R.Civ.P. 1042.6. Thereafter, the prothonotary entered a judgment of *non pros* in favor of Jurenovich, Uberti, and Vermeire.

¶ 4 On May 28, 2003, appellant filed a *pro se* motion to extend time for filing a certificate of merit. However, since the judgment of *non pros* was already entered in favor of Jurenovich, Uberti, and Vermeire, the Honorable Ralph D. Pratt ruled that the only action pending was against **Davila**. Judge Pratt issued a rule to show cause upon **Davila** to demonstrate why the requested extension of time to file a certificate of merit should not be granted. (See Order of Court, 5/29/03 docket entry # 9.) On June 16, 2003, **Davila** filed a response to the rule to show cause.

¶ 5 Appellant subsequently hired counsel, Daniel S. Soom, Esq. Appellant then filed a petition to open or strike judgment of *non pros*. This petition contained certificates of merit dated July 3, 2004 to be filed against Jurenovich, Uberti, and Vermeire. No certificate of merit was attached regarding **Davila**.

¶ 6 On August 26, 2003, after a hearing on the petition to open or strike judgment of *non pros* and rule to show cause, the Honorable J. Craig Cox entered an order denying the petition to open or strike entry of judgment of *non pros*; the court also denied the motion for extension of time for the filing of a certificate of merit against **Davila**. Judge Cox held that appellant had failed to timely file certificates of merit and failed to timely file a motion for an extension of time. Further, Judge Cox found that appellant offered no reasonable explanation as to the delay in filing certificates of merit.

*2 ¶ 7 On September 16, 2003, appellant filed a notice of appeal and pursuant to the trial court's order, filed a 1925(b) statement of matters complained of on appeal. Instantly, appellant presents the following issue:

WHETHER THE TRIAL COURT ERRED IN DENYING [APPELLANT'S] PETITION TO OPEN OR STRIKE JUDGMENT OF *NON PROS*.

Appellant's brief at 8.

[1] ¶ 8 Initially, we note our well-settled standard

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(Cite as: 2004 WL 1879849 (Pa.Super.))

of review. The denial of a petition to open and/or strike judgment of *non pros* is subject to the abuse of discretion standard; an exercise of that discretion will not be reversed on appeal unless there is proof of manifest abuse thereof. *Sklar v. Harleysville Insurance Co.*, 526 Pa. 617, 619, 587 A.2d 1386, 1387 (1991).

[2] ¶ 9 Appellant first claims that the judgment of *non pros* should be stricken; he argues that the 60-day "clock" should start to run from the date of the last reinstated complaint or, in his case, April 10, 2003. (Appellant's brief at 11.) Hence, appellant claims that he had until June 10, 2003 to file the appropriate certificates and the entry of judgments of *non pros* on April 29, 2003 was premature. We disagree.

¶ 10 Recently, our supreme court adopted new rules governing liability actions against licensed professionals. *See* Pa.R.Civ.P. 1042.1-1042.8. Rule 1042.3 provides that in an action based on an allegation that a licensed professional deviated from an acceptable professional standard, the plaintiff's attorney shall file a certificate of merit with the complaint or within 60 days after the filing of the complaint. Pa.R.Civ.P. 1042.3(a). The certificate certifies that another appropriate licensed professional has supplied a written statement that there is a basis to conclude that the care, skill, or knowledge exercised or exhibited by the defendant in the treatment, practice, or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. A separate certificate must be filed as to each licensed professional named in the complaint. Pa.R.Civ.P. 1042.3(b). Under Rule 1042.3(d), the court upon good cause shown shall extend the time for filing a certificate of merit for a period not to exceed 60 days. Pa.R.Civ.P. 1042.3(d). This rule does not impose any restrictions on the number of extension orders that the court may enter.

¶ 11 If a plaintiff fails to file either a certificate of merit within the required time or a request for an extension, Rule 1042.6 provides that the prothonotary, on praecipe of the defendant, shall enter a judgment of *non pros* against the plaintiff.

¶ 12 Appellant in the instant action filed the original complaint on February 12, 2003 against all

Page 3

of the named defendants. However, due to the inability to effectuate service, appellant had to reinstate the complaint on March 10, 2003 and again on April 10, 2003. The trial court found no ambiguity in the plain requirements of Pa.R.Civ.P. 1042.3(a). We agree. The 60-day time period for the filing of a certificate of merit or for requesting an extension of time clearly runs from the date of the filing of the *original complaint*, which in this case would be February 12, 2003.

*3 [3] ¶ 13 The term filing, while not specifically defined within the rules of civil procedure, must be accorded its plain meaning according to its common and approved usage. 1 Pa.C.S.A. § 1903. Black's Law Dictionary defines the term filing to mean to "deliver a legal document to the court clerk or record custodian for placement into the official record." Black's Law Dictionary 643 (7th ed.1999). In other words, filing is the initial commencement of an action.

[4] ¶ 14 Furthermore, we agree with the trial court that looking at the common definition of the term "reinstatement" is also helpful. Black's Law Dictionary defines the term "reinstate" to mean "to place again in a former state or position; to restore." Black's Law Dictionary 1290 (7th ed.1999). Additionally, a reading of Rule 401(b), which pertains to the reissuance of a writ or the reinstatement of a complaint, states as follows: "[The] prothonotary upon praecipe and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint ..." *See* Pa.R.Civ.P. 401(b). Thus, the reinstatement of a complaint simply continues the complaint's validity from the time of the original filing until the time service is made.

¶ 15 We agree with the trial court that pursuant to Rule 1042.3 the date upon which the 60-day period must begin is the date of the filing of the original complaint--which in this case is February 12, 2003. (*See* trial court opinion, 11/20/03 at 4-5.) Thus, the 60-day period ended on April 14, 2003; and the entry of judgment of *non pros* for failure to timely file the certification was not in error. Pa.R.Civ.P. 1042.6.

[5] ¶ 16 Appellant also raises an argument as to the trial court's failure to grant him an extension of

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time to file a certificate of merit regarding *appellee Davila*. We find that the trial court did not err in refusing to grant such an extension, as the 60-day period to request this had already lapsed by the time appellant sought the extension on May 21, 2003. *See Pa.R.Civ.P. 1042.3(d)*. It is of no consequence that appellant had been proceeding *pro se*. The rule clearly states "the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit ..." *Pa.R.Civ.P. 1042.3* (emphasis added). [FN1]

[6] ¶ 17 Next, appellant contends that the trial court erred in its failure to consider the factors enumerated at *Pa.R.Civ.P. 3051* when considering his petition to open the judgment of *non pros*. (Appellant's brief at 14.)

¶ 18 Rule 1042.6(a) states: "The prothonotary, on praecipe of the defendant, shall enter a judgment of *non pros* against the plaintiff for failure to file a certificate of merit within the required time provided that there is no pending timely filed motion seeking to extend the time to file the certificate."

¶ 19 The trial court without explanation determined that the comments to Rule 1042.6 precluded the application of *Pa.R.Civ.P. 3051*. We cannot understand this rationale. [FN2] Rule 3051 governs relief from a judgment of *non pros* whether entered on praecipe or by the court and sets forth as follows:

Rule 3051. Relief from Judgment of Non Pros

*4

- (b) If the relief sought includes the opening of the judgment, the petition shall allege facts showing that
 - (1) the petition is timely filed,
 - (2) there is a reasonable explanation or legitimate excuse for the inactivity or delay, and
 - (3) there is a meritorious cause of action.

Pa.R.Civ.P. 3051(b)(1-3).

¶ 20 As set forth in the comments to the rule, its purpose is to provide uniformity of practice involving all types of *non pros* judgments:

The rule will apply in all cases in which relief from a judgment of *non pros* is sought, whether

the judgment has been entered by praecipe as of right or by the court following a hearing. Where the court has not participated in the entry of judgment, the rule will provide a procedure for court involvement and the making of a record which an appellate court will be able to review. *Pa.R.Civ.P. 3051*, comment.

¶ 21 While we might remand for the trial court's review of the motion to open pursuant to the Rule 3051 standard, we decline to do so because on the face of the record, appellant cannot meet the requirement of the rule that any delay be reasonably explained. Appellant's purported explanation is that he was unaware of the new rule of civil procedure requiring certificates of merit or that he did not understand the rule. We find this explanation does not amount to just cause for the untimely filing. [FN3]

[7] ¶ 22 A *pro se* litigant is not absolved from complying with procedural rules. *Jones v. Rudenstein*, 401 Pa.Super. 400, 585 A.2d 520, 522 (Pa.Super.1991), *appeal denied*, 529 Pa. 634, 600 A.2d 954 (1991). The fact that appellant initially proceeded *pro se* does not absolve him of the responsibility to comply with procedural rules, new or old. *See Commonwealth v. Abu-Jamal*, 521 Pa. 188, 200, 555 A.2d 846, 852 (1989) (*pro se* litigant is subject to same rules of procedure as is a counseled defendant). Additionally, Rule 1042.3(a) specifically contemplates *pro se* plaintiffs; thus, appellant's compliance can not be excused due to ignorance of the rules.

¶ 23 Order affirmed.

FN1. Additionally, even if we were to accept appellant's argument that the certificates of merit could be filed within 60 days after the reinstatement of the complaint, appellant missed this deadline after both reinstatements.

FN2. The only reference to any other rule in the comment to Rule 1042.6 sets forth that the notice requirements of Rule 237.1 do not apply to a Rule 1042.6 *non pros*.

FN3. We also note with approval the trial court opinion in *Helfrick v. UPMC*

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--- A.2d ---

(Cite as: 2004 WL 1879849 (Pa.Super.))

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Shadyside Hospital, 65 Pa. D & C 4th 420 (Pa.Cmwth.2003), authored by the Honorable Stanton R. Wettick, Jr. of the Allegheny County Court of Common Pleas. In addressing the appealability of the reasonable explanation or legitimate excuse prong to a Rule 1042.6 *non pros*, Judge Wettick offered the following cogent analysis:

Plaintiff's petition does not set forth a reasonable explanation or legitimate excuse for the inactivity (the inactivity being the failure of plaintiff's counsel to file within the sixty day period a certificate of merit or a motion to extend the time for filing the certificate). This will be so in almost every case in which a judgment of non pros is entered for failure to file a certificate of merit. The plaintiff who has a reasonable explanation or legitimate excuse for not being able to timely file a certificate of merit may, instead, file a motion to extend the time for filing the certificate on or before the filing date that the plaintiff seeks to extend. The filing of the motion to extend tolls the time period within which a certificate of merit must be filed until the court rules on the motion. Consequently, an explanation for the inactivity requires an explanation as to why the plaintiff did not within the sixty day period file a motion to extend the time for filing the certificate of merit.

Id. at 423.

END OF DOCUMENT

2004 WL 1879849 (Pa.Super.), 2004 PA Super 314

Briefs and Other Related Documents (Back to top)

- 2004 WL 1182055 (Appellate Brief) Brief for Appellees, Michael J. Jurenovich, D.O., Edward J. Uberti, D.O., and David A. Vermeire, M.D. (Jan. 30, 2004)Original Image of this Document (PDF)
- 2004 WL 1182056 (Appellate Brief) Brief on Behalf of Appellee Ramon A. Davila, M.D. (Jan. 30, 2004)Original Image of this Document (PDF)
- 2003 WL 23526139 (Appellate Brief) Brief on Behalf of Appellant and Reproduced Record (Dec. 31, 2003)Original Image of this Document (PDF)

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRELIMINARY OBJECTIONS

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS, CIVIL ACTION

Plaintiff, No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

PRELIMINARY OBJECTIONS

And now, comes Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C. and files the following Preliminary Objections:

1. The plaintiff filed the within legal malpractice claim against Defendants Ronald Collins and Sobel, Collins & Knaresboro.
2. Defendant Ronald Collins represented the plaintiff in a criminal matter in the Court of Common Pleas of Clearfield County at docket number 02-251-CRA.
3. Defendant Collins only represented the plaintiff following his guilty plea and initial sentencing. Defendant Collins represented the plaintiff with regard to a Motion for Reconsideration of Sentencing filed by the Commonwealth.
4. During the guilty plea entered by the plaintiff, and the initial sentencing, the plaintiff was represented by attorney Earl D. Lees, Jr.
5. Plaintiff alleges that on January 6, 2003, while being represented by attorney Lees he plead guilty to two counts including the charge of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County.

6. On March 6, 2003, plaintiff was sentenced to a term of two years of probation under the supervision of the Clearfield County Department of Probation with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of the Clearfield County Department of Probation on count two (2) to be served consecutively. (Paragraph 5 of the Complaint.)
7. Plaintiff's sentence was conditioned on plaintiff possessing satisfactory employment. Plaintiff further alleges that at the time of his incarceration of March 6, 2003, he maintained full-time employment.
8. On or about March 7, 2003, it is alleged that the Commonwealth filed a Motion for Reconsideration of Sentencing.
9. Plaintiff's counsel was advised that argument was scheduled before the court on April 8, 2003.
10. The plaintiff further alleges that on April 7, 2003, his father was notified by attorney Lees that he could no longer represent since he had accepted employment with the Clearfield County District Attorney's office.
11. The plaintiff further alleges that on April 7 his father retained the defendants to represent him at the reconsideration of sentence hearing.
12. It is further alleged that the hearing on the Motion for Reconsideration of Sentencing was continued to April 17, 2003.
13. It is further alleged that at the hearing on April 17, 2003, the plaintiff was resentenced to a minimum term of six (6) months and a maximum of two (2) years at a state prison.

14. It is further alleged by plaintiff as the defendants were negligent as to the representation of the plaintiff at the hearing in the following ways:

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721 (b)(i).
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff on April 17, 2003, sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

(Paragraph 15 of Complaint.)

15. The plaintiff alleges he lost income due to the inability to pursue work release while incarcerated in the state facility and that he also suffered physical and mental abuse while in the state facility.

16. Under Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1987) in order to state a legal malpractice claim against an attorney representing a plaintiff in a criminal matter, the plaintiff must plead and prove:

1. An attorney-client relationship;
2. The attorney showed reckless or wanton disregard to the criminal defendant's interest;
3. That the attorney's culpable conduct was the approximate cause of an injury suffered by the defendant/plaintiff (i.e., but for the attorney's conduct, the defendant/plaintiff would have obtained an acquittal or a complete dismissal of the charges);
4. As a result of the injury, the criminal defendant/plaintiff must have suffered damages;
5. The plaintiff must have pursued post trial remedies and obtained relief which was dependent upon attorney error.

17. The plaintiff cannot plead elements 2, 3 and 5 under Bailey v. Tucker and therefore no legal malpractice claim has been asserted. See also Slaughter v. Rushing, 453 Pa.Super. 379, 683 A.2d 1234 (Pa.Super. 1986).

18. The plaintiff has not plead the necessary elements for a legal malpractice claim arising out of the representation of the plaintiff in a criminal proceeding, and therefore the Preliminary Objections should be sustained and the Complaint should be dismissed with prejudice.

WHEREFORE, the Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, respectfully requests that their Preliminary Objections be sustained and the Complaint be dismissed with prejudice.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By 

David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS, CIVIL ACTION

Plaintiff, No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

ORDER OF COURT

AND NOW, to wit, on this _____ day of _____ 2004,
upon consideration of the Preliminary Objections filed by the Defendants; it is hereby
ORDERED that the Preliminary Objections are sustained and the Complaint is dismissed
with prejudice.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

**BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS**

Filed on behalf of Defendants:
Ronald Collins and Sobel, Collins &
Knaresboro

Counsel of Record for this Party:

DAVID L. HABER, ESQUIRE
Pa. I.D. No. 39574

Weinheimer, Schadel & Haber, P.C.
Firm No. 090
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS,

CIVIL ACTION

Plaintiff,

No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

And now, comes Defendants Ronald Collins, individually and Sobel, Collins & Knaresboro, by and through their attorneys, Weinheimer, Schadel & Haber, P.C. and files the following Brief in Support of their Preliminary Objections:

I. History of the Case

The plaintiff filed the within legal malpractice claim against Defendants Ronald Collins and Sobel, Collins & Knaresboro. Defendant Ronald Collins represented the plaintiff in a criminal matter in the Court of Common Pleas of Clearfield County at docket number 02-251-CRA. The defendants only represented the plaintiff following the plaintiff's guilty plea and original sentence. The plaintiff pled guilty to charges including possession with intent to deliver cocaine. The plaintiff was represented during his guilty plea and original sentence by Earl D. Lees, Jr. The defendants only represented the plaintiff after the Commonwealth filed a Motion for Reconsideration of Sentence.

On March 6, 2003, the plaintiff was sentenced to a term of two (2) years of probation under the supervision of the Clearfield County Department of Probation with the condition that the first six (6) months be served in the Clearfield County Jail on count one and to a term of one

Civil Division No. 04-614-CD
year probation under the supervision of Clearfield County Department of Probation on count two (2) to be served consecutively. The sentence was also conditioned on the plaintiff possessing satisfactory employment which he alleges that he had on March 6, 2003, at the time of his incarceration.

On or about March 27, 2003, the Commonwealth filed a Motion for Reconsideration which was originally scheduled for argument on April 8, 2003. On April 7, 2003, the plaintiff alleges that his father was notified by attorney Lees that he could no longer represent him due to him accepting employment with the Clearfield County District Attorney's office. It is further alleged that on April 7 plaintiff's father retained defendants to represent plaintiff at the reconsideration of sentence hearing. The hearing was rescheduled to April 17, 2003, and at that time plaintiff was sentenced to a minimum term of six (6) months to a maximum term of two (2) years at a state prison.

It is alleged that the defendants were negligent in the representation of the plaintiff at the hearing in the following ways:

- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721 (b)(i);
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff on April 17, 2003, sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

(Paragraph 15 of Complaint.)

The plaintiff seeks damages relative to loss of income since he was unable to pursue work release and also physical and mental abuse while incarcerated at the state prison.

Civil Division No. 04-614-CD

The defendants have filed Preliminary Objections to the Complaint and this brief is filed in support of those Preliminary Objections.

II. Statement of Question Involved

Which the plaintiff's failure to allege that he was innocent of the criminal charges and that he pursued post trial remedies and obtained relief which was conditioned on attorney error precludes a legal malpractice claim arising out of the representation of the plaintiff in a criminal proceeding under Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1987).

III. Copy of relevant documents to be involved

A copy of the Complaint is attached.

IV. Argument

Our Supreme Court, in Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (Pa. 1987), has clearly stated the elements for bringing a legal malpractice action against an attorney who represents a plaintiff in criminal proceedings. The court held that the malpractice plaintiff must plead and prove:

- (1) An attorney client relationship;
- (2) The attorney showed reckless or wanton disregard of the criminal defendant's interest;
- (3) That the attorney's culpable conduct was the proximate cause of an injury suffered by the defendant/plaintiff, i.e., "but for" the attorney's conduct, the defendant/plaintiff would have obtained an **acquittal** or a **complete dismissal** of the charges.

Civil Division No. 04-614-CD

- (4) As a result of the injury, the criminal defendant/plaintiff must have suffered damages.
- (5) The plaintiff must have pursued post-trial remedies and obtained relief which was dependent upon attorney error;

Id. at 250-51, 621 A.2d at 114-15, *emphasis added*.

In Bailey, the Court found that allegations of attorney malpractice arising from representation in a criminal matter require different considerations than those in an underlying civil matter. Id., 533 Pa. at 246, 621 A.2d at 112. The court found this because policy considerations apply in the context of criminal proceedings that do not exist in civil cases. The Court explained:

Unlike in the civil litigation area, a client does not come before the criminal justice system under the care of his counsel alone; he comes with full panoply of rights, powers, and privileges. These rights and privileges not only protect the client from abuses of the system but are designed to protect the client from a deficient representative. Thus, whereas in a civil matter a case once lost is lost forever, in a criminal matter a defendant is entitled to a second chance (perhaps even a third or fourth chance) to insure that an injustice has not been committed. For these reasons we are constrained to recognize that criminal malpractice trespass actions are distinct from civil legal malpractice trespass actions, and as a result the elements to sustain such a cause of action must likewise differ.

Id., 533 Pa. at 250, 621 A.2d at 114. Because of these rights and policy considerations, the court in Bailey held that "we require that as an element to a cause of action in trespass against a defense attorney whose dereliction was the sole proximate cause of the defendant's unlawful conviction, **the defendant must prove that he is innocent of the crime or any lesser included offense.**" Bailey, 533 Pa. at 247, 621 A.2d at 113. (Emphasis added).

The Superior Court has held that this standard applies to malpractice plaintiffs when suing their attorneys arising out of post-plea proceedings. Slaughter v Rushing, 453 Pa.Super.

Civil Division No. 04-614-CD

379, 683 A.2d 1234 (Pa.Super. 1996). In Slaughter, an inmate initiated legal malpractice actions sounding in trespass against criminal attorneys who had represented him in post-plea proceedings and against the attorney who was appointed to represent the defendant as PCRA counsel. The plaintiff did not allege facts tending to show he was innocent of the criminal charges. The court held that under Bailey, the complaint was properly dismissed. The court stated:

In this case, appellant's complaints do not allege facts that purport to show he is innocent of all the criminal charges filed against him. Nor has appellant demonstrated that appellees' culpably negligent representation was the proximate cause of his conviction in the sense that "but for" the attorney conduct, appellant would have obtained an acquittal or complete dismissal of the criminal charges. Furthermore, appellant's complaints do not aver that he pursued all available post-trial remedies and obtained relief predicated upon attorney error. We agree with the trial court that under these circumstances, the complaints in trespass alleging malpractice by the defendants/appellees must be dismissed for failure to state a cause of action.

Slaughter, 453 Pa.Super. At 383-84, 683 A.2d at 1234. The instant matter is identical in all material respects. Here the plaintiff pled guilty when he was represented by another attorney. The plaintiff can not plead he was innocent of all charges and that the conduct of defendants was the cause of his guilty plea. He avers that Defendant Collins failed to properly challenge a Motion to Reconsider Sentence. The plaintiff also fails to allege that he obtained post-trial relief based on ineffective assistance of counsel. Therefore, plaintiff has failed to state a cause of action for legal malpractice and his complaint should be dismissed with prejudice.

V. Conclusion

The plaintiff has failed to allege the necessary elements to support a claim of legal malpractice arising out of the representation of a plaintiff in a criminal proceeding under Bailey v. Tucker. The court does not permit a criminal defendant to shift the loss cause

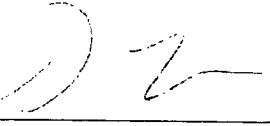
by his criminal conduct to a lawyer. Here the plaintiff is attempting to shift the burden of his sentence to a lawyer, exactly what Bailey v. Tucker precludes. The plaintiff is not innocent of the criminal charges and a lawyer cannot be made to pay for the plaintiff's violation of the criminal laws of Pennsylvania.

WHEREFORE, the Defendants Ronald Collins and Sobel, Collins & Knaresboro, respectfully request that their Preliminary Objections be sustained and that the Complaint be dismissed with prejudice.

Respectfully Submitted,

Weinheimer, Schadel & Haber, P.C.

By



David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503
(412) 765-3399

9-07-2004 11:06AM FROM SOBEL COLLINS KNARES 814 765 6210

P. 3

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
DefendantsIN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO 04-614-CD

CIVIL ACTION-LAW

JURY TRIAL DEMANDED

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, 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 for the sum of a default for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may have other property or other rights important to you.

YOU SHOULD TAKE THIS PAPER 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING AN ATTORNEY.

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 OR NO FEE.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
230 East Market Street
Clearfield, Pennsylvania 16830
(814) 765-2641 ext. 5982

0
9-07-2004 11:06AM FROM SOBEL COLLINS KNARES 614 765 6210

P. 4

JACOB MICHAEL HARRIS,

Plaintiff,

vs.

RONALD L. COLLINS, individually and
SOBEL, COLLINS & KNARESBORO
DefendantsIN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 04-614-CD

CIVIL ACTION-LAW

JURY TRIAL DEMANDED

COMPLAINTAND NOW, this day 25th day of July, 2004 comes the

Plaintiff, Jacob Michael Harris, by and through his attorneys, McShane & Hitchings, LLC and Joseph L. Hitchings, Esquire, and avers in support of his complaint against Defendants Ronald L. Collins, individually and Sobel, Collins, and Knaresboro as follows:

1. Plaintiff, Jacob Michael Harris, is an adult individual residing at 338 West Main Street, Reynoldsburg, Jefferson County, Pennsylvania 15851.
2. Defendant, Ronald L. Collins, is at a time, licensed to practice law in the Commonwealth of Pennsylvania with a professional address of 218 South Second Street, Clearfield, Pennsylvania 16830.
3. Sobel, Collins and Knaresboro is believed to be a partnership, operating a law firm located at 218 South Second Street, Clearfield, Pennsylvania 16830.
4. On or about January 6, 2003, Plaintiff while represented by Attorney Earl D. Lees, Jr., entered a guilty plea to two counts including the criminal charge of possession with intent to deliver cocaine in the Court of Common Pleas of Clearfield County, Pennsylvania, Docket No. 02-251-CRA.

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P.5

5. On March 6, 2003, Plaintiff was sentenced to a term of two (2) years of probation under the supervision of Clearfield County Department of Probation, with the condition that the first six (6) months be served in the Clearfield County Jail on count one (1) and to a term of one year probation under the supervision of Clearfield County Department of Probation on count two (2) to be served consecutively.

6. Plaintiff's sentence was further conditioned on whether Plaintiff possessed "satisfactory employment."

7. At the time of his incarceration on March 6, 2003, Plaintiff maintained full time employment.

8. On or about March 27, 2003, the Commonwealth filed in Clearfield County Clerk of Courts office a "Motion for Reconsideration of Sentence", twenty-one (21) days after sentencing.

9. By letter dated April 4, 2003 David S. Mekhjian, Clerk of Courts, advised Plaintiff's Counsel of Record, Mr. Lees, that the Commonwealth's Motion for Reconsideration of Sentence was scheduled to be heard before the Court on Tuesday, April 8, 2003.

10. On April 7, 2003, Plaintiff's father, Patrick Harris, was notified by telephone by Attorney Lees that he could no longer represent the Plaintiff due to a conflict of interest created by Attorney Lees accepting employment with the Clearfield County's District Attorney's Office.

11. On April 7, 2003, Patrick Harris retained Defendant Ronald L. Collins, Esquire of the Defendant law firm, Sobel, Collins and Knaresboro to represent his son, the Plaintiff, at the Reconsideration of Sentence Hearing.

12. On April 8, 2003, the hearing on the Commonwealth's Motion for Reconsideration of Sentence was continued until April 17, 2003.

13. At the April 17, 2003 hearing, the Commonwealth alleged that the Plaintiff had tested positive for an illegal substance, however no the evidence to establish the positive test was presented. Following the hearing on April 17, 2003 the Court amended its present prior sentence of March 6, 2003, and ordered the Plaintiff to be incarcerated in a State Prison for a minimum term of six (6) months and a maximum of two (2) years.

14. Defendant, Ronald L. Collins represented the Plaintiff at the hearing on the Commonwealth's Motion for Reconsideration of Sentence.

15. Defendants were negligent in their representation of the Plaintiff in the following ways:

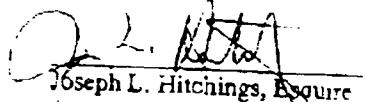
- a. By failing to object or to seek dismissal of the Commonwealth's untimely Motion to Modify Sentencing under Pennsylvania Rules of Criminal Procedure 721(b)(1);
- b. By failing to challenge the allegation that the Plaintiff tested positive for an illegal substance;
- c. By failing to demand that the Commonwealth present evidence of a valid positive drug test from the Plaintiff;
- d. By failing to advise the Plaintiff of his post sentencing rights; and
- e. By failing to file a direct Appeal of the Plaintiff April 17, 2003 sentence despite the fact that both the Plaintiff and Plaintiff's family requested that an Appeal be filed.

16. As a direct and proximate result of the Defendants negligence in representing the Plaintiff in the criminal case, the Plaintiff suffered damages including lost income as a result of not being able to pursue work release, and having to serve an extended sentence in a state facility rather than in County Prison.

17. As a direct and proximate result of the negligence of the Defendants as set forth herein, the Plaintiff was incarcerated in a State Prison in excess of the six (6) months originally sentenced, and was subjected to physical and mental abuse while in the State facility.

WHEREFORE, Plaintiff Jacob Michael Harris demands judgment against the Defendants, Ronald L. Collins, individually, and Sobel, Collins, and Knaresboro in an amount in excess of twenty five thousand dollars (25,000.00) plus interest, costs, fees, and any other relief the court deems appropriate under the circumstances.

Respectfully Submitted
MC SHANE & HITCHINGS



Joseph L. Hitchings, Esquire
Attorney I.D. # 65551
4807 Jonestown Road, Suite 242
Harrisburg, Pennsylvania 17109
(717) 657-3900
Fax: (717) 657-2060
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS** has been served upon the following by First Class United States Mail, postage pre-paid, overnight mail, or hand delivery on September Sept, 2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By DLH
David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

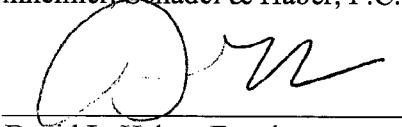
CERTIFICATE OF SERVICE

I HEREBY, that a true and correct copy of the within **ANSWER TO PLAINTIFF'S PETITION TO OPEN AND/OR STRIKE JUDGMENT OF NON PROS** has been served upon the following by First Class United States Mail, postage pre-paid, overnight mail, or hand delivery on October 20th, 2004:

Joseph L. Hitchings, Esquire
McShane & Hitchings
4807 Jonestown Road, Suite 242
Harrisburg PA 17109

Respectfully submitted,

Weinheimer, Schadel & Haber, P.C.

By 

David L. Haber, Esquire
Pa. I.D. 39574

602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

FILED

OCT 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JACOB MICHAEL HARRIS, CIVIL ACTION

Plaintiff, No. 04-614-CD

v.

RONALD COLLINS, individually and
SOBEL, COLLINS & KNARESBORO,

Defendants.

ORDER OF COURT

And now, to wit, on this _____ day of _____
2004, the Plaintiff's Petition to Open and/or Strike the Judgment of Non Pros entered in
this matter is denied.

BY THE COURT

J.

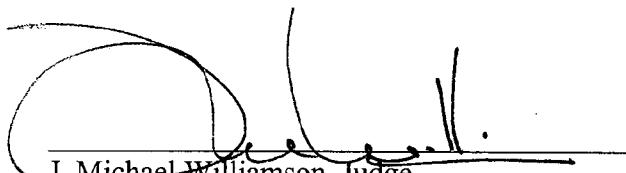
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JACOB MICHAEL HARRIS,)
Plaintiff)
) NO. 04-614-CD
v.)
) JURY TRIAL
RONALD L. COLLINS, individually and)
SOBEL, COLLINS & KNARESBORO,)
Defendants)

ORDER

NOW, this 26th day of October, 2004, the above matter having been referred to us through the Administrative Regional Unit II, IT IS HEREBY ORDERED that a hearing/argument on all outstanding motions, including Plaintiff's Petition to Open and/or Strike Judgment of Non Pros and Defendants' Preliminary Objections, if any, to Plaintiff's Amended Complaint, shall be held before the undersigned on Tuesday, November 23, 2004, at 11:00 a.m., in Court Room No. 1 of the **Clinton County Courthouse, Lock Haven, Pennsylvania**.

BY THE COURT:



J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

xc: Joseph L. Hitchings, Esquire
David L. Haber, Esquire
Court Administrator

J. MICHAEL WILLIAMSON

JUDGE

COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

FILED
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OCT 29 2004

William A. Shaw
Prothonotary



JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

October 28, 2004

William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**Re: Harris v. Collins
No. 04-614-CD**

Dear Mr. Shaw:

Please file the enclosed Order in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

A handwritten signature in cursive ink that reads "Carol E. Miller".

Carol E. Miller
Secretary to Judge Williamson

Enclosure

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JACOB MICHAEL HARRIS,)
Plaintiff)
)
v.) NO. 04-614-CD
)
RONALD COLLINS, individually, and)
SOBEL, COLLINS & KNARESBORO,)
Defendants)

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per letter
William A. Shaw
Prothonotary/Clerk of Courts

**ORDER DISMISSING PLAINTIFF'S PETITION
TO OPEN AND/OR STRIKE JUDGMENT OF NON PROS**

On August 2, 2004, Plaintiff filed a Complaint in Clearfield County alleging that his attorney, Ronald L. Collins, of the firm of Sobel, Collins & Knaresboro, was negligent in failing to take certain enumerated action in the course of representing Defendant at a hearing in Clearfield County Court on a Motion by the Commonwealth for Reconsideration of Sentence.¹ The initial Complaint, while identifying Defendant Collins as an attorney licensed to practice law in the Commonwealth of Pennsylvania and averring an attorney/client relationship and failure to provide certain advice and take certain actions common in the practice of criminal law, failed to comply with Rule 1042.1 of the Rules of Civil Procedure by specifically stating that Plaintiff was asserting a professional liability claim.

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

¹While we take judicial notice of the history of the criminal proceeding to No. 02-251-CRA, all relevant documents with regard to those proceedings are contained in Plaintiff's Petition to Open.

On September 9, 2004, Defendants filed Preliminary Objections seeking dismissal of the Complaint with prejudice on the basis the Plaintiff had "not pled the necessary elements for a legal malpractice claim," citing Bailey v. Tucker, 533 Pa. 237, 621 A.2d 108 (1987). In response to the Preliminary Objections of Defendants, Plaintiff filed an Amended Complaint on September 29, 2004, expanding somewhat upon his allegations and including references to the proceedings under the Post-Conviction Relief Act which led to a February 24, 2004, Order of Senior Judge Reilly granting Plaintiff permission to withdraw his initial guilty plea and thereafter re-sentencing him upon the entry of a second guilty plea.

On October 5, 2004, Defendants filed a Praecept for Non Pros with the Prothonotary under Rule 1045.1 based upon Plaintiff's failure to file a Certificate of Merit and there being no pending timely-filed Motion seeking to extend the time to file the Certificate. As he was required to do, the Prothonotary issued a judgment of non pros on October 6, 2004. Plaintiff promptly filed the Petition to Open and/or Strike Judgment of Non Pros presently before us.

In support of his Motion, Plaintiff contends the sixty-day time period for filing a Certificate of Merit is renewed by the filing of an Amended Complaint, particularly, as here, where that Amended Complaint is in response to Preliminary Objections. Even were we to agree with Plaintiff that implied extensions of the sixty-day time period can be created by a plaintiff's own actions, we are bound by the recent panel decision of the Superior Court (Hoover v. Davila, No. 1657 WDA 2003, filed August 13, 2004) which clearly states, "The 60-day time period for

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

the filing of a Certificate of Merit or for requesting an extension of time clearly runs from the date of the filing of the original Complaint..."

Having determined that the Judgment of Non Pros was appropriately entered, we must next determine whether relief may be granted under Rule 3051 which requires that the Petition be timely filed, that there be a reasonable explanation or legitimate excuse for the inactivity or delay, and that there be a meritorious cause of action.

Although Plaintiff's Petition to Open was timely filed, we reject his suggestion that there was a reasonable explanation or legitimate excuse for his failure to comply with the sixty-day requirement. While Plaintiff's counsel suggests somewhat more than that he was simply unfamiliar with the Rules, we do not believe his interpretation of the Rule to permit the creation of a new sixty-day filing period to be reasonable. More importantly, however, we find that Plaintiff has failed to plead a meritorious cause of action. As the record of the criminal proceedings clearly shows, notwithstanding the acknowledgment by the Commonwealth that the Sentencing Judge erred, a new guilty plea was entered and a new sentence imposed following the granting of post-conviction relief. Under the criteria established by our Supreme Court in Bailey, supra, a plaintiff seeking to bring a trespass action against a criminal defense attorney must establish that, "but, for" the attorney's conduct, plaintiff would have obtained an acquittal or a complete dismissal of the charges. This record clearly establishes that Plaintiff did not obtain an acquittal or a complete dismissal of the charges but, rather, acknowledged his guilt by re-entering

J. MICHAEL WILLIAMSON

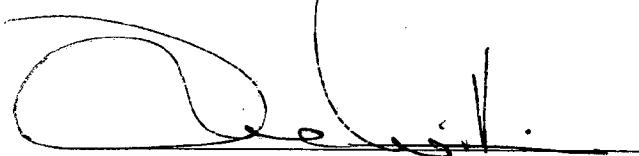
JUDGE

COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

a guilty plea. Under the standards established by our Supreme Court, therefore, Plaintiff has no meritorious cause of action and, therefore, is not entitled to relief under Rule 3051 even were we satisfied he had a reasonable explanation or legitimate excuse for his counsel's failure to properly interpret the Professional Liability Actions Rules.

NOW, this 23rd day of November, 2004, for the reasons set forth herein, Plaintiff's Petition to Open and/or Strike Judgment of Non Pros is DENIED.

BY THE COURT:



J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

xc: Joseph L. Hitchings, Esquire
David L. Haber, Esquire
Court Administrator

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

FILED

NOV 30 2004

William A. Shaw
Prothonotary/Clerk of Courts



JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

November 29, 2004

William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: **Harris v. Collins**
No. 04-614-CD

Dear Mr. Shaw:

Please file the enclosed Order in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

Carol E. Miller
Carol E. Miller
Secretary to Judge Williamson

Enclosure