

2004-1367-CD
DAVID A. WILLIAMS

VS
F. CORTEZ BELL

David Williams vs F Cortez Bell
2004-1367-CD

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS, :
Plaintiff :
: :
v. : No. 2004-1367-C0
: :
F. CORTEZ BELL, III : Jury Trial Demanded
Defendant : :
:

NOTICE TO DEFEND

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 ATTORNEY AT ONCE. IF YOU DO NOT HAVE AN ATTORNEY OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, 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.

FILED

SEP 01 2004
O/S/2004
William A. Shaw
Prothonotary

2 CERT TO PLE

David S. JMeholick
Clearfield County SCourthouse
230 East Market St.
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS, :
Plaintiff :
: :
v. : : No.
: :
: :
F. CORTEZ BELL, III, :
Defendant :
:

MOTION TO PROCEED IN FORMA PAUPERIS

1. I am the Plaintiff in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.
2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.
3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: David A. Williams FD9344
Address: SCI at Albion
10745 Route 18
Albion, PA 16475-0002
Social Security Number: 160-54-4616

(b) Employment
If you are presently employed, state
Employer: SCI Albion Dietary Department
Address: 10745 Route 18
Albion, PA 16475-0002
Salary or wages per month: \$0.29/hr. (\$40.60/month)
Type of Work: Institutional Dietary Department

(c) Other income within the past twelve months
Business or profession: No
Other self-employment: No
Interest: No
Dividends: No
Pension and annuities: No
Social Security benefits: No
Disability benefits: No
Unemployment compensation and supplemental benefits: No
Workman's compensation: No
Public assistance: No
Other: No

(d) Other contributions to household support
(Wife) (Husband) Name: None
If Wife/Husband is employed, state
Employer: None
Salary or wages per month: None
Type of work: None
Contributions from children: No
Contributions from parents: No
Other contributions: No

(e) Property owned
Cash: No
Checking Account: No
Savings Account: No
Certificate of Deposit: No
Real Estate (including home): No
Motor vechicle: Make Year
Cost Amount Owed \$
Stocks; bonds: No
Other: No

(f) Debts and obligations
Mortgage: No
Rent: No
Loans: No
Other: Courts costs and fines, Clearfield County
No. 1999-0951-CR (\$8,292.81)

(g) Persons dependent upon you for support
(Wife)(Husband) Name: No
Children, if any: No
Other persons: No
Name:
Relationship:

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the cost incurred herein.
5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

David A Williams

David A. Williams
FD-9344 D/A 51
SCI at Albion
10745 Route 18
Albion, PA 16475-0002

Date: August 13, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,
Plaintiff

v.

F. CORTEZ BELL, III
Defendant

No. 2004-1367-C0

FILED

SEP 01 2004

o (3) 2004

William A. Shaw
Prothonotary

2 (3) 2004

FACTUAL BACKGROUND

1. Defendant, F. Cortez Bell, III, is a licensed professional (Attorney at Law) with offices in Clearfield County Pennsylvania. Plaintiff is asserting a professional liability claim against this defendant under Pa.R.Civ.P. 1042.1.
2. Plaintiff, David A. Williams, is an inmate currently incarcerated at the State Correctional Institute at Albion, 10745 Route 18, Albion, PA 16475-0002.
3. On September 9, 2002, the Plaintiff was arrested. Plaintiff was held until a Parole/Probation Revocation Hearing could be done.
4. On November 07, 2002, the Clearfield County Court of Common Pleas, Judge John K. Reilly presiding, held a Parole/Probation Revocation Hearing regarding Plaintiff. Having found that Plaintiff was in violation of his parole resentenced Plaintiff to a minimum term of 18 months and a maximum of 5 years.
5. On or about November 15, 2002, Plaintiff along with his parents, hired Attorney Bell to represent him.
6. On November 18, 2002, Defendant filed a Motion for Reconsideration of Sentence on behalf of Plaintiff.

7. On December 10, 2002, the Clearfield Court of Common Pleas denied said motion but did resentence Plaintiff to a minimum term of 3 months to maximum of 5 years.

8. At this hearing the presiding judge, John K. Reilly Jr., stated that if Plaintiff was not released on his minimum, March 26, 2003, that the Plaintiff could file a PCRA to give the sentencing court jurisdiction and then the court would sentence Plaintiff to time served immediate release with probation.

9. Attorney Bell conveyed this to Plaintiff and his parents.

10. In March 2003, the Plaintiff informed Attorney Bell by letter that Plaintiff's minimum had expired. A copy of the Department of Correction's status sheet was sent as reference. Plaintiff was not yet seen by the Parole Board.

11. On April 25, 2003, Plaintiff was reviewed for parole by the Pennsylvania Board of Probation and Parole (PBPP). The PBPP issued a 16 month hit and a new review date of September 26, 2004.

12. Plaintiff informed Attorney Bell of the PBPP decision by letter.

13. On November 13, 2003, seven months later Attorney Bell assured Plaintiff by letter that he would file a Post Conviction Relief Motion.

14. On November 17, 2003, Defendant filed a motion for Modification of Sentence/PCRA Petition in the Court of Common Pleas of Clearfield County.

15. December 03, 2003, Defendant's secretary sent a letter to Plaintiff informing him of scheduled hearing on his motion. This hearing was to be held on Tuesday, December 09, 2003, at 2:00 p.m. in Courtroom #1.

16. No hearing was held, Attorney Bell failed to show or have Plaintiff present at the hearing. No postponement date was given.

17. On or around the end of December 2003, Judge John K. Reilly Jr. retired. This is the sentencing judge who promised Plaintiff that if he was not released by the PBPP that he would resentence him on a PCRA petition. Judge Reilly was never given the chance because Defendant never showed for the hearing that was scheduled on December 09, 2003.

18. On April 30, 2004, Defendant filed a Motion to Withdraw as counsel. Defendant is currently employed at this time by the Clearfield County District Attorney's Office. Thus causing a conflict of interest with Plaintiff. Motion was granted on May 03, 2004. Plaintiff did not know this until June when he received a letter from the Defendant. The Defendant did not even inform the Plaintiff that he was trying to withdraw as his counsel.

19. Defendant did not inform the Plaintiff that he was hired by the District Attorney's Office thus giving him time to procure other counsel. Plaintiff was under the impression that Defendant still represented him, he was Plaintiff's Attorney of Record according to the Clearfield County docketing statement Plaintiff received.

20. On June 02, 2004, Defendant wrote Plaintiff to inform him of a hearing on Tuesday, June 08, 2004, at 2:00 p.m. This hearing was concerning the original Motion for Modification of Sentence/PCRA Petition Defendant filed on November 17, 2003, that was scheduled to be heard on December 09, 2003.

21. On June 08, 2004, the Clearfield County Court of Common Pleas, Judge Fredric J. Ammerman presiding, denied Plaintiff's Motion for Modification of Sentence/PCRA Petition citing no legal theory or conclusions of law.

22. On June 23, 2004, Plaintiff wrote to Defendant in the hopes that he could collect his legal file off of Defendant so he could perfect an appeal to the Superior Court on his Motion for Modification of Sentence/PCRA that was

denied. Defendant has not or ever returned Plaintiff's phone calls or answered any of Plaintiff's letters.

23. Plaintiff does not have a copy of the motion filed by defendant, and is at a loss to what issues he could raise to the Superior Court. Defendant did not discuss these issues with Plaintiff as he should of according to the Rules of Professional Conduct (Rule 1.4 Communication).

R E L I E F S O U G H T

1. Plaintiff is asking for a trial by jury under Pa.R.Civ.P. 1007.1.
2. Plaintiff is asking for the return of the money paid to the Defendant for the representation he promised. "You will be released on your minimum."
3. Plaintiff is asking for the Defendant to reimburse him for the monies lost if he were released on his minimum. In the amount of \$29,184. (\$8.00/hr. 6 days a week for 76 weeks.)

C O N C L U S I O N

Defendant made a promise to this Plaintiff that he would be released on his minimum date of March 26, 2003. Instead of fulfilling this promise the Defendant chose to abandon this Plaintiff and take a position in the District Attorney's Office. The Defendant could of notified the Plaintiff that he was being considered for this position, instead he chose to hide it until it was to late for Plaintiff to procure other counsel. Defendant could of also asked one of his partner's at the time to handle Plaintiff's case. Defendant was a partner in the law firm of Bell, Silberblatt & Wood. He also had a relative working there, Mr. Richard A. Bell.

From March 2003 until November 2003 Plaintiff sent this Defendant numerous letters trying to find out why he was being held past his minimum when Defendant made a promise to him. Defendant filed a Motion that Plaintiff never received a copy of or told what issues were raised.

Defendant failed to show for a motion hearing on December 09, 2003, being held before Judge John K. Reilly, Jr., thus assuring Plaintiff would be given Post Conviction Relief. Judge Reilly knew the circumstances surrounding Plaintiff's conviction and incarceration and would of resentenced Plaintiff.

Defendant waited until months later, ignoring letters from Plaintiff and his parents, after Judge Reilly retired, to notify him that:

- a. Plaintiff was assigned a new Judge that was not familiar with the case.
- b. Defendant was working for the District Attorney's Office.
- c. Defendant filed a motion to withdraw as Plaintiff's counsel.

Defendant took money from this Plaintiff based on lies and a false promise that he knew he was not going to keep. He deprived this Plaintiff of monies that would of been earned if that promise was kept.

Defendant violated not only the Rules of Professional Conduct set by our courts, but also the Rules of Ethical Conduct followed by those who have respect for their profession.

WHEREFORE, this Plaintiff prays that this Honorable Court grant Plaintiff the relief sought.

Respectfully submitted,
David A Williams
David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Date: **August 13, 2004**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	
v.	:	No.
	:	
	:	
F. CORTEZ BELL, III	:	
Defendant	:	

V E R I F I C A T I O N

I state that the averments made in the foregoing Civil Action are true and correct upon my personal knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. §4904 (relating to the unsworn falsification to authorities).

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Date: August 13, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	
v.	:	No.
	:	
	:	
F. CORTEZ BELL, III	:	
Defendant	:	

C E R T I F I C A T E O F S E R V I C E

I hereby certify that I am this day serving the foregoing Civil Action, upon the persons and in the manner indicated below which service satisfies the requirement of Pa.R.Civ.P. 400.

Service by Sheriff's Department of Clearfield County:

F. Cortez Bell, III
Attorney at Law
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

One Copy

David A. Williams
David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Date: August 13, 2004

In the Court of Common Pleas of Clearfield County, Pennsylvania

Civil Division

DAVID A. WILLIAMS

*

*

Plaintiff

*

*

*

*

vs.

*

No. 2004-1367-CD C.D.

F. CORTEZ BELL, III

*

*

Defendant

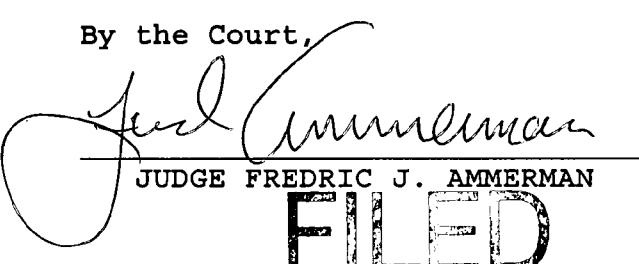
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O R D E R

NOW, this 20th day of August, 2004, upon consideration of the foregoing Motion to Proceed in Forma Pauperis, it is the ORDER of this Court that said Motion is GRANTED.

Filing fee is hereby WAIVED.

By the Court,


JUDGE FREDRIC J. AMMERMAN
FILED

SEP 01 2004



William A. Shaw
Prothonotary
2 Cents to Post

In The Court of Common Pleas of Clearfield County, Pennsylvania

WILLIAMS, DAVID A.

VS.

F. CORTEZ BELL III

COMPLAINT

Sheriff Docket # 16256

04-1367-CD

SHERIFF RETURNS

NOW SEPTEMBER 14, 2004 AT 3:28 PM SERVED THE WITHIN COMPLAINT ON F. CORTEZ BELL III, DEFENDANT AT EMPLOYMENT, DISTRICT ATTORNEY'S OFFICE, COURTHOUSE ANNEX, 230 E. MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO F. CORTEZ BELL III A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING.

Return Costs

Cost	Description
18.37	SHERIFF HAWKINS PAID BY: IFP (OFFICE CREDIT)

Sworn to Before Me This

23rd Day Of Sept 2004
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

FILED
018568H
SEP 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS

CIVIL DIVISION

Plaintiff,

No. 2004-1367 - CD

v.

F. CORTEZ BELL, III

PRAECIPE FOR APPEARANCE

Defendant.

Filed on Behalf of Defendant:
F. Cortez Bell, III

Counsel of Record for this Party:

JAMES R. SCHADEL, ESQUIRE
Pa. I.D. No. 27937

SCOTT R. EBERLE, ESQUIRE
Pa. I.D. No. 89044

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

FILED *EGK*
m/15/04 NO CC
OCT 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS) CIVIL DIVISION
)
Plaintiff,) No. 2004-1367 - CD
)
v.)
)
F. CORTEZ BELL, III)
)
Defendant.)

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter our appearance on behalf of defendant, F. Cortez Bell, III, in the above-captioned matter.

Respectfully submitted:

WEINHEIMER, SCHADEL & HABER, P.C.

By James R. Schadel / S.R.S
James R. Schadel
Pa. I.D. No. 27937

By Scott R. Eberle
Scott R. Eberle
Pa. I.D. No. 89044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within has been served upon the
PRACIPE FOR APPEARANCE following by First Class United States Mail, postage pre-paid, or
hand delivery on October 1, 2004.

David A. Williams
SCI at Albion
10745 Route 18
Albion, PA 16475-0002
Plaintiff, Pro Se

Respectfully submitted,

WEINHEIMER, SCHADEL & HABER, P.C.

By James R. Schadel/S.R.E.
James R. Schadel
Scott R. Eberle
602 Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS, :
Plaintiff :
: No. 2004-1367-C.D.
v. :
: F. CORTEZ BELL, III, :
Defendant : Jury Trial Demanded

CERTIFICATE OF MERIT

Certificate of Merit as to: F. Cortez Bell, III

I, David A. Williams, 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 a cause in bringing about harm.

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Dated: October 13, 2004

FILED 

OCT 15 2004

12:30 AM

William A. Shaw

Prothonotary Clerk of Courts

cc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	No. 2004-1367-C.D.
v.	:	
	:	
F. CORTEZ BELL, III,	:	Jury Trial Demanded
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing CERTIFICATE OF MERIT upon the defendant listed below and in the manner indicated which service satisfies the requirements of Pa.R.Civ.P.

Attorneys for the Defendant, F. Cortez Bell, III
Service by First Class Mail, Postage Pre-Paid

WEINHEIMER, SCHADEL, & HABER
Attorneys at Law
602 Law and Finance Building
429 Fourth Avenue
Pittsburg, PA 15219-1503

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Dated: October 13, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,
Plaintiff

v.

F. CORTEZ BELL, III,
Defendant

: No. 2004-1367-C.D.

: Jury Trial Demanded

FILED

NOV 19 2004 (R)

W/ W. Shaw
William A. Shaw
Prothonotary
Court to Puff.

MOTION FOR DEFAULT JUDGMENT

COMES NOW, David A. Williams, and states the following is
support of his Motion for Default Judgment:

1. On August 20, 2004, In Forma Pauperis Status was granted to Plaintiff.
2. On September 1, 2004, the Clerk of Court filed said civil action and assigned the current docketing number.
3. The Clearfield County Sheriff's Office served the Defendant on September 14, 2004.
4. On October 1, 2004, the Defendant's Attorneys, James R. Schadel and Scott R. Eberle, filed their Notice of Appearance on behalf of the defendant.
5. On October 13, 2004, a Certificate of Merit was filed by the Plaintiff and a copy was received by the Defendant on or before October 20, 2004. Confirmation made by letter. Exhibit A
6. The Defendant has had ample amount of time to file a well pleaded response to the above complaint. It not doing so the defendant is in violation of Pa.R.Civ.P. 1042.4

7. The Defendant is a licensed attorney in the state of Pennsylvania and is well aware of the rules of court. Also, the defendant is represented by the professional law firm Weinheimer, Schadel & Haber.

8. The Plaintiff asks for this Honorable Court to grant the Motion for Default Judgment against the Defendant for failing to file a responsive pleading within the twenty (20) day time frame after the Certificate of Merit was filed. In granting the Motion for Default Judgment this Honorable Court would grant this Plaintiff his relief sought as outlined in the Complaint.

- a. The amount of \$300.00 for fee paid by Plaintiff to the Defendant for his representation.
- b. The amount of \$29,184 for the money Plaintiff would of of earned if released on his minimum as promised by the Defendant in their original agreement.

WHEREFORE, the Plaintiff prays that this Honorable court grant said Motion for Default Judgement.

Respectfully submitted,

David Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Dated: November 16, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	No. 2004-1367-C.D.
v.	:	
	:	
F. CORTEZ BELL, III,	:	Jury Trial Demanded
Defendant	:	

O R D E R

NOW, this _____ day of _____, 2004, upon
consideration of the foregoing Motion for Default Judgment, it is
hereby the ORDER of this Court that said Motion is GRANTED.

Defendant is ORDERED to pay the Plaintiff in the Amount of
\$29,484.00.

By the Court,

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS, :
Plaintiff :
: No. 2004-1367-C.D.
v. :
: :
F. CORTEZ BELL, III, : Jury Trial Demanded
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing
MOTION FOR DEFAULT JUDGMENT upon the defendant listed below and
in the manner indicated which service satisfies the requirements
of Pa.R.Civ.P.

Attorneys for the Defendant, F. Cortez Bell, III
Service by First Class Mail, Postage Pre-Paid

WEINHEIMER, SCHADEL, & HABER
Attorneys at Law
602 Law and Finance Building
429 Fourth Avenue
Pittsburg, PA 15219-1503

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Dated: November 16, 2004

WEINHEIMER, SCHADEL & HABER

A Professional Corporation
Attorneys At Law

Robert A. Weinheimer

James R. Schadel

David L. Haber

Amy J. Coco

Scott R. Eberle

Kristen A. Budris

Ref. No. 325.0280

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

Telephone: (412) 765-3399
Facsimile: (412) 765-3537
E-mail: wsh@wshpc.com

October 20, 2004

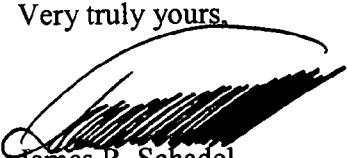
David A. Williams
SCI at Albion
10745 Route 18
Albion, PA 16475-0002

Re: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-CD; Clearfield County, PA

Dear Mr. Williams:

I have received your Certificate of Merit. Please forward to me the written statement from an appropriate licensed professional referenced in your Certificate of Merit.

Very truly yours,



James R. Schadel

chl

JA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS

CIVIL DIVISION

Plaintiff,

No. 2004-1367 - CD

v.

F. CORTEZ BELL, III

PRELIMINARY OBJECTIONS

Defendant.

Filed on Behalf of Defendant:
F. Cortez Bell, III

Counsel of Record for this Party:

JAMES R. SCHADEL, ESQUIRE
Pa. I.D. No. 27937

SCOTT R. EBERLE, ESQUIRE
Pa. I.D. No. 89044

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
m/12/5661
NOV 29 2004
W.A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS) CIVIL DIVISION
)
Plaintiff,) No. 2004-1367 - CD
)
v.)
)
F. CORTEZ BELL, III)
)
Defendant.)

PRELIMINARY OBJECTIONS

Defendant, F. Cortez Bell, III, by and through his attorneys Weinheimer, Schadel & Haber, P.C., files the following Preliminary Objections to Plaintiff's Complaint and in support thereof avers:

1. Defendant, F. Cortez Bell, III, respectfully requests this Honorable court to dismiss Plaintiff's Complaint against him with prejudice for failure to state a claim upon which relief can be granted.
2. Plaintiff's Complaint is barred by the Pennsylvania Supreme Court's decision in Bailey v. Tucker, 621 A.2d 108 (Pa.1987).
3. Under Bailey, Plaintiff has not and cannot plead a cause of action for legal malpractice against Mr. Bell because he has not and cannot plead that "but for" the conduct of Mr. Bell he would have received an acquittal or complete dismissal of his probation violation. Id. at 114.

FACTS

4. This is a purported legal malpractice action arising out of Plaintiff's violation of probation.

5. The Complaint alleges that Plaintiff was arrested on September 9, 2002, for violating his probation. See ¶3 of Plaintiff's Complaint attached hereto as Exhibit "A."
6. The Probation Violation Report states that at the Project Point of Light Program on September 4, 2002, Plaintiff admitted that he consumed alcohol and smoked marijuana. Plaintiff again admitted to his conduct to a probation officer on September 18, 2002. See Probation Violation Report attached hereto as Exhibit "B."
7. Plaintiff's actions violated a condition of his then current sentence which ordered that he not possess or consume alcohol while serving a sentence of eleven and one half (11½) months in jail and five (5) years probation. See Probation Violation Report.
8. The Court of Common Pleas of Clearfield County originally scheduled Plaintiff for probation revocation court on October 10, 2002. See Probation Violation Report. However, it continued the hearing until the disposition of new charges against Plaintiff in Cambria County (Corruption of Minors, Selling/Furnishing Alcohol to Minors, and Unlawful Conduct with Minors). See Probation Violation Report.
9. The Complaint alleges that Judge John Reilly of the Court of Common Pleas of Clearfield County, Pennsylvania held Plaintiff's revocation hearing on November 7, 2002. Judge Reilly found that Plaintiff violated his probation and re-sentenced Plaintiff to a minimum term of 18 months and a maximum of 5 years. See ¶4 of Plaintiff's Complaint.
10. Plaintiff's Complaint alleges that he hired Mr. Bell to represent him on or about November 15, 2002 (after he was re-sentenced for violation of probation).
11. On November 18, 2002, Mr. Bell filed a Motion for Reconsideration of Sentence on his behalf. See ¶¶5 and 6 of Plaintiff's Complaint. The Motion filed with the Clearfield County

Prothonotary/Clerk of Courts stated that the imposition of an eighteen (18) month minimum "Western sentence" was excessive in light of the alleged violations. A true and correct copy of the Motion is attached hereto as Exhibit "C."

12. Plaintiff's Complaint alleges that the court held a hearing on Plaintiff's Motion for Reconsideration on December 10, 2002. See ¶7 of Plaintiff's Complaint.
13. Plaintiff's Complaint alleges that on that date the court denied his Motion, but re-sentenced him to a minimum of three (3) months to maximum of five (5) years. See ¶7 of Plaintiff's Complaint.
14. Plaintiff further alleges that at the hearing on his Motion for Reconsideration of Sentence, Judge Reilly stated that if Plaintiff was not released on his minimum that Plaintiff could file a PCRA petition and then the court would re-sentence him to time served and probation. See ¶8 of Plaintiff's Complaint. A true and correct copy of the transcript of proceedings on the Motion for Reconsideration is attached hereto as Exhibit "D."
15. Plaintiff's Complaint alleges that Mr. Bell filed a PCRA petition on his behalf on November 17, 2003. See ¶14 of Plaintiff's Complaint. A true and correct copy of the PCRA Petition is attached hereto as Exhibit "E."
16. Plaintiff's Complaint alleges that the court scheduled a hearing on Plaintiff's PCRA Petition for December 9, 2003. See ¶¶15 and 16 of Plaintiff's Complaint. Plaintiff alleges that the court did not hold the hearing on December 9, 2003, or Mr. Bell did not show up to the hearing. See ¶¶16 and 17 of Plaintiff's Complaint.
17. However, a true and correct copy of the transcript of proceedings on December 9, 2003 on Defendant's Motion for Modification of Sentence/PCRA Petition before Judge John K.

Reilly is attached to Preliminary Objections as Exhibit "F." See transcript of PCRA proceedings.

18. Plaintiff's Complaint alleges that Judge Reilly retired from the bench in December, 2003, before making a decision on Plaintiff's PCRA Petition See ¶17 of Plaintiff's Complaint. See transcript of PCRA proceedings.
19. Plaintiff's Complaint also alleges that Mr. Bell filed a Motion to Withdraw as his counsel on April 30, 2004, upon taking the position of First Assistant District Attorney of Clearfield County. A true and correct copy of Mr. Bell's Petition to Withdraw is attached hereto as Exhibit "G."
20. Plaintiff's Complaint alleges that Judge Frederic Ammerman of the Court of Common Pleas of Clearfield County held a hearing on Plaintiff's PCRA petition on June 8, 2004. Plaintiff further alleges that Judge Ammerman denied his petition that same day. See ¶21 of Plaintiff's Complaint.
21. On or about September 1, 2004, Plaintiff filed the instant Complaint against Mr. Bell. Plaintiff alleges that Mr. Bell was in some way responsible for him not being released from incarceration on his minimum sentence.
22. Plaintiff alleges that Mr. Bell is liable to him for the retainer he paid Mr. Bell plus Twenty Nine Thousand One Hundred Eighty Four Dollars (\$29,184.00) representing the amount of money he allegedly would have earned at a job if he was released on his minimum. See Conclusion of Plaintiff's Complaint.

ARGUMENT

23. In Bailey v. Tucker, 621 A.2d 108 (Pa.1987), the Supreme Court of Pennsylvania clearly stated the elements for bringing a legal malpractice action against an attorney who represented the plaintiff in criminal proceedings:

- (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.
- (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 114-15, emphasis added.

25. The court stated that the Plaintiff must prove by a preponderance of the evidence that he did not commit any unlawful acts with which he was charged as well as any lesser included offense. Id. at 114 FN12.

26. In the instant matter, Plaintiff has not and cannot plead a cause of action for legal malpractice against Mr. Bell for the following reasons:

- Plaintiff cannot plead "but for" Mr. Bell's conduct he would have obtained an acquittal or complete dismissal of the charges against him because Mr. Bell did not represent Plaintiff at the time he was convicted of violating his probation;
- Plaintiff cannot plead that he did not commit any unlawful acts because he admitted that he violated his probation by consuming alcohol and smoking marijuana; and

- Plaintiff does not allege that he was innocent of violating his probation. Plaintiff merely alleges that he should have been released from his incarceration for violating his parole sooner.

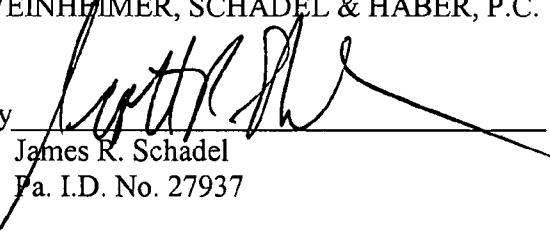
27. Plaintiff's Complaint must be dismissed with prejudice.

WHEREFORE, Defendant, F. Cortez Bell, III, respectfully requests this Honorable court to dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted:

WEINHEIMER, SCHADEL & HABER, P.C.

By


James R. Schadel
Pa. I.D. No. 27937

Scott R. Eberle
Pa. I.D. No. 89044
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,
Plaintiff

v.

F. CORTEZ BELL, III
Defendant

No.

Jury Trial Demanded

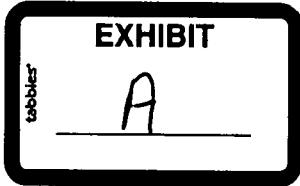
N O T I C E T O D E F E N D

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 ATTORNEY AT ONCE. IF YOU DO NOT HAVE AN ATTORNEY OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, 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.

David S. Meholic
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 5982



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,
Plaintiff

:

:

:

v.

:

:

No.

F. CORTEZ BELL, III,
Defendant

:

:

:

MOTION TO PROCEED IN FORMA PAUPERIS

1. I am the Plaintiff in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.
2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.
3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: David A. Williams FD9344
Address: SCI at Albion
10745 Route 18
Albion, PA 16475-0002
Social Security Number: 160-54-4616

(b) Employment
If you are presently employed, state
Employer: SCI Albion Dietary Department
Address: 10745 Route 18
Albion, PA 16475-0002
Salary or wages per month: \$0.29/hr. (\$40.60/month)
Type of Work: Institutional Dietary Department

(c) Other income within the past twelve months
Business or profession: No
Other self-employment: No
Interest: No
Dividends: No
Pension and annuities: No
Social Security benefits: No
Disability benefits: No
Unemployment compensation and supplemental benefits: No
Workman's compensation: No
Public assistance: No
Other: No

(d) Other contributions to household support
(Wife) (Husband) Name: None
If Wife/Husband is employed, state
Employer: None
Salary or wages per month: None
Type of work: None
Contributions from children: No
Contributions from parents: No
Other contributions: No

(e) Property owned
Cash: No
Checking Account: No
Savings Account: No
Certificate of Deposit: No
Real Estate (including home): No
Motor vechicle: Make Year
Cost Amount Owed \$
Stocks, bonds: No
Other: No

(f) Debts and obligations
Mortgage: No
Rent: No
Loans: No
Other: Courts costs and fines, Clearfield County
No. 1999-0951-CR (\$8,292.81)

(g) Persons dependent upon you for support
(Wife)(Husband) Name: No
Children, if any: No
Other persons: No
Name:
Relationship:

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the cost incurred herein.
5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Garrett A. Williams

David A. Williams
FD-9344 D/A 51
SCI at Albion
10745 Route 18
Albion, PA 16475-0002

Date: August 13, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,
Plaintiff

:
:
:
v. : No.
:
:

F. CORTEZ BELL, III
Defendant

C O M P L A I N T

FACTUAL BACKGROUND

1. Defendant, F. Cortez Bell, III, is a licensed professional (Attorney at Law) with offices in Clearfield County Pennsylvania. Plaintiff is asserting a professional liability claim against this defendant under Pa.R.Civ.P. 1042.1.
2. Plaintiff, David A. Williams, is an inmate currently incarcerated at the State Correctional Institute at Albion, 10745 Route 18, Albion, PA 16475-0002.
3. On September 9, 2002, the Plaintiff was arrested. Plaintiff was held until a Parole/Probation Revocation Hearing could be done.
4. On November 07, 2002, the Clearfield County Court of Common Pleas, Judge John K. Reilly presiding, held a Parole/Probation Revocation Hearing regarding Plaintiff. Having found that Plaintiff was in violation of his parole resentenced Plaintiff to a minimum term of 18 months and a maximum of 5 years.
5. On or about November 15, 2002, Plaintiff along with his parents, hired Attorney Bell to represent him.
6. On November 18, 2002, Defendant filed a Motion for Reconsideration of Sentence on behalf of Plaintiff.

7. On December 10, 2002, the Clearfield Court of Common Pleas denied said motion but did resentence Plaintiff to a minimum term of 3 months to maximum of 5 years.

8. At this hearing the presiding judge, John K. Reilly Jr., stated that if Plaintiff was not released on his minimum, March 26, 2003, that the Plaintiff could file a PCRA to give the sentencing court jurisdiction and then the court would sentence Plaintiff to time served immediate release with probation.

9. Attorney Bell conveyed this to Plaintiff and his parents.

10. In March 2003, the Plaintiff informed Attorney Bell by letter that Plaintiff's minimum had expired. A copy of the Department of Correction's status sheet was sent as reference. Plaintiff was not yet seen by the Parole Board.

11. On April 25, 2003, Plaintiff was reviewed for parole by the Pennsylvania Board of Probation and Parole (PBPP). The PBPP issued a 16 month hit and a new review date of September 26, 2004.

12. Plaintiff informed Attorney Bell of the PBPP decision by letter.

13. On November 13, 2003, seven months later Attorney Bell assured Plaintiff by letter that he would file a Post Conviction Relief Motion.

14. On November 17, 2003, Defendant filed a motion for Modification of Sentence/PCRA Petition in the Court of Common Pleas of Clearfield County.

15. December 03, 2003, Defendant's secretary sent a letter to Plaintiff informing him of scheduled hearing on his motion. This hearing was to be held on Tuesday, December 09, 2003, at 2:00 p.m. in Courtroom #1.

16. No hearing was held, Attorney Bell failed to show or have Plaintiff present at the hearing. No postponement date was given.

17. On or around the end of December 2003, Judge John K. Reilly Jr. retired. This is the sentencing judge who promised Plaintiff that if he was not released by the PBPP that he would resentence him on a PCRA petition. Judge Reilly was never given the chance because Defendant never showed for the hearing that was scheduled on December 09, 2003.

18. On April 30, 2004, Defendant filed a Motion to Withdraw as counsel. Defendant is currently employed at this time by the Clearfield County District Attorney's Office. Thus causing a conflict of interest with Plaintiff. Motion was granted on May 03, 2004. Plaintiff did not know this until June when he received a letter from the Defendant. The Defendant did not even inform the Plaintiff that he was trying to withdraw as his counsel.

19. Defendant did not inform the Plaintiff that he was hired by the District Attorney's Office thus giving him time to procure other counsel. Plaintiff was under the impression that Defendant still represented him, he was Plaintiff's Attorney of Record according to the Clearfield County docketing statement Plaintiff received.

20. On June 02, 2004, Defendant wrote Plaintiff to inform him of a hearing on Tuesday, June 08, 2004, at 2:00 p.m. This hearing was concerning the original Motion for Modification of Sentence/PCRA Petition Defendant filed on November 17, 2003, that was scheduled to be heard on December 09, 2003.

21. On June 08, 2004, the Clearfield County Court of Common Pleas, Judge Fredric J. Ammerman presiding, denied Plaintiff's Motion for Modification of Sentence/PCRA Petition citing no legal theory or conclusions of law.

22. On June 23, 2004, Plaintiff wrote to Defendant in the hopes that he could collect his legal file off of Defendant so he could perfect an appeal to the Superior Court on his Motion for Modification of Sentence/PCRA that was

denied. Defendant has not or ever returned Plaintiff's phone calls or answered any of Plaintiff's letters.

23. Plaintiff does not have a copy of the motion filed by defendant, and is at a loss to what issues he could raise to the Superior Court. Defendant did not discuss these issues with Plaintiff as he should of according to the Rules of Professional Conduct (Rule 1.4 Communication).

R E L I E F S O U G H T

1. Plaintiff is asking for a trial by jury under Pa.R.Civ.P. 1007.1.
2. Plaintiff is asking for the return of the money paid to the Defendant for the representation he promised. "You will be released on your minimum."
3. Plaintiff is asking for the Defendant to reimburse him for the monies lost if he were released on his minimum. In the amount of \$29,184. (\$8.00/hr. 6 days a week for 76 weeks.)

C O N C L U S I O N

Defendant made a promise to this Plaintiff that he would be released on his minimum date of March 26, 2003. Instead of fulfilling this promise the Defendant chose to abandon this Plaintiff and take a position in the District Attorney's Office. The Defendant could of notified the Plaintiff that he was being considered for this position, instead he chose to hide it until it was to late for Plaintiff to procure other counsel. Defendant could of also asked one of his partner's at the time to handle Plaintiff's case. Defendant was a partner in the law firm of Bell, Silberblatt & Wood. He also had a relative working there, Mr. Richard A. Bell.

From March 2003 until November 2003 Plaintiff sent this Defendant numerous letters trying to find out why he was being held past his minimum when Defendant made a promise to him. Defendant filed a Motion that Plaintiff never received a copy of or told what issues were raised.

Defendant failed to show for a motion ~~hearing~~ on December 09, 2003, being held before Judge John K. Reilly, Jr., thus assuring Plaintiff would be given Post Conviction Relief. Judge Reilly knew the circumstances surrounding Plaintiff's conviction and incarceration and would of resentenced Plaintiff.

Defendant waited until months later, ignoring letters from Plaintiff and his parents, after Judge Reilly retired, to notify him that:

- a. Plaintiff was assigned a new Judge that was not familiar with the case.
- b. Defendant was working for the District Attorney's Office.
- c. Defendant filed a motion to withdraw as Plaintiff's counsel.

Defendant took money from this Plaintiff based on lies and a false promise that he knew he was not going to keep. He deprived this Plaintiff of monies that would of been earned if that promise was kept.

Defendant violated not only the Rules of Professional Conduct set by our courts, but also the Rules of Ethical Conduct followed by those who have respect for their profession.

WHEREFORE, this Plaintiff prays that this Honorable Court grant Plaintiff the relief sought.

Respectfully submitted,
David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Date: **August 13, 2004**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	
v.	:	No.
	:	
	:	
F. CORTEZ BELL, III	:	
Defendant	:	

V E R I F I C A T I O N

I state that the averments made in the foregoing Civil Action are true and correct upon my personal knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. §4904 (relating to the unsworn falsification to authorities).

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Date: **August 13, 2004**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	
v.	:	No.
	:	
	:	
F. CORTEZ BELL, III	:	
Defendant	:	

C E R T I F I C A T E O F S E R V I C E

I hereby certify that I am this day serving the foregoing Civil Action, upon the persons and in the manner indicated below which service satisfies the requirement of Pa.R.Civ.P. 400.

Service by Sheriff's Department of Clearfield County:

F. Cortez Bell, III
Attorney at Law
318 East Locust Street
P.O. Box 1088
Clearfield, PA 16830

One Copy

David A. Williams
David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Date: **August 13, 2004**

CERTIFIED MAIL



Name David A. Williams
Number FD-9344
Unit/Side S/A 17
10745, Route 18
Albion, PA 16475-0002

F. CORTEZ BELL, III
ATTORNEY AT LAW
318 EAST LOCUST STREET
P.O. BOX 1088
CLEARFIELD, PA 16830

PA DIRECT
CORRECTION

16830+50BB 03

8/24/44

PLACE STICKER AT TOP OF ENVELOPE
TO THE RIGHT OF RETURN ADDRESS.
FOLD AT DOTTED LINE

2036

9.

VIOLATION REPORT

DATE: November 4, 2002

NAME: David A. Williams

ARD:

PROBATION: X

PAROLE:

FILE NO.: 3178

TYPE OF HEARING:

DETENTION:

REVOCATION: X

ORIGINAL CHARGE (S): Statutory Rape (F2)

SENTENCE: Five (5) Years Probation Under Supervision of Pennsylvania Board of Probation/Parole, upon which he does Eleven and one half (11 1/2) Months in Clearfield County Jail. No possession and/or use of alcohol.

INDICTMENT NUMBER: 99-951-CRA

SENTENCING JUDGE: HONORABLE JOHN K. REILLY, JR., President Judge

EFFECTIVE DATE OF SENTENCE: 4-17-01

MAXIMUM EXPIRES: 4-17-06

VIOLATIONS SPECIFIED:

- 1.) It is alleged Probationer violated his Probation through the use of alcohol.
- 2.) It is alleged Probationer violated his Probation through the use of THC.
- 3.) It is alleged Probationer violated his Probation by failing to pay costs of Project Point of Light Program.

SUPPORTING EVIDENCE:

Probationer is under the Courtesy Supervision of the Pennsylvania Board of Probation/Parole.

On 9-4-02, Probationer was given a polygraph exam by Jim Young for the Project Point of Light Program. At this time Probationer admitted to consuming alcohol and also smoking marijuana.

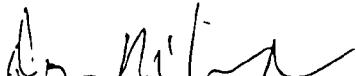
As a result, on 9-9-02, Probationer was incarcerated by the Parole Agent, James Yaworski.

On 9-18-02, this Officer spoke with Probationer at the Clearfield County Jail. Probationer admitted to this offense to smoking marijuana and drinking alcohol.

Also, Probationer has a balance of \$669.00 at Project Point of Light. His last payment was made on 7-30-02 for \$25.00.

On 10-10-02, Probationer was scheduled for Revocation Court and said case was continued until disposition of new charges at District Justice Zungali's Office.

On 10-15-02, Probationer waived his Preliminary Hearing on Charges of Corruption of Minors, Selling /Furnishing Alcohol to Minors, and Unlawful Contact with Minors.



DIRECTOR: DONALD J. MCCLUSICK



SUPERVISOR, ADULT PROBATION: LISA REDDEN

EXHIBIT

B

COMMONWEALTH VS. DAVID A. WILLIAMS

OTN #: H 632977-2

DOCKET #: 316-02

PROPOSAL FOR PLEA AGREEMENT

Defendant has been charged with the following crime(s):

Corruption of Minors, Selling or Furnishing L
To Minors, Unlawful Contact w/ Minors

Defendant shall waive all of the above charge(s) to court:

ALL

under the following conditions:

NO SPECIAL CONDITIONS

Defendant shall plead to the following charge(s) waived to court, or: UNLAWFUL CONTACT OR COMMUNICATION W/ A
MINOR PROS ALL REMAINING CHARGES. AGREED SENTENCE THAT DEFENDANT WILL SERVE A PERIOD OF INCARCERATION
WHICH RUNS CONCURRENT WITH WHATEVER PERIOD OF INCARCERATION IS ORDERED IN CAMBRIA COUNTY ON A
IN THE EVENT THAT THE PROPOSED PLEA AGREEMENT IS NOT EFFECTUATED VIOLATION; AND
(FOR A REASON OTHER THAN THE DEFENDANT'S FAILURE TO ENTER THE PLEA)
THE COMMONWEALTH AGREES TO PERMIT A TIMELY REMAND TO THE DISTRICT JUSTICE. PAROLE IN
CAMBRIA TUE

Victim (PLEASE SIGN & PRINT ABOVE)

Date

10/15/02

Date

10/15/02

Date

10/15/02

Date

10/15/02

Date

Prosecutor

Mr. Charles Smetek

Assistant District Attorney

David A. Williams

Defendant

Kevin Tulowitzki

Attorney for Defendant

FOR D.A. USE ONLY

Victim Address: _____

Telephone #: _____

AGREED RESTITUTION: _____

Scheduled Court Arraignment: _____

DATE OF PROPOSED PLEA

9:00 A.M.

(CIRCLE DAY)

TUESDAY OR THURSDAY
ON

DECEMBER 10, 2002

Defendant agrees to present himself/herself for the guilty plea on the above date at 9:00 a.m. in Ct. Rm. #1, Cambria County Courthouse, Ebensburg, PA, or a BENCH WARRANT will be issued for his/her arrest

IMPORTANT

THIS AGREEMENT IS SUBJECT TO THE FINAL APPROVAL OF DAVID J. TULOWITZKI, DISTRICT ATTORNEY, AND MAY BE AFFECTED BY CRIMINAL RECORD OF DEFENDANT



Commonwealth of Pennsylvania
County of Cambria

To the Keeper of the Common Jail of the County of Clearfield

Whereas one David Allan Williams dob 11/15/1964 is now in your custody under certain legal proceedings.

I therefore command and require you, the said keeper, to detain and keep the body of the said David Allan Williams that he may not from henceforth depart until he shall have been brought before me the undersigned, one of the District Justice's and state, to answer the Commonwealth of Pennsylvania, of a certain charge of Corr. of minors; selling to minors; on oath of Pa., State Police unlawful contact or communication with minor And for your so doing and the keeping and detaining of the said

David Allan Williams

this shall be your sufficient warrant.

Witness my hand and official seal, this 30th day of Sept. 2004

District Justice ALDERMAN, JUDGE OF THE PEACE
My Commission Expires 11 Monday of January, 2004

October 8, 2002

Please lift the above detainer. The defendant has responded.

Michael Zungali
District Court 17-105

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

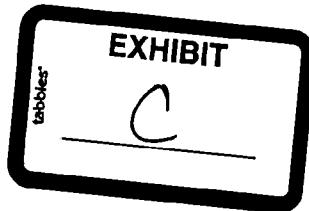
COMMONWEALTH OF PENNSYLVANIA, : No. 99-951-CRA
Plaintiff :
vs. : Type of Case: Criminal
DAVID A. WILLIAMS, :
Defendant : Type of Pleading:
 : Motion for Reconsideration
 : of Revocation/Sentence
 : Filed on Behalf of:
 : David A. Williams,
 : Defendant
 :
 : Counsel of Record for this Party:
 : F. Cortez Bell, III, Esquire
 : I.D. #30183
 :
 : Bell, Silberblatt & Wood
 : 313 East Locust Street
 : P.O. Box 670
 : Clearfield, PA 16830
 : Telephone: (814) 765-5537
 :
 :

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

NOV 18 2002

Attest.

John A. R.
Prothonotary/
Clerk of Courts



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

COMMONWEALTH OF PENNSYLVANIA, :
Plaintiff :
:
Vs. : No. 99-951-CPA
:
DAVID A. WILLIAMS, :
Defendant :

MOTION FOR RECONSIDERATION
OF REVOCATION/SENTENCE

NOW, comes the Defendant, DAVID A. WILLIAMS, by and through his attorney, F. Cortez Bell, III, Esquire, who, for the Defendant's Motion for Reconsideration of Revocation/Sentence in the above captioned matter and respectfully sets forth and avers as follows:

1. That the Defendant, David A. Williams, was before your Honorable Court on Thursday, November 7, 2002 for purpose of Revocation proceedings to the above captioned term and number. At that term and number, the Defendant had been sentenced to a five (5) year probationary period under the supervision of the Pennsylvania Board of Probation and Parole upon condition that he serve a period of incarceration in the Clearfield County Jail of 11 $\frac{1}{2}$ months. There were further conditions that he not possess or use alcoholic beverages.

2. That the Defendant appeared before your Honorable Court for purpose of revocation at which point in time the Court revoked the five (5) year probationary sentence and imposed a sentence to the Western Diagnostic and Classification Center at Pittsburgh for the minimum of which was eighteen (18) months and the maximum of which was five (5) years.

3. That at the time of the revocation proceeding your Honorable Court directed that the Adult Probation Office make a determination in regard to the Defendant's employment and advise the Court as to whether he could remain local by paying the costs as a result of the Work Release Program.

4. That the Defendant was incarcerated on this violation commencing on September 9, 2002 and as a result thereof had approximately fifty-eight (58) days served as a result of this violation.

5. That this was the Defendant's first violation of the probationary supervision.

6. That the Defendant at the time of his incarceration on September 9, 2002 was current in his payment on his fines and costs and had previously had worked out a payment agreement with the Project Point of Light Program such that his payments to that Program were also current at the time of his incarceration.

7. That at the time of his incarceration the Defendant was employed on a full-time basis at a recycling operation operated by his father as well as additionally hauled house coal on an "as needed" basis.

8. That the admissions listed within the violations specified concerning the use of alcohol and THC only arose as a result of the Defendant seeking the Court ordered treatment that was required of him such that the Defendant was being truthful and honest with the operators of the Program in regard to his problem and now finds himself being violated as a result of his honesty with the treatment Program

required by the Court.

9. That the Defendant would aver that the imposition of an eighteen (18) month minimum Western sentence is excessive in light of the alleged violations in this matter and the attempts that the Defendant has made in order to seek the treatment desired by the Court as well as maintain his employment and maintain his payment on his fines, costs and Project Point of Light Program.

WHEREFORE, it is respectfully requested that your Honorable Court reconsider the Revocation of the Defendant in the above captioned matter as well as reconsider the sentence imposed such that the Defendant could be sentenced to a local period of incarceration consistent with the nature of his violations as well as such that the Defendant might return to his employment and maintain his payments on fines, costs and the Project Point of Light Program.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III, Esquire
F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, F. Cortez Bell, III, Esquire, verify that the statements made within the foregoing Motion for Reconsideration of Revocation/Sentence are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 11-18-02

F. Cortez Bell III
F. Cortez Bell, III, Esquire

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

COMMONWEALTH OF PENNSYLVANIA, :
Plaintiff :
:
Vs. : No. 99-951-CRA
:
DAVID A. WILLIAMS, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Motion for Reconsideration of Revocation/Sentence upon the following person by hand delivery to:

Paul E. Cherry, Esquire
District Attorney of Clearfield County
Clearfield County Courthouse
Clearfield, PA 16830

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III
F. Cortez Bell, III
Attorney for Defendant

DATED: November 18, 2002

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

v. : NO. 99-951-CRA
DAVID ALLEN WILLIAMS :

TRANSCRIPT OF PROCEEDINGS

DEFENDANT'S MOTION FOR RECONSIDERATION
OF REVOCATION/SENTENCE

HELD BEFORE THE HONORABLE
JOHN K. REILLY, JR., PRESIDENT JUDGE
on Tuesday, December 10, 2002

A P P E A R A N C E S

FOR THE COMMONWEALTH:

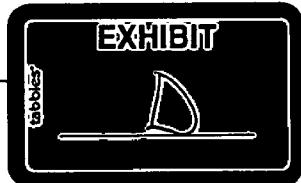
WILLIAM A. SHAW, JR., ESQUIRE

FOR THE DEFENDANT:

F. CORTEZ BELL III, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter



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

2 ATTORNEY BELL: This is Reconsideration of
3 Revocation Sentence. He was before the Court on a probationary
4 period of five years. The violation specified in the violation
5 report was the use of alcohol, use of THC and failure to pay
6 costs for the Project Point of Light Program.

7 We appeared before you and you revoked the
8 probationary sentence and sentenced him to a period of
9 incarceration of 18 months to five years at Western.

10 I note at the time that the Court did that, that
11 the alcohol violation and the THC violation were admitted at
12 the Project Point of Light Program. And I argued to the Court,
13 Well, he's there to get help. He's going to admit that he's
14 got a problem, and now we're penalizing him because he was
15 honest with them.

16 Point of Light cost, he had just reached a payment
17 agreement with them in order to set him up on a payment plan.
18 The only payment he's missed thus far is the payment since he's
19 been incarcerated. I believe he was current on his fines and
20 costs.

21 He did have employment available through his
22 father. It's a recycling sort of operation. And so we're
23 asking the Court to reconsider. It's a first probationary
24 violation that he had.

25 | THE COURT: Do we have his file here?

1 ATTORNEY BELL: First violation of this probation,
2 I should say.

3 THE COURT: Okay. Does he get credit for that 11
4 and a half months, Don?

5 PROBATION DIRECTOR MCCLUSICK: (Nods in the
6 affirmative)

7 THE COURT: So actually he's only going to be
8 serving six and a half months; right?

9 PROBATION DIRECTOR MCCLUSICK: Yes. He gets credit
10 what he already served on that original.

11 ATTORNEY BELL: Well, that certainly helps out,
12 Your Honor. I wasn't aware of that, but it helps us.

13 THE COURT: I'm going to deny the motion. But at
14 the end of that time, if he hasn't been released, you let me
15 know and we'll make the other arrangements.

16 ATTORNEY BELL: That you.

17 -- END OF PROCEEDINGS --

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

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

Date: September 3, 2004

Debbie Reed

Cathy Warrick Provost, RMR

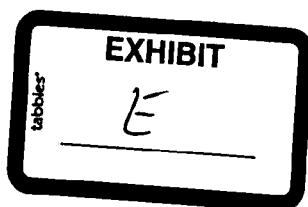
Official Court Reporter

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

COMMONWEALTH OF PENNSYLVANIA, : No. 99-951-CRA
Plaintiff :
vs. : Type of Case: Criminal
DAVID ALLEN WILLIAMS, :
Defendant : Type of Pleading:
: Motion for Modification of
: Sentence/PCRA Petition
: Filed on Behalf of:
: David Allen Williams, Defendant
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: Telephone: (814)765-5537
:

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

NOV 17 2003



Attest.

William L. Bell
Prothonotary/
Clerk of Courts

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

COMMONWEALTH OF PENNSYLVANIA, :
Plaintiff :
: vs. : No. 99-951-CRA
: :
DAVID ALLEN WILLIAMS, :
Defendant :
:

MOTION FOR MODIFICATION OF
SENTENCE/PCRA PETITION

NOW, comes the Defendant, David Allen Williams, by and through his attorney, F. Cortez Bell, III, Esquire, who for the Defendant's Motion for Modification of Sentence/PCRA Petition respectfully sets forth and avers as follows:

1. That the Defendant, David Allen Williams, was before your Honorable Court for purpose of a Revocation proceeding on Thursday, November 7, 2002 for purpose of a violation of probation to the above captioned term and number. At that term and number, the Defendant had been sentenced to a five (5) year probationary period under the supervision of the Pennsylvania Board of Probation and Parole upon condition that he serve a period of incarceration in the Clearfield County Jail of 11½ months. There were further conditions that he not possess or use alcoholic beverages.

2. That on the date of said Revocation proceeding, the Defendant appeared before your Honorable Court for purpose of revocation at which point in time the Court revoked the five (5) year probationary sentence and imposed a sentence to the Western Diagnostic and Classification Center at Pittsburgh for the minimum of which was eighteen (18) months and the maximum of which was five (5) years.

3. That the Defendant filed a Motion for Reconsideration of Revocation Sentence on November 18, 2002 with said Motion having been heard by the Court at Motions Court on December 10, 2002 at which time the Motion for Reconsideration of Revocation Sentence was denied.

4. That the basis for said Motion for Reconsideration of Sentence dealt with the fact that the Defendant was, at the time of the Revocation, employed on a full-time basis at a recycling operation operated by his father as well as additionally hauled house coal on an "as needed" basis.

5. That at the time of the Revocation proceeding, your Honorable Court directed that the Adult Probation Office make a determination in regard to the Defendant's employment and advise the Court as to whether he could remain local by paying the costs as a result of the Work Release Program.

6. That the admissions listed within the violations specified concerning the use of alcohol and THC only arose as a result of the Defendant seeking the Court ordered treatment that was required of him such that the Defendant was being truthful and honest with the operators of the Project Point of Light Program in regard to his problem and now finds himself being violated as a result of his honest with the treatment Program which was required by the Court.

7. That the Defendant was incarcerated on this violation commencing on September 9, 2002 and as a result thereof had approximately fifty-eight (58) days served as a result of this violation.

8. That the Defendant at the time of his incarceration on September 9, 2002

was current in his payment on his fines and costs and had previously worked out a payment agreement with the Project Point of Light Program such that his payments to that Program were also current at the time of his incarceration.

9. That this was the Defendant's first violation of the probationary supervision.

10. That Defendant's minimum sentence, if given credit for all time served, was reached on approximately March 26, 2003. As of the writing of this Motion, Defendant is still incarcerated at the SCI - Albion and has not been released on parole.

11. That the Defendant's parents, George and Donna Williams, are in very poor health and require assistance in their daily activities.

12. That as a result of all of the above, it was noted in the Motion for Reconsideration of Sentence to the Court that the health concerns of the Defendant's parents have placed severe strain on the family above and beyond which would normally be expected.

13. That should a basis be necessary for the filing of the Post Conviction Relief Act Petition, the Defendant would assert that at the time of the original entry of his plea of guilt he did not fully appreciate or understand the nature of his plea of guilt nor did he understand the terms and circumstances of his probationary sentence with a condition thereof being incarceration nor did he understand that upon reaching him minimum sentence he would have to await appropriate action by the State Parole Board authorities.

14. That this Motion is being filed consistent with the understanding of counsel at the time of the denial of the Motion for Reconsideration of Sentence and the

Court's indication that if the Defendant was not paroled on his minimum date that counsel should file the instant Motion for consideration by the Court such that the Court could modify sentence or furlough the Defendant until such point in time as the State Parole Board accepts supervision.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Defendant's Motion for Modification of Sentence and/or his Post Conviction Relief Act Petition and the Defendant would specifically request relief in the form of a modification of his sentence.

Respectfully submitted,
BELL, SILBERBLATT & WOOD

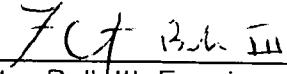
By:

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, F. Cortez Bell, III, Esquire, verify that the statements made within the foregoing Motion For Modification of Sentence/PCRA Petition are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: **November 17, 2003**


F. Cortez Bell, III, Esquire

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

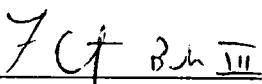
COMMONWEALTH OF PENNSYLVANIA, :
Plaintiff :
: :
vs. : No. 99-951-CRA
: :
DAVID ALLEN WILLIAMS, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of a Motion For Modification
Of Sentence/PCRA Petition upon the following person by personal delivery to:

Paul E. Cherry, Esquire
District Attorney of Clearfield County
231 East Market Street
Clearfield, PA 16830

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,


F. Cortez Bell, III

Attorney for Defendant

DATED: November 17, 2003

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

COPY

COMMONWEALTH OF PENNSYLVANIA :

V. : NO. 99-951-CRA
DAVID ALLEN WILLIAMS :

TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S MOTION FOR MODIFICATION
OF SENTENCE/PCRA PETITION

HELD BEFORE THE HONORABLE
JOHN K. REILLY, JR., PRESIDENT JUDGE
on Tuesday, December 9, 2003

A P P E A R A N C E S

FOR THE COMMONWEALTH:

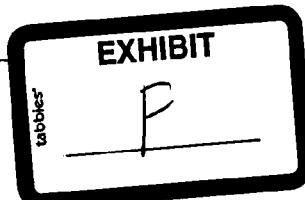
WILLIAM A. SHAW, JR., ESQUIRE

FOR THE DEFENDANT:

F. CORTEZ BELL III, ESQUIRE

Reported by: Cathy Warrick Provost, RMR

Official Court Reporter



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

2 ATTORNEY SHAW: Next on the list is No. 5, David
3 Williams.4 ATTORNEY BELL: Your Honor, this is also a motion I
5 filed on behalf of Mr. Williams. He was originally sentenced
6 by the Court to a five-year probationary period on the
7 condition that he does 11 and a half months' incarceration at
8 the county jail.9 He did complete that. Was out on his probationary
10 supervision. We did have a revocation proceeding before the
11 Court, and that occurred, I believe, on November 7th of 2002.
12 At that time, the Court gave him a sentence of 18 months to 5
13 years at Western. I filed a Motion for Reconsideration, which
14 the Court denied.15 The basis for the violations were that he admitted
16 to use of alcohol, that he admitted to use of marijuana
17 containing THC. He did all those as part of the Project Point
18 of Light, which he was Court ordered to do. And I argued to
19 the Court at that time --20 THE COURT: You mean they ordered him to drink and
21 smoke?22 ATTORNEY BELL: No. You ordered him to go to them
23 for help and, as part of the help, they asked him, What
24 substances have you used and are you using, and he voluntarily
25 admitted in order to get the help.

1 The Court, at the time you denied the motion,
2 indicated that if he was not paroled on his minimum, giving him
3 credit for all the time he had served on this sentence, you
4 would consider bringing him back and releasing him. He's now
5 nine months past that minimum sentence.

6 THE COURT: What was the charge or charges?

7 ATTORNEY BELL: The charge was --

8 ATTORNEY SHAW: Indecent Assault, M1; Indecent
9 Assault, M2.

10 ATTORNEY BELL: And now he's served his 18 months
11 total. Now he's nine months beyond that.

12 THE COURT: He served 27 months on the revocation?

13 ATTORNEY BELL: On the revocation, he served,
14 giving him credit, about 12 months. He was revoked November
15 the 7th.

16 THE COURT: How far is the max?

17 ATTORNEY BELL: His maximum sentence is up to five
18 years, so he served 20-some months of a five-year sentence.
19 He's got a lengthy period of time.

20 THE COURT: Mr. Shaw.

21 ATTORNEY SHAW: I think that the issue was argued
22 back at the last Motions Court when you denied it. I think it
23 was, in essence, the same argument to modify the sentence.

24 But I would again encourage the Court to give
25 deference to the State Board of Probation and Parole. It's a

1 sex offense. I'm sure that he's in there receiving treatment.
2 What those folks, who are on scene with him, believe is the
3 appropriate treatment, if they don't feel he's ripe to be
4 paroled, then I think deference should be given to those folks.
5 That's their function.

6 THE COURT: Has he come up for parole?

7 ATTORNEY BELL: Yes, Your Honor. I believe he came
8 up for parole on his minimum sentence in March and was denied.

9 THE COURT: When's it rescheduled?

10 ATTORNEY BELL: I have no idea.

11 THE COURT: Find out when he's rescheduled for
12 consideration, or reconsideration for parole, will you, and
13 look at it? I'm looking at Don. Let me know.

14 ATTORNEY SHAW: Thank you, Your Honor.

15 -- END OF PROCEEDINGS --

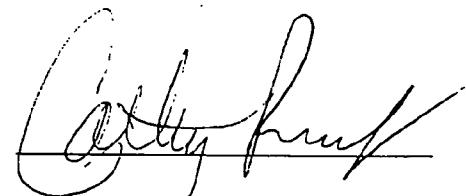
16

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

18 I hereby certify that the proceedings and evidence
19 are contained fully and accurately in the notes taken by me
20 upon the hearing of the within matter, and that this transcript
21 is a correct copy of the same.

22

23 Date: September 3, 2004



24 Cathy Warrick Provost, RMR

25

Official Court Reporter

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

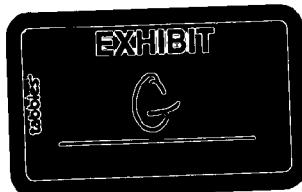
COMMONWEALTH OF PENNSYLVANIA, : No. 99-951-CRA
Plaintiff :
vs. : Type of Case: Criminal
DAVID ALLEN WILLIAMS, :
Defendant : Type of Pleading:
: Petition for Withdrawal
: of Counsel
: Filed on Behalf of:
: David Allen Williams,
: Defendant
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:

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

APR 3 0 2004

Attest.

John C. Bell
Prothonotary/
Clerk of Courts



Diagnostic and Classification Center at Pittsburgh for the minimum of which was eighteen (18) months and the maximum of which was five (5) years.

3. That the Defendant filed a Motion for Reconsideration of Revocation Sentence on November 18, 2002 with said Motion having been heard by the Court at Motions Court on December 10, 2002 at which time the Motion for Reconsideration of Revocation Sentence was denied.

4. That on November 17, 2003, your Petitioner filed a Motion for Modification of Sentence/PCRA Petition scheduling the same for Motions Court on December 3, 2003 at which time said Motion for Modification was not decided as the Court needed additional information regarding the Defendant's parole status.

5. That counsel for Defendant wrote the Court by letter dated December 31, 2003 inquiring about the status, however, to the date of this Petition no determination has been made.

6. That counsel for the Defendant has recently been sworn in and employed as the First Assistant District Attorney of Clearfield County which is a full-time position.

7. That an irreconcilable conflict exists such that counsel for the Defendant can not continue with his representation before the Court of Common Pleas of Clearfield County while at the same time representing the Commonwealth of Pennsylvania as the First Assistant District Attorney in Clearfield County.

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

COMMONWEALTH OF PENNSYLVANIA, :
Plaintiff :
:
vs. : No. 99-951-CRA
:
DAVID ALLEN WILLIAMS, :
Defendant :
:

PETITION FOR WITHDRAWAL OF COUNSEL

NOW, comes your Petitioner, F. Cortez Bell, III, Esquire, counsel for the Defendant in the above captioned matter who sets forth counsel's Petition to Withdraw as Counsel and respectfully avers as follows:

1. That the Defendant, David Allen Williams, was before your Honorable Court for purpose of a Revocation proceeding on Thursday, November 7, 2002 for purpose of a violation of probation to the above captioned term and number. At that term and number, the Defendant had been sentenced to a five (5) year probationary period under the supervision of the Pennsylvania Board of Probation and Parole upon condition that he serve a period of incarceration in the Clearfield County Jail of 11½ months. There were further conditions that he not possess or use alcoholic beverages.

2. That on the date of said Revocation proceeding, the Defendant appeared before your Honorable Court for purpose of revocation at which point in time the Court revoked the five (5) year probationary sentence and imposed a sentence to the Western

8. That disciplinary/ethics counsel has advised counsel for the Defendant that he should petition to withdraw from all cases in every County in which he currently represents criminal defendants.

WHEREFORE, your Petitioner would respectfully request that your Honorable Court grant his Petition to Withdraw as Counsel for the Defendant in the above captioned matter.

Respectfully submitted,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

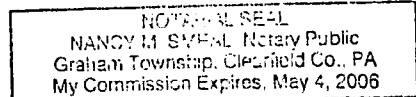
COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CLEARFIELD :
:

Before me, the undersigned officer, personally appeared F. Cortez Bell, III, Esquire, who being duly sworn according to law, deposes and says that the facts set forth in the foregoing Petition for Withdrawal of Counsel are true and correct to the best of his knowledge, information and belief.

F C Bell III
F. Cortez Bell, III, Esquire

SWORN and SUBSCRIBED before me
this 30th day of April, 2004.

Nancy M. Smeal



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

COMMONWEALTH OF PENNSYLVANIA, :
Plaintiff :
:
vs. : No. 99-951-CRA
:
DAVID ALLEN WILLIAMS, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Petition for Withdrawal of Counsel upon the following person by mailing such copy first class mail, postage prepaid to:

William A. Shaw, Jr., Esquire
District Attorney of Clearfield County
Clearfield County Courthouse
203 East Market Street
Clearfield, PA 16830

F.C.B. III

F. Cortez Bell, III, Esquire
Attorney for Plaintiff

Date: April 30, 2004

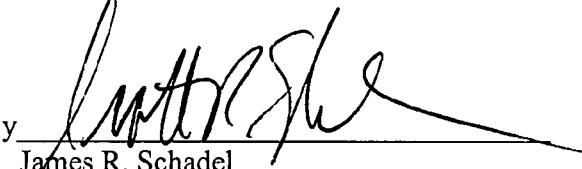
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within has been served upon the **PRELIMINARY OBJECTIONS** following by First Class United States Mail, postage pre-paid, or hand delivery on November 23, 2004.

David A. Williams
SCI at Albion
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002
Plaintiff, Pro Se

Respectfully submitted,

WEINHEIMER, SCHADEL & HABER, P.C.

By 
James R. Schadel
Scott R. Eberle
602 Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS) CIVIL DIVISION
)
Plaintiff,) No. 2004-1367 - CD
)
v.)
)
F. CORTEZ BELL, III)
)
Defendant.)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2004, it is hereby ORDERED, ADJUDGED and DECREED that Defendant F. Cortez Bell, III's Preliminary Objections to Plaintiff's Complaint are GRANTED. It is further ORDERED that Plaintiff's Complaint is dismissed with prejudice.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS

Plaintiff,

v.

F. CORTEZ BELL, III

Defendant.

CIVIL DIVISION

No. 2004-1367 - CD

**DEFENDANT'S RESPONSE TO
MOTION FOR DEFAULT JUDGMENT
AND MOTION FOR SANCTIONS**

Filed on Behalf of Defendant:
F. Cortez Bell, III

Counsel of Record for this Party:

JAMES R. SCHADEL, ESQUIRE
Pa. I.D. No. 27937

SCOTT R. EBERLE, ESQUIRE
Pa. I.D. No. 89044

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

FILED

NOV 29 2004

11/29/04
William A. Shaw
Prothonotary
no 9/

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS) CIVIL DIVISION
)
Plaintiff,) No. 2004-1367 - CD
)
v.)
)
F. CORTEZ BELL, III)
)
Defendant.)

DEFENDANT'S RESPONSE TO MOTION FOR DEFAULT JUDGMENT
AND MOTION FOR SANCTIONS

Defendant F. Cortez Bell, III, by and through counsel, James R. Schadel, and Weinheimer, Schadel & Haber, P.C., sets forth the following Defendant's Response to Motion for Default Judgment and Motion for Sanctions in support thereof states:

1. Admitted as appearing on the record.
2. Denied as stated. Technically the plaintiff filed the same and the court assigned a docket number.
3. It is admitted that defendant was served.
4. It is admitted that counsel entered an appearance as appears on the docket.
5. It is admitted that plaintiff filed a "Certificate of Merit", however, defendant questions whether plaintiff has, as is required by Rule 1042.1, a written statement from an appropriate licensed professional, see letter of October 20, 2004, attached to plaintiff's motion.
6. The allegations in paragraph 6 are denied. To the contrary, for several reasons plaintiff's motion is inappropriate and defendant is not obliged at this time to respond to the Complaint.

- A. First, plaintiff has failed to comply with the requirements of Rule 237.1 requiring the service of a ten (10) day notice prior to the entry of any default judgment. Plaintiff's motion and the record contain no certification of compliance with Rule 237.1.
- B. Secondly, defendant didn't respond to the plaintiff's Complaint because the plaintiff offered to settle the case for a nominal amount of money, less than the expense of defending the same, and the defendant accepted that offer of settlement. Defendant attaches hereto the plaintiff's October 22, 2004, letter as Exhibit "A". Therein, plaintiff offered to settle the matter for three hundred dollars (\$300.00). By letter of November 2, 2004, (copy attached as Exhibit "B") defendant accepted that offer, forwarded plaintiff a release for execution, provided plaintiff with instructions to complete the release in order to finalize the matter and requested plaintiff's instruction on how payment of the \$300.00 settlement funds would be made. Furthermore, the letter of November 2 confirms a general enlargement of time to respond in any fashion to the existing pleading pending receipt of the executed release in conclusion of the settlement.

7. Admitted, but by way of further answer defendant incorporates herein the averments of paragraph 6.
8. Denied as stated. To the contrary, this Court should deny the plaintiff's "Motion for Default Judgment" and, instead should grant the defendant sanctions against the plaintiff for the expense of responding to the plaintiff's inappropriate Motion for Default Judgment and for expenses in connection with responding to the substance of plaintiff's Complaint in an amount to be determined by the Court.

Respectfully submitted:

WEINHEIMER, SCHADEL & HABER, P.C.

By

James R. Schadel
Pa. I.D. No. 27937
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh PA 15219-1503

October 22, 2004

Weinheimer, Schadel & Haber
Attorneys at Law
602 Law and Finance Building
429 Fourth Avenue
Pittsburg, PA 15219-1503

RE: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-C.D.; Clearfield County, PA

Dear Mr. Schadel:

I am writing in response to your letter dated October 20, 2004, in which you request a copy of the written statement from an appropriate licensed professional referenced in my Certificate of Merit.

If I am not mistaken I do not have to provide you with a copy until the discovery phase of this civil action. If you wish you may request a copy then and one will be provided to you.

I have one thing to request of you in return. If your client, Mr. Bell, would agree to return the \$300.00 I paid to him for the services he did not render, I would gladly settle this. Also, but not conditional, a letter of apology from Mr. Bell. He promised an outcome he could not guarantee because he was not knowledgeable in the procedures of the PA Board of Probation and Parole and also he should of informed me that he was being considered for a position in the Clearfield County District Attorney's Office. This would of held great weight in my considerations in hiring him.

I thank you for your time and hope that you would discuss the above with your client.

Very truly yours,

David A. Williams.

David Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

c Civ File



WEINHEIMER, SCHADEL & HABER

A Professional Corporation
Attorneys At Law

Robert A. Weinheimer
James R. Schadel
David L. Haber
Amy J. Coco
Scott R. Eberle
Kristen A. Budris

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

Telephone: (412) 765-3399
Facsimile: (412) 765-3537
E-mail: wsh@wshpc.com

Ref. No. 325.0280

November 2, 2004

David A. Williams
SCI at Albion
10745 Route 18
Albion, PA 16475-0002

Re: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-CD; Clearfield County, PA

Dear Mr. Williams:

My client has decided to accept your offer of settlement set forth in your letter of October 22, 2004 and will pay the \$300 you requested. In furtherance of that settlement agreement, I am enclosing herewith for your signature two copies of the General Release in Full and Final Settlement of Claim. Please read the same carefully as this Release will affect your rights and will forever bar claims that you may wish to make regarding the subject matter thereof. I also call to your particular attention the provisions of the paragraph regarding confidentiality and remind that you are bound by those provisions upon execution of this document.

In order to finalize this settlement, it will be necessary for you to return two copies of the enclosed General Release in Full and Final Settlement of Claim with your signature and an appropriate notarization and also to provide evidence that you have settled and discontinued the docket in the Court of Common Pleas of Clearfield County.

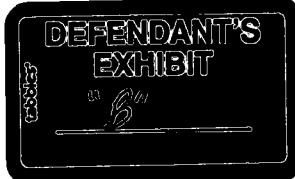
Upon receipt of those documents, I would be in a position to direct payment of the \$300 as you would direct. In other words, you have to give me instructions on where you want the money sent. The money will be paid in a money order.

Please understand that my client has agreed to accept your settlement demand not because he engaged in any improper conduct, or in any way was liable to you, as is more fully set forth in the General Release, but simply to avoid further costs to be incurred in responding to the pleading. Accordingly, pending the receipt of the executed settlement documentation, I understand that I have a general enlargement of time to respond in any fashion to the existing pleading.

Very truly yours,

James R. Schadel

chl
Enclosure



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within has been served upon the
**DEFENDANT'S RESPONSE TO MOTION FOR DEFAULT JUDGMENT AND MOTION
FOR SANCTIONS** following by First Class United States Mail, postage pre-paid, or hand delivery
on November 22, 2004.

David A. Williams
SCI at Albion
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002
Plaintiff, Pro Se

Respectfully submitted,

WEINHEIMER, SCHADEL & HABER, P.C.



By _____
James R. Schadel
Scott R. Eberle
602 Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID A. WILLIAMS) CIVIL DIVISION
Plaintiff,)
v.) No. 2004-1367 - CD
F. CORTEZ BELL, III)
Defendant.)

ORDER OF COURT

And now, to wit, on this _____ day of _____ 2004,
upon consideration of the foregoing Plaintiff's Motion for Default Judgment, Defendant's Answer
thereto and Defendant's Motion for Sanctions it is ORDERED that the Motion for Default Judgment
is DENIED; and Defendant's Motion for Sanctions is GRANTED and sanctions are entered in favor
of Defendant and against Plaintiff in the amount of \$_____.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	No. 2004-1367-C.D.
v.	:	
	:	
F. CORTEZ BELL, III,	:	Jury Trial Demanded
Defendant	:	

O R D E R O F C O U R T

AND NOW, to wit, on this _____ day of _____ 2004,
upon consideration of the foregoing Answer to Defendant's Motion
for Sanctions it is ORDERED that said Motion is hereby DENIED; and
both parties are GRANTED an additional Thirty (30) days to come
to an agreed settlement if both parties are still in agreement
upon the terms and sum of \$300.00

By the Court,

J.

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DEC 08 2004 (b)

mo/11/04/lms

William A. Shaw
Prothonotary

DAVID A. WILLIAMS, :
Plaintiff :
v. :
F. CORTEZ BELL, III, :
Defendant :
: No. 2004-1367-C.D. *1 CPNT TO PLAINTIFF*

ANSWER TO DEFENDANT'S MOTION FOR SANCTIONS

Plaintiff, David Allen Williams, sets forth the following in his Answer to Defendant's Motion for Sanctions and in support thereof states:

1. On October 22, 2004, Plaintiff sent a letter to Defendant's Attorney in the hopes of settling this action. (Exhibit A)
2. On advise from a legal clerk who works in the State Correctional Institution's Law Library, Plaintiff filed on November 16, 2004, a Motion for Default Judgment.
3. It had been more than twenty-five (days) and Plaintiff received no response from the Defendant on either the original complaint or the settlement offer.
4. Plaintiff is unschooled in the practice of law and is acting pro-se in this matter. He neither has the money to retain a law firm to represent him or the monies to pay the court for filing fees. In forma pauperis status was granted by this court on August 20, 2004.

5. On November 26, 2004, Plaintiff received a letter from Defendant's Attorney. This letter contained two letters because the first letter dated November 2, 2004, was returned because the Defendant's Attorney forgot to include Plaintiff's Department of Corrections' Identification Number on the envelope. (Exhibit B) In this letter Defendant agreed to settle this case for the nominal amount of \$300.00.

6. The original complaint was filed on September 1, 2004. A copy was served upon the Defendant September 14, 2004, by the Clearfield County Sheriff's Office. October 1, 2004, Defendant's Attorneys entered their appearance.

7. A Certificate of Merit was then filed by the Plaintiff on October 13, 2004. Thus giving the Defendant twenty (20) days to answer the Complaint. Pa.R.Civ.P. 1042.4

8. On October 20, 2004, the Defendant's Attorney, Mr. Schadel, wrote to the Plaintiff asking for a copy of the letter supplied by an appropriate licensed professional as stated in the Certificate of Merit. (Exhibit C) The Defendant was not dismissed from the case through voluntary dismissal, verdict or order of court. Pa.R.Civ.P. 1042.7 Because Plaintiff did not supply Defendant with a copy, Defendant now believes he is entitled to another extension of time in answering the complaint.

9. Plaintiff responded with a letter dated October 22, 2004, in which it states the proposed settlement and if this proceeds to the Discovery Phase I would provide Defendant with a copy of the

letter. Pa.R.Civ.P. 1042.5. Defendant is trying to obtain discovery from the Plaintiff without first answering the original complaint and without leave of Court.

10. If the case against the Defendant is dismissed the Plaintiff will provide a copy to the Defendant as per Pa.R.Civ.P. 1042.7.

11. Pa.R.Civ.P. 237.5 states, "The notice required by Rule 237.1 (a)(2) shall be in the following form." As stated in paragraph 4, Plaintiff is unschooled in the practice of law. He was advised by the legal clerk that this rule is only for the prothonotary's office if no response is made by the Defendant. Plaintiff was misled. It is harmless error that would not have occurred if the Defendant's attorney would of included Plaintiff's D.O.C. number on the envelope with the November 2, 2004, letter. Plaintiff's actions were not willful or negligent; it was not part of a pattern for the purpose of delaying the court or process; this is Plaintiff's first civil action and is acting pro se.

12. The Court should not sanction the Plaintiff for harmless error. The Defendant was willing to settle for the amount of \$300.00. The paperwork is signed and waiting to be notarized.

13. Under Rule 237.1(a)(2) the Motion for Default should not of been entered but returned by the Prothonotary's Office because it did not include a certification that a written notice of intention to file the praecipe was mailed or delivered to the Defendant.

14. The Defendant was willing to settle this case. If the court would deny Defendant's Motion for Sanctions and allow a reasonable

amount of time I believe this case could be dissolved with the signing of the settlement papers. This would be both time and cost saving on this Honorable Court as well as both parties.

Respectfully submitted,

David A Williams
David Allen Williams
FD-9344 D/A 1
10745 Route 18
Albion, PA 16475-0002

Dated: December 06, 2004

VERIFICATION

Plaintiff, David Allen Williams, hereby avers that the following facts stated in this Answer to Defendant's Motion for Sanctions are true and correct upon my personal knowledge, information and belief and that any false statements made herein are subject to the penalties under 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

David A Williams
David Allen Williams
FD-9344 D/A 1
10745 Route 18
Albion, PA 16475-0002

Dated: December 06, 2004

October 22, 2004

Weinheimer, Schadel & Haber
Attorneys at Law
602 Law and Finance Building
429 Fourth Avenue
Pittsburg, PA 15219-1503

RE: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-C.D.; Clearfield County, PA

Dear Mr. Schadel:

I am writing in response to your letter dated October 20, 2004, in which you request a copy of the written statement from an appropriate licensed professional referenced in my Certificate of Merit.

If I am not mistaken I do not have to provide you with a copy until the discovery phase of this civil action. If you wish you may request a copy then and one will be provided to you.

I have one thing to request of you in return. If your client, Mr. Bell, would agree to return the \$300.00 I paid to him for the services he did not render, I would gladly settle this. Also, but not conditional, a letter of apology from Mr. Bell. He promised an outcome he could not guarantee because he was not knowledgeable in the procedures of the PA Board of Probation and Parole and also he should of informed me that he was being considered for a position in the Clearfield County District Attorney's Office. This would of held great weight in my considerations in firing him.

I thank you for your time and hope that you would discuss the above with your client.

Very truly yours,

David A. Williams

David Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

c Civ File

EXHIBIT A

WEINHEIMER, SCHADEL & HABER

A Professional Corporation
Attorneys At Law

Robert A. Weinheimer
James R. Schadel
David L. Haber
Amy J. Coco
Scott R. Eberle
Kristen A. Budris

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

Telephone: (412) 765-3399
Facsimile: (412) 765-3537
E-mail: wsh@wshpc.com

Ref. No. 325.0280

November 23, 2004

David A. Williams
SCI at Albion
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Re: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-CD; Clearfield County, PA

Dear Mr. Williams:

I enclose a letter dated November 2, 2004 that was returned to us due to unavailability of inmate number. I look forward to your response. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Scott R. Eberle

chl
Enclosure

WEINHEIMER, SCHADEL & HABER
A PROFESSIONAL CORPORATION
"ATTORNEYS AT LAW"
602 LAW AND FINANCE BUILDING
429 FOURTH AVENUE
PITTSBURGH, PENNSYLVANIA 15219-1503



Need more
#

1647-3488(199303)13:1;1-3

WEINHEIMER, SCHADEL & HABER

A Professional Corporation
Attorneys At Law

Robert A. Weinheimer

James R. Schadel

David L. Haber

Amy J. Coco

Scott R. Eberle

Kristen A. Budris

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

Telephone: (412) 765-3399
Facsimile: (412) 765-3537
E-mail: wsh@wshpc.com

Ref. No. 325.0280

November 2, 2004

David A. Williams

SCI at Albion

10745 Route 18

Albion, PA 16475-0002

Re: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-CD; Clearfield County, PA

Dear Mr. Williams:

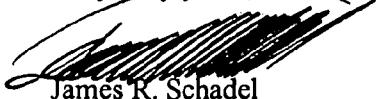
My client has decided to accept your offer of settlement set forth in your letter of October 22, 2004 and will pay the \$300 you requested. In furtherance of that settlement agreement, I am enclosing herewith for your signature two copies of the General Release in Full and Final Settlement of Claim. Please read the same carefully as this Release will affect your rights and will forever bar claims that you may wish to make regarding the subject matter thereof. I also call to your particular attention the provisions of the paragraph regarding confidentiality and remind that you are bound by those provisions upon execution of this document.

In order to finalize this settlement, it will be necessary for you to return two copies of the enclosed General Release in Full and Final Settlement of Claim with your signature and an appropriate notarization and also to provide evidence that you have settled and discontinued the docket in the Court of Common Pleas of Clearfield County.

Upon receipt of those documents, I would be in a position to direct payment of the \$300 as you would direct. In other words, you have to give me instructions on where you want the money sent. The money will be paid in a money order.

Please understand that my client has agreed to accept your settlement demand not because he engaged in any improper conduct, or in any way was liable to you, as is more fully set forth in the General Release, but simply to avoid further costs to be incurred in responding to the pleading. Accordingly, pending the receipt of the executed settlement documentation, I understand that I have a general enlargement of time to respond in any fashion to the existing pleading.

Very truly yours,



James R. Schadel

chl

Enclosure

WEINHEIMER, SCHADEL & HABER

A Professional Corporation
Attorneys At Law

Robert A. Weinheimer
James R. Schadel
David L. Haber
Amy J. Coco
Scott R. Eberle
Kristen A. Budris

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

Telephone: (412) 765-3399
Facsimile: (412) 765-3537
E-mail: wsh@wshpc.com

Ref. No. 325.0280

October 20, 2004

David A. Williams
SCI at Albion
10745 Route 18
Albion, PA 16475-0002

Re: David A. Williams v. F. Cortez Bell, III
No. 2004-1367-CD; Clearfield County, PA

Dear Mr. Williams:

I have received your Certificate of Merit. Please forward to me the written statement from an appropriate licensed professional referenced in your Certificate of Merit.

Very truly yours,



James R. Schadel

chl

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	No. 2004-1367-C.D.
v.	:	
	:	
F. CORTEZ BELL, III,	:	Jury Trial Demanded
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing ANSWER TO DEFENDANTS MOTION FOR SANCTIONS upon the defendant listed below and in the manner indicated which service satisfies the requirements of Pa.R.Civ.P. 403.

Attorneys for the Defendant, F. Cortez Bell, III
Service by First Class Mail, Postage Pre-Paid

WEINHEIMER, SCHADEL, & HABER
Attorneys at Law
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Dated: December 06, 2004

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

DAVID A. WILLIAMS :
:
vs. : No. 04-1367-CD
:
F. CORTEZ BELL, III :
:

O R D E R

NOW, this 9 day of December, 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 *6016*
J. Cally Schadel
01125 1CC Dely 10745 R# 18521
100% CA ALBION 7416475
DEC 10 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION

SA
FILED

10:53 AM
DEC 13 2004

PA William A. Shaw
Prothonotary/Clerk of Courts

DAVID A. WILLIAMS, :
Plaintiff :
v. : No. 2004-1367-C.D. 1CC Dff
:
F. CORTEZ BELL, III, : Jury Trial Demanded
Defendant :
:

MOTION FOR DISCONTINUANCE AND
WITHDRAWAL OF MOTION FOR DEFAULT JUDGMENT

Pa. R. Civ. P. §229

COMES NOW, David A. Williams, Plaintiff in the above captioned matter and hereby represents the following in his Motion for Discontinuance and Withdrawal of Motion for Default Judgment:

1. On August 20, 2004, In Forma Pauperis Status was granted.
2. On September 1, 2004, the Clerk of Court filed said civil action and assigned the current docketing number.
3. The Clearfield County Sheriff's Office served the Defendant on September 14, 2004.
4. On October 13, 2004, a Certificate of Merit was filed.
5. On October 22, 2004, the Plaintiff sent a letter to the Defendant's Attorney in the hopes of settling this matter.
6. After receiving no response for about twenty-five days the Plaintiff filed on November 16, 2004, a Motion for Default Judgment against the Defendant.

7. On November 26, 2004, Plaintiff received a letter from the Defendant's Attorney stating that the Defendant wished to settle this case without any further legal action.

8. On November 22, 2004, the Defendant filed a Response to Plaintiff's Motion for Default Judgment and Motion for Sanctions.

8. On December 6, 2004, Plaintiff sent an Answer to Defendant's Motion for Sanctions.

9. On December 9, 2004, Plaintiff received a letter dated December 7, 2004, from the Defendant's Attorney stating that they still wish to settle this said civil action pending receipt of the executed release and Plaintiff filing a Motion for Discontinuance. Plaintiff sent to the Defendant's Attorney a notarized executed release on December 9, 2004.

10. This Motion for Discontinuance and Withdrawal of Motion for Default Judgment follows. Plaintiff would ask this Honorable Court to discontinue said civil action because both parties do not wish to proceed and have come to a financial understanding.

11. I hereby certify that the facts stated in Plaintiff's Motion for Discontinuance and Withdrawal of Motion for Default are true and correct, and any false statements may subject me to the penalties of perjury under 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Respectfully submitted,

David A. Williams

David A. Williams
FD-9344 D/A 1
10745 Route 18
Albion, PA 16475-0002

Dated: December 10, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	No. 2004-1367-C.D.
v.	:	
F. CORTEZ BELL, III,	:	Jury Trial Demanded
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing MOTION FOR DISCONTINUANCE and WITHDRAWAL OF MOTION FOR DEFAULT JUDGMENT upon the defendant listed below and in the manner indicated and which service satisfies the requirements of Pa.R.Civ.P. 403.

Attorneys for the Defendant, F. Cortez Bell, III
Service by First Class Mail, Postage Pre-Paid

WEINHEIMER, SCHADEL, & HABER
Attorneys at Law
602 Law and Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219-1503

David A. Williams

David A. Williams
FD-9344 D/A 17
10745 Route 18
Albion, PA 16475-0002

Dated: December 10, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

CIVIL ACTION

DAVID A. WILLIAMS,	:	
Plaintiff	:	
	:	No. 2004-1367-C.D.
v.	:	
	:	
F. CORTEZ BELL, III,	:	Jury Trial Demanded
Defendant	:	

O R D E R O F C O U R T

AND NOW, to wit, on this _____ day of _____ 2004,
upon consideration of the foregoing MOTION FOR DISCONTINUANCE AND
WITHDRAWAL OF MOTION FOR DEFAULT JUDGMENT filed by the Plaintiff,
it is ORDERED that said Motion is hereby GRANTED.

By the Court,

----- J.

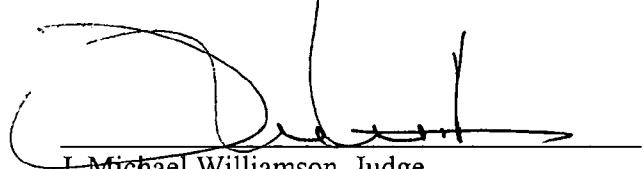
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DAVID A. WILLIAMS,)
Plaintiff)
) NO. 2004-1367-C.D.
v.)
) JURY TRIAL
F. CORTEZ BELL, III,) DEMANDED
Defendant)

ORDER

NOW, this 17th day of December, 2004, upon motion of the Plaintiff, the above matter shall be marked settled, terminated, and discontinued.

BY THE COURT:



J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

xc: David A. Williams, Plaintiff
James R. Schadel, Esquire
Court Administrator

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

FILED *Copies distributed*
612 12:05/04 per letter
DEC 20 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

December 17, 2004

William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: **Williams v. Bell**
No. 2004-1367-C.D.

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 black ink, appearing to read "Carol E. Miller".

Carol E. Miller
Secretary to Judge Williamson

Enclosure