
**In the
Supreme Court of the United States**

COMMONWEALTH OF PENNSYLVANIA,

Petitioner,

v.

MICHAEL J. HICKS,

Respondent.

**On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania**

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Respondent, through counsel, asks leave to file the attached Brief in Opposition and to proceed *in forma pauperis*, and in support thereof, avers the following:

1. Respondent, Michael J. Hicks, was qualified as indigent and approved for services by the Lehigh County Public Defender on July 21, 2014, a position and office established under the Pennsylvania Public Defender Act (Act of Dec. 2, 1968, P.L. 1144, No. 358).

2. Thereafter, upon filing of a Notice of Appeal to the Pennsylvania Superior Court, Respondent's indigent status was verified by counsel and the case was approved for *in forma pauperis* ("IFP") status by the Superior Court on February 14, 2016. True and correct copies of

Verification of *In Forma Pauperis* Status and docketed Notice of Appeal with IFP notation are attached collectively as Exhibit "A."

3. On April 28, 2017, counsel for Respondent filed a Certification of Indigent Status with the Pennsylvania Supreme Court in conjunction with a Petition for Writ of Certiorari, and respondent's IFP status was continued by the Court without filed Order. True and correct copies of Attorney's Certification of Indigent Status and the Pennsylvania Supreme Court Allocatur Docket Sheet (showing the continuation of IFP status without Order) are attached hereto as Exhibit "B."

4. Subsequent to the filing of these documents, Respondent became gainfully employed.

5. Respondent's executed Affidavit Accompanying Motion for Permission to Proceed *In Forma Pauperis* is attached hereto as Exhibit "C."

6. Based upon the information provided in the Affidavit, the Lehigh County Public Defender has determined that Respondent remains eligible for representation through the Public Defender's Office.

7. Counsel for the Respondent further avers that the Lehigh County Public Defender's Office is funded through the office of the County Executive by the taxpayers of Lehigh County, Pennsylvania (see Pennsylvania Public Defender Act), and as such should not be required to pay the costs associated with filing the attached Brief in Opposition without IFP status.

WHEREFORE, Respondent, through counsel, respectfully requests that the Court grant this Motion for Leave to File *In Forma Pauperis*.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. R. Smith', with a stylized flourish at the end.

KATHRYN R. SMITH
Deputy Public Defender
Lehigh County Courthouse
455 West Hamilton Street
Allentown, PA 18101
Tel. No. (610) 782-3157
kathrynsmith@lehighcounty.org
Counsel of Record for Respondent

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

COMMONWEALTH OF PENNSYLVANIA)
)
)
 vs)
)
)
 MICHAEL J. HICKS)

CASE NO.: 5692 OF 2014

VERIFICATION OF IN FORMA PAUPERIS STATUS

I, Kathryn R. Smith, Esquire, Assistant Public Defender, hereby verify that:

1. I represent the above-captioned Defendant.
2. The above-captioned Defendant was approved as eligible for a Public Defender.
3. To the best of my knowledge, there has been no substantial change in the financial condition of the Defendant.
4. The Defendant is unable to pay the fees and costs of this appeal.



Kathryn R. Smith, Esquire
Assistant Public Defender

Date: February 9, 2016

2016 FEB -9 PM 3:25
CLERK OF COURTS
LEHIGH COUNTY, PA

FILED

"A"

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

COMMONWEALTH OF PENNSYLVANIA)


CASE NO.: 5692 OF 2014

VS)

MICHAEL J. HICKS)

NOTICE OF APPEAL

Notice is hereby given that the above named Defendant, MICHAEL J. HICKS, hereby appeals to the Superior Court of Pennsylvania from the Judgment of Sentence entered in this matter on January 11, 2016. These orders have been entered in the docket as evidenced by the attached copy of the docket entries.



Kathryn R. Smith, Esquire
Assistant Public Defender
455 W. Hamilton Street
Allentown, PA 18101
(610) 782-3157
Supreme Court No. 210191
Attorney for Defendant/Appellant

ATTACHMENTS:

- Check # _____ in the amount of \$60.00 payable to the appellate Court.
- Copy of Request for Transcript.
- Check # _____ for payment of deposit(s) on transcription costs.
- Proof of Service on All Parties in Trial Court, Trial Judge(s), Court Reporter(s), and District Court Administrator.
- Above referenced Docket Entry.

DOCKETED
SUPERIOR COURT
FEB 24 2016
PHILADELPHIA

ALL COUNSEL ADVISED
FEB 24 2016

CLERK OF COURTS
LEHIGH COUNTY, PA

2016 FEB -9 PM 3:25

FILED

1FP

IN THE SUPREME COURT OF PENNSYLVANIA

FOR THE MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	: SUPREME COURT NO.
	: _____
Respondent	:
vs.	: SUPERIOR COURT NO.
	: 510 EDA 2016
MICHAEL J. HICKS,	:
Petitioner	: LEHIGH COUNTY
	: DOCKET NO-5692 of 2014

Attorney's Certification of Indigent Status

I, Kathryn R. Smith, Esquire, attorney for the Petitioner, Michael J. Hicks, certify that:

1. I represent Petitioner as a member of the Lehigh County Office of the Public Defender.
2. The Petitioner continues to be indigent and I continue to represent him in my capacity as a member of the Office of the Public Defender, not privately retained counsel.
3. I am aware of no substantial change in the Petitioner's financial condition which would enable him to pay the fees and costs on this petition for allowance of appeal.

/s/ Kathryn R. Smith
 Kathryn R. Smith, Esquire,
 ID #210191
 Assistant Public Defender
 Attorney for the Defendant
 Office of the Public Defender
 Lehigh County Courthouse
 455 W. Hamilton Street
 Allentown, PA 18101

"B"

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 286 MAL 2017

Page 1 of 3

October 30, 2019

CAPTION

Commonwealth of Pennsylvania, Respondent

v.

Michael J. Hicks, Petitioner

CASE INFORMATION

Initiating Document: Petition for Allowance of Appeal

Case Status: Closed

Journal Number:

Case Category: Criminal

Case Type(s): Driving Under the Influence

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Attorney: Smith, Kathryn Rose
 Lehigh County Public Defender's Office
 Address: 455 W Hamilton St
 Allentown, PA 18101-1602
 Phone No: (610) 782-3157
 Receive Mail: Yes
 Representing: Hicks, Michael J., Petitioner
 Pro Se: No
 IFP Status: Pa.R.A.P. 551

Attorney: Makoul, Kimberly Faye
 Lehigh County Public Defender's Office
 Address: 455 W Hamilton St
 Allentown, PA 18101
 Phone No: (610) 782-3157
 Receive Mail: Yes
 Representing: Hicks, Michael J., Petitioner
 Pro Se: No
 IFP Status: Pa.R.A.P. 551

Attorney: Martin, James Bernard
 Lehigh County District Attorney's Office
 Address: 455 W Hamilton St
 Allentown, PA 18101-1614
 Phone No: (610) 782-3100
 Receive Mail: Yes
 Receive EMail: Yes Email:
 Representing: Commonwealth of Pennsylvania, Respondent
 Pro Se: No
 IFP Status:

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 286 MAL 2017

Page 2 of 3

October 30, 2019

COUNSEL INFORMATION

Attorney: Gallagher, Heather F.
 Lehigh County District Attorney's Office
 Address: 455 W Hamilton St
 Allentown, PA 18101
 Phone No: (610) 782-3104
 Receive Mail: Yes
 Representing: Commonwealth of Pennsylvania, Respondent
 Pro Se: No
 IFP Status:

SUPREME COURT INFORMATION

Appeal From:
 Appeal Filed Below:

Probable Jurisdiction Noted: Docketed Date: April 28, 2017
 Allocatur/Miscellaneous Granted: Allocatur/Miscellaneous Docket No.:
 Allocatur/Miscellaneous Grant Order:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
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INTERMEDIATE APPELLATE COURT INFORMATION

Court Name: Superior Docket Number: 510 EDA 2016
 Date of Order: March 29, 2017 Rearg/Recon Disp Date:
 Rearg/Recon Disposition:
 Judge(s): Stabile, Victor P.
 Moulton, Geoffrey
 Musmanno, John L.
 Intermediate Appellate Court Action: Affirmed
 Referring Court:

AGENCY/TRIAL COURT INFORMATION

Court Below: Lehigh County Court of Common Pleas
 County: Lehigh Division: Lehigh County Criminal Division
 Date of Agency/Trial Court Order: January 11, 2016
 Docket Number: CP-39-CR-0005692-2014
 Judge(s): Anthony, James T. OTN: L8727272
 Order Type: Judgment of Sentence

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description
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Record Remittal:



DISPOSITION INFORMATION

Related Journal No: Judgment Date:

Category: Decided Disposition Author: Per Curiam

Disposition: Order Granting Petition for Allowance of Appeal Disposition Date: October 2, 2017

Dispositional Filing: Author:

Filed Date:

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
April 28, 2017	Petition for Allowance of Appeal	Petitioner	Hicks, Michael J.
April 28, 2017	Verified Statement in Support of Continuation of IFP Status	Petitioner	Hicks, Michael J.
April 28, 2017	In Forma Pauperis Continued		Supreme Court of Pennsylvania
May 4, 2017	No Answer Letter to Petition for Allowance of Appeal	Respondent	Commonwealth of Pennsylvania
October 2, 2017	Order Granting Petition for Allowance of Appeal		Per Curiam

Comments:

AND NOW, this 2nd day of October, 2017, the Petition for Allowance of Appeal is GRANTED. The issue, as stated by petitioner, is:

Whether the Superior Court's bright line rule holding that possession of a concealed firearm in public is sufficient to create reasonable suspicion is a matter of such substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court?

October 2, 2017	Order Exited		Office of the Prothonotary
October 2, 2017	Case was transferred to 56 MAP 2017		Office of the Prothonotary

Comments:

Case was transferred to 56 MAP 2017

CROSS COURT ACTIONS

Docket Number: 510 EDA 2016
Docket Number: 56 MAP 2017

**AFFIDAVIT ACCOMPANYING MOTION
FOR PERMISSION TO PROCEED IN FORMA PAUPERIS**

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees or costs of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p>
<p>Signed: <u> m J O H L </u></p>	<p>Date: <u> 10-31-19 </u></p>

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 2288.00	\$ N/A	\$ 2288.00	\$ N/A
Self-employment	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Income from real property (such as rental income)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Interest and dividends	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Gifts	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Alimony	\$ N/A	\$ N/A	\$ N/A	\$ N/A

"C"

Child support	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Disability (such as social security, insurance payments)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Unemployment payments	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Public-assistance (such as welfare)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Other (specify):	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Total monthly income:	\$ 2288.00	\$ N/A	\$ 2288.00	\$ N/A

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
Kensol Airways	864 3 rd street Whitehall, PA 18052	6/2017 - present	\$ 2288.00
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
First Commonwealth	Checking	\$ 11.00	\$ N/A
F.C.U.	SAVINGS	\$ 5.00	\$ N/A
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) \$ N/A	(Value) \$ N/A	(Value) \$ 8,000
		Make and year: 2010 Lexus
		Model: 460 L
		Registration #: PA EGV4524

Motor vehicle #2	Other assets	Other assets
(Value) \$ N/A	(Value) \$ N/A	(Value) \$ N/A
Make and year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ N/A	\$ N/A
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 600.00	\$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ ^a 150.00	\$ N/A
Home maintenance (repairs and upkeep)	\$ N/A	\$ N/A
Food	\$ 386.00	\$ N/A
Clothing	\$ 50.00	\$ N/A
Laundry and dry-cleaning	\$ N/A	\$ N/A
Medical and dental expenses	\$ N/A	\$ N/A
Transportation (not including motor vehicle payments)	\$ 100.00	\$ N/A

Recreation, entertainment, newspapers, magazines, etc.	\$ N/A	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$ N/A	\$ N/A
Life:	\$ N/A	\$ N/A
Health:	\$ N/A	\$ N/A
Motor vehicle:	\$ 115.00	\$ N/A
Other:	\$ N/A	\$ N/A
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ N/A	\$ N/A
Installment payments		
Motor Vehicle:	\$ 500.00	\$ N/A
Credit card (name): DISCOVER, CAPITAL ONE, MACY'S	\$ 200.00	\$ N/A
Department store (name):	\$ N/A	\$ N/A
Other:	\$ N/A	\$ N/A
Alimony, maintenance, and support paid to others	\$ N/A	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ N/A	\$ N/A
Other (specify):	\$ N/A	\$ N/A
Total monthly expenses:	\$ 2101.00	\$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit? Yes No

If yes, how much? \$ _____

Approved for
Public Defender

11. Provide any other information that will help explain why you cannot pay the ~~docket fees~~ ^{costs} for your appeal.

Lost Commercial Driver's License due to this case.
CANNOT WORK IN primary employment field.

12. State the city and state of your legal residence.

Allentown, Pennsylvania

Your daytime phone number: (610) 782-3157 - Attorney

Your age: 41 Your years of schooling: 12

Last four digits of your social-security number: 6315