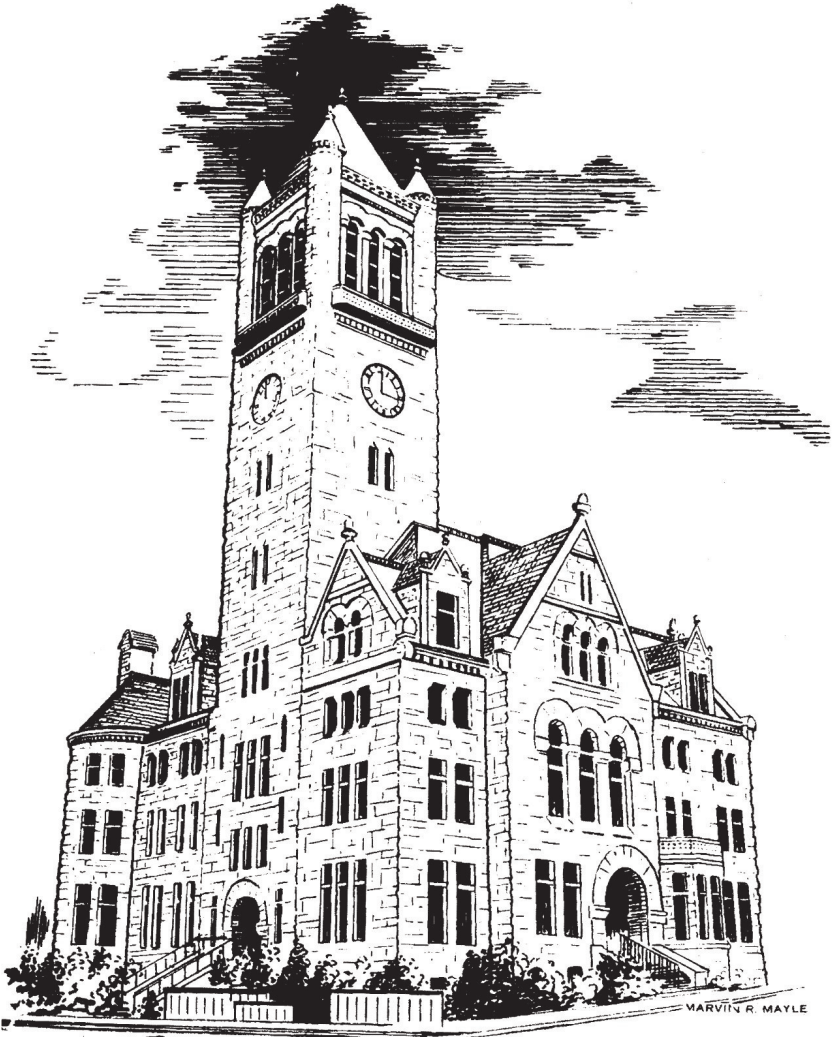


FAYETTE LEGAL JOURNAL

VOL. 79

JANUARY 23, 2016

NO. 4



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 2 West Main Street, Suite 711, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Crossland and Melinda Deal Dellarose

Associate Editor: Emilie J. Cupp

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Anne N. John

Vice-President:

President Elect: John M. Purcell

Secretary: Bernard C. John

Treasurer: Vincent J. Roskovensky, II

Past President: Ewing D. Newcomer

Executive Director: Marianne Miele

Directors

Gary N. Altman

Joseph I. Brodak

Davina D. Burd

Melinda D. Dellarose

Robert R. Harper, Jr.

James Higinbotham, Jr.

Carolyn W. Maricondi

William M. Martin

Wendy L. O'Brien

Ellen R. Terry

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

YOLANDA TRAFECANTY, A/K/A YOLANDA ANN TRAFECANTY, late of South Connellsville Boro, Fayette County, PA(3)

Personal Representatives: Mary Ann Osniak and Susan Trafecanty Powell
c/o Richard A. Husband, Esquire
Riverfront Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

Second Publication

MARGARET A. BOTTI, late of South Union Township, Fayette County, PA (2)

Administrator: Albert J. Botti
c/o Monaghan & Monaghan
57 East Main Street
Uniontown, PA 15401
Attorney: Louise D. Monaghan

HELEN D. BRAZNOK, late of Redstone Township, Fayette County, PA (2)

Personal Representative:
Rose Marie Vrabel
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

MARY KOSISKO, A/K/A, MARY L. KOSISKO, late of Connellsville, Fayette County, PA (2)

Executor: Douglas Kosisko
c/o P.O. Box 760
Connellsville PA 15425
Attorney: Carolyn W. Maricondi

DORIS KOVALIK, A/K/A DORIS I. KOVALIK, late of Redstone Township, Fayette County, PA (2)

Personal Representative: Carol L. Girolami
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

GEORGE M. PEPPER, late of Markleysburg, Henry Clay Township, Fayette County, PA (2)

Executor: Bryon G. Pepper
298 Martin Road
Markleysburg, PA 15459
c/o J. Ronald Bruzda
22 Highhouse Street
Smithfield, PA 15459

First Publication

LAWRENCE ANDREW DOWLING, late of South Union Township, Fayette County, PA (1)

Administrator: Terry Dowling
c/o Monaghan & Monaghan
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

BARBARA E. HANKINS, A/K/A BARBARA EDITH HANKINS, late of Wharton Township, Fayette County, PA (1)

Executor: Alfred E. Dubois, Jr.
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401

TERRY LEE HENRY, SR., A/K/A TERRY L. HENRY, SR, A/K/A TERRY HENRY, late of Perry Township, Fayette County, PA (1)

Personal Representative: Merle Henry
c/o Davis & Davis
107 East Main Street
Attorney: Gary J. Frankhouser

ANDREW M. MESICH, late of German Township, Fayette County, PA (1)

Executrix: Lisa Mesich
c/o Monaghan & Monaghan
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

JOHN SCHROYER, A/K/A JOHN V. SCHROYER, late of Dunbar Township, Fayette County, PA (1)

Executor: John A. Schroyer
c/o 213 Deerfield Drive
Connellsville, PA 15425

Attorney: John K. Greiner

LEGAL NOTICES

LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA. The name of the proposed corporation is Goodwin Como, P.C. The corporation is to be (or has been) incorporated under the Pennsylvania Business Corporation Law of 1988.

Benjamin F. Goodwin, Esquire
92 East Main Street, Suite 20
Uniontown, PA 15401

NOTICE OF INCORPORATION

Notice is hereby given that Bureau of Corporation and Charitable Organizations were filed and approved with the Department of State of the Commonwealth of Pennsylvania on the 22nd day of December, 2015 with respect to a corporation, CMS Realty, LLC which has been incorporated under the provisions of the Business Corporation Law of 1988.

Margaret Zylka House, Esquire
815A Memorial Boulevard
Connellsville, PA 15425
724-628-4955

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at 577 Liberty Street, Perryopolis, PA 15473 being more fully described at Fayette County Record Book Volume 2626, Page 151.

SAID SALE to be held in the hallway outside of the Fayette County Sheriff's Office at the Fayette County Courthouse, Uniontown, PA 15401 at 10:00 a.m. prevailing, standard time, on February 19, 2016.

All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Map No. 28-08-0159 recorded in Fayette County, Pennsylvania. Seized and taken in execution as the property of Jennifer I. Balchick, at the suit of the United States of America, acting through the Rural Housing Service, on behalf of the United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 2:14-cv-1656.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Steve Frank, United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov. (1 of 4)

SHERIFF'S SALE

Date of Sale: March 10, 2016

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, March 10, 2016, at 10:30 a.m. in the Hallway outside the Sheriff's Office at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2)

James Custer
Sheriff Of Fayette County

STERN & EISENBERG PC
Edward J. McKee, Esquire

No.1804 of 2015 GD
No. 440 of 2015 ED

U.S. Bank National Association, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005- EFC4 c/o Ocwen Loan Servicing LLC,
Plaintiff,
vs.
Stella Marie Batten,
Defendant.

SITUATE IN GEORGES TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 54 2nd STREET, UNIONTOWN, PA 15401
PARCEL NO. 14-16-0046
IMPROVEMENTS - RESIDENTIAL REAL ESTATE
SOLD AS THE PROPERTY OF- STELLA MARIE BATTEN

No. 2108 of 2015 GD
No. 433 of 2015 ED

JPMorgan Chase Bank, National Association,
Plaintiff,
vs.
David F. Baus and Jessica E. Baus,
Defendants.

COMMONLY KNOWN AS: 110 Whyel Avenue, Uniontown, PA 15401
TAX PARCEL NO. 25-22-0162-01

BERNSTEIN-BURKLEY, P.C.
(412) 456-8100

No. 1723 of 2015 GD
No. 436 of 2015 ED

ELDERTON STATE BANK,
Plaintiff,
vs.
CHRIS A. CASAGRANDE,
Defendant.

Address: 111 Clay Street, Perryopolis, PA 15473

Debt: \$395,108.86

Legal Description: ALL that certain piece or parcels of land situate in Perry Township, Fayette County, Pennsylvania, having erected thereon a commercial structure.

Tax Parcel # 27-10-0075-04 & 27-10-0075

No. 2036 of 2015 GD
No. 420 of 2015 ED

**U.S. Bank National Association, as Indenture
Trustee for Springleaf Mortgage Loan Trust
2012-3,**

**Plaintiff,
vs.
Howard D. Cropp,
Defendant.**

ALL THAT CERTAIN parcel of land situate in Menallen Township, Fayette County, Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at a stake in line of lands now or formerly of Austin Woodward and on the north side of the public road leading from New Salem Road to Uniontown; thence along the north side of the said road, South 84° 36' East, 210 feet to a stake in line of lands now or formerly of Earl Fisher; thence by lands of said Fisher, North 21° 50' East 216.2 feet to a stake; thence North 84°36' West, 2 10 feet along property now or formerly of Dell Hickle to a stake in line of lands of the said Austin Woodward; thence by line of lands of said Woodward South 21° 50' West 216.2 feet to the place of beginning, containing one acre.

UNDER AND SUBJECT to all exceptions, reservations, easements, rights of way etc., as appear in prior instruments of record.

BEING PARCEL #22-21-139
COMMONLY KNOWN AS: 344 New Salem Road, Uniontown, PA 15401
TAX PARCEL NO. 22-21-0139

Phelan Hallinan Diamond & Jones, LLP

No. 1802 of 2013 GD
No. 417 of 2015 ED

**Bank of America, N.A.,
Plaintiff,
v.**

**Greg W. Ferrence and Gail R. Richardson,
Defendants.**

By virtue of a Writ of Execution No. 1802 OF 2013 GD, Bank of America, N.A. v. Greg W:-Ferrence Gail R Richardson, owner(s) of property situate in the WASHINGTON TOWNSHIP, Fayette County, Pennsylvania, being 1238 Linn Drive, Belle Vernon, PA 15012 -2449

Parcel No.: 41-02-0028
Improvements thereon: RESIDENTIAL DWELLING

No. 2370 of 2014 GD
No. 441 of 2015 ED

**BANK OF AMERICA, N.A.,
Plaintiff,
vs.
NELLIE I. GREGG
Defendant.**

All that certain parcel of land in Luzerne Township as follows:

That part of Lot No. 96 lying northeast of the center line of Maxwell Ave.

That part of Lot No. 97 lying northeast of the center line of Maxwell Ave.

That part of Lot No.95 lying northeast of the center line of Maxwell Ave.

That part of Lots No. 96 and 97 lying southwest of the center line of Maxwell Ave. all as shown in a plan of lots recorded by John W. Gailbreath d/b/a John W. Galbreath & Co. in the Recorder's Office of Fayette County Pennsylvania, in Plan Book Volume 9, Page 43.

BEING THE SAME PREMISES which Daryl W. Gregg, Sr., by Deed dated 08/26/2008 and recorded 10/10/2008 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 1998-1, Page 102902, granted and conveyed unto Nellie I. Gregg and Daryl W. Gregg, Sr. And said Daryl W. Gregg, Sr. departed this life on 12/31/2010, vesting the title solely in Nellie I. Gregg by rights of survivorship.

BEING KNOWN AS: 751 MAXWELL AVENUE, LA BELLE, PA 15450
PARCEL # 19-04-0066

Phelan Hallinan Diamond & Jones, LLP

No. 1037 of 2015 GD
No. 438 of 2015 ED

**Citifinancial Servicing LLC,
Plaintiff,
vs.**

**Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Betty Jane Harshman, Deceased,
Defendant(s).**

By virtue of a Writ of Execution No. 1037-2015 Citifinancial Servicing LLC vs. Unknown Heirs, Successors, Assigns, and All Persons,

Firms, or Associations Claiming Right, Title or Interest From or Under Betty Jane Harshman, Deceased, owner(s) of property situate in the DUNBAR TOWNSHIP, Fayette County, Pennsylvania, being 1206 Maple Street, Dickerson Run, PA 15430

Parcel No.: 09-03-0050

Improvements thereon: RESIDENTIAL DWELLING

No. 115 of 2015 GD

No. 442 of 2015 ED

21st MORTGAGE CORPORATION,
successor to Vanderbilt Mortgage & Finance
Inc., assignee of Chase Manhattan Bank,
USA, N.A., assignee of Tammac Financial
Corporation , assignee of Tammac Corp.,
Plaintiff,

vs.

DAVID W. INMAN, as Mortgagor and Real
Owner,
Defendant.

ALL that certain piece or parcel of land situate in Jefferson Township, Fayette County, Pennsylvania, having an address of 118 Francis Road, Perryopolis, PA . CONTAINING an area of 1 acre.

PARCEL ID NUMBER: 17-08-0048

BEING THE SAME PREMISES which Howard W. Inman and Shirley A. Inman, husband and wife, by Deed dated June 15, 1999 and recorded on June 24, 1999, in the Office for the Recording of Deeds in and for the County of Fayette, at Deed Book Volume 2349, Page 33, granted and conveyed unto David W. Inman, unmarried, his heirs and assigns.

No. 2077 of 2015 GD

No. 435 of 2015 ED

cfsbank F/K/A CHARLEROI FEDERAL
SAVINGS BANK,
Plaintiff,

vs.

JOHN R. SUMEY and RACHEL D.
KINNEER,
Defendants.

ALL that certain parcel of land situate in the Borough of Vanderbilt, County of Fayette and Commonwealth of Pennsylvania, being known and designated as Lot No. 56 in the West Vanderbilt Plan, said Plan recorded in the Recorder's Office of Fayette County, Pennsylvania in Plan Book Volume 1, page 182.

Being also known as Tax Parcel ID No. 40-01-0024.

Phelan Hallinan Diamond & Jones, LLP

No. 3643 of 2008 GD

No. 427 of 2015 ED

Deutsche Bank National Trust Company, as
Trustee Forgsamp Trust 2002-Wf, Mortgage
Pass-Through Certificates, series 2002-Wf,
Plaintiff,

vs.

Joanne M. Kushnar,
Defendant.

By virtue of a Writ of Execution No.3643 OF 2008 GD, Deutsche Bank National Trust Company, as Trustee Forgsamp Trust 2002-Wf, Mortgage Pass-Through Certificates, series 2002-Wf vs. Joanne M. Kushnar, owner of property situate in the Fayette County, Pennsylvania, being 403 Cook Street, Fayette City, PA 15438-1210

Parcel No.: 12-03-0194

Improvements thereon: RESIDENTIAL DWELLING

McCABE, WEISBERG & CONWAY, P.C.
 123 South Broad Street, Suite 1400
 Philadelphia, Pennsylvania 19109
 (215) 790-1010

No. 1365 of 2015 GD

No. 423 of 2015 ED

Green Tree Servicing LLC,
Plaintiff,
Vs.

Samantha Leska and Paul Leska,
Defendants.

All that certain piece or parcel or Tract of land situate Boro of Perryopolis, Fayette County, Pennsylvania, and being known as 210 Union Street, Perryopolis, Pennsylvania 15473.

Being known as: 210 Union Street, Perryopolis, Pennsylvania 15473

Title vesting in Samantha Leska and Paul Leska, husband and wife, by deed from Joseph Vayansky, Single dated April 22, 2004 and recorded April 29, 2004 in Instrument Number 200400006714.

Tax Parcel Number: 28-9-157

KML Law Group, P.C.
 Suite 5000 - BNY Independence Center
 701 Market Street
 Philadelphia, PA 19106
 215-627-1322
 No. 2480 of 2014 GD
 No. 440 of 2015 ED

KML Law Group, P.C.
 Suite 5000 - BNY Independence Center
 701 Market Street
 Philadelphia, PA 19106
 215-627-1322

No. 1456 of 2015 GD
 No. 437 of 2015 ED

GREEN TREE SERVICING LLC
345 St Peter Street
1100 Landmark Towers St Paul, MN 55102,
Plaintiff,

vs.
MATTHEW B. MCKINSEY and KELLI R PHILLIPS,
Mortgagor(s) and Record Owner(s)
196 Churchill Road
Dunbar, PA 15431,
Defendant.

ALL THAT CERTAIN piece, parcel or tract of land situate in the Dunbar Township, County of Fayette and Commonwealth of Pennsylvania.

TAX PARCEL #09-31-0180
 PROPERTY ADDRESS: 196 Churchill Road Dunbar, PA 15431
 IMPROVEMENTS: A residential dwelling.

SOLD AS THE PROPERTY OF:
 MATTHEW B. MCKINSEY and KELLI R PHILLIPS

No. 341 of 2013 GD
 No. 422 of 2015 ED

BAYVIEW LOAN SERVICING LLC
Plaintiff,
vs.

MICHAEL N. MILLER and SHANNON P. MILLER,
Defendants.

ALL THAT CERTAIN land situated in the State of PA, County of Fayette, City of Confluence.

BEING THE SAME PREMISES which Bernice D. Reckner, surviving spouse of Stephen E. Reckner, by Deed dated February 4, 2005 and recorded February 10, 2005 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 2935, Page 1073, granted and conveyed unto MICHAEL N. MILLER and SHANNON P. MILLER, husband and wife.

BEING KNOWN AS: 1523 SUGAR LOAF ROAD, CONFLUENCE , PA 15424-1917
 PARCEL #16-05.0059

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED NOTES, SERIES 2004-SD4
55 Beattie Place, Suite 110
Greenville, SC 29601,
Plaintiff,

vs.
ROBERTS A. MYERS and ERIN L MYERS a/k/a ERIN L. BIRMINGHAM,
Mortgagor(s) and Record Owner(s)
188 Snuff Ridge Road
New Salem, PA 15468,
Defendants.

ALL THAT CERTAIN parcel of ground situate in the Township of Menallen, County of Fayette and Commonwealth of Pennsylvania.

TAX PARCEL #22-04-0032-01
 PROPERTY ADDRESS: 188 Snuff Ridge Road New Salem, PA 15468
 IMPROVEMENTS: A residential dwelling.

SOLD AS THE PROPERTY OF:
 ROBERTS A. MYERS and ERIN L MYERS a/k/a ERIN L. BIRMINGHAM

No. 436 of 2015 GD
No. 414 of 2015 ED

Wells Fargo Bank, NA,
Plaintiff,
vs.
Kristoffer M. Pechatsko,
Defendant.

ALL that certain parcel of land lying and being situate in the Borough of Masontown, County of Fayette, and Commonwealth of Pennsylvania, known as 210 North Main Street, Masontown, PA 15461 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 21-07-0337

BEING the same premises which Carol M. Guthrie and Harry Guthrie, her husband and Gerald A. Cunningham and Christine M. Cunningham, his wife, by Deed dated August 24, 2007 and recorded in and for Fayette County, Pennsylvania in Deed Book 3037, Page 542, granted and conveyed unto Kristoffer M. Pechatsko, unmarried.

McCABE, WEISBERG & CONWAY, P.C.
123 South Broad Street, Suite 1400
Philadelphia, Pennsylvania 19109
(215) 790-1010

No. 1364 of 2015 GD
No. 412 of 2015 ED

EverBank,
Plaintiff,
vs.
Wanda J. Puza, Administratrix of the Estate
of Keith E. Puza, Deceased Mortgagor and
Real Owner,
Defendant.

All that certain piece or parcel or Tract of land situate Henry Clay Township, Fayette County, Pennsylvania, and being known as 336 Dinnerbell Ohiopyle, Farmington, Pennsylvania 15437.

Being known as: 336 Dinnerbell Ohiopyle, Farmington, Pennsylvania 15437

Title vesting in Keith E. Puza, by Deed from M and P Construction Co., Inc. dated December 5, 2002 and recorded December 6, 2002 in Deed Book 2482, Page 2468. The said Keith E. Puza died on September 5, 2014. Letters of Administration were granted unto Wanda J. Puza, Administratrix of the Estate of Keith E. Puza, Deceased Mortgagor and Real Owner, by Operation of Law.

Tax Parcel Number: 16-06-0001-09

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, February 1, 2016
at 9:30 A.M.

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2608-1122	VIRGINIA MARGARET STEVE, also known as VIRGINIA M STEVE	GEORGE W STEVE, Surviving Administrator

Tuesday, February 16, 2016
at 9:30 A.M.

in Court Room No. 1 of the Honorable STEVE P. LESKINEN, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, February 1, 2016
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2613-0491	SUSAN K DEMSKO	PAMELA M KUMOR, Executrix
2612-0621	MARGARET F KEIFER, also known as MARGARET KEIFER	TINA RIGGAR and BLAIR KEIFER SR, Co-Administrators

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Tuesday, February 16, 2016
at 9:30 A.M.

in Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (2)

JUDICIAL OPINION

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

COMMONWEALTH OF :
PENNSYLVANIA, :
v. :
RICHARD G. BOWERS, : NO. 820 OF 2009
Defendant. : SENIOR JUDGE GERALD R. SOLOMON

OPINION AND ORDER

SOLOMON, S.J.

July 13, 2015

Following a trial by jury, Appellant, Richard G. Bowers, was found guilty of indecent assault – person less than 13 years of age. Thereafter, on May 12, 2015, Appellant was sentenced to a total term of incarceration for a period of not less than twenty-five years, nor more than fifty years.

Thereafter, Appellant filed a timely appeal with the Superior Court of Pennsylvania. Upon receipt of the Notice of Appeal, this Court entered an Order pursuant to Pa.R.A.P. 1925(b) directing Appellant to file of record a concise statement of the errors complained of on appeal. In response to this Order, Appellant filed the following concise issues:

1. The Court sentenced Defendant under the mandatory sentencing provisions of 42 Pa.C.S.A. §9718.2.
2. Section 9718 is unconstitutional.
3. The Defendant should have been sentenced under the Sentencing Guidelines, 42 Pa.C.S.A. §9721 et seq., 204 Pa. Code §1303.16(a).
4. The Court failed to consider the Sentencing Guidelines, 42 Pa.C.S.A. §9721 et seq.
5. The Court failed to state on the record the reasons for deviating from the sentencing guidelines.
6. The sentence of the Court exceeded the standard and aggravated ranges for the charge.
7. The Court abused its discretion in that the sentence imposed was unreasonable and excessive under the circumstances of the case.

8. The sentence of the Court exceeded the allowable sentence for the grading of the offense.
9. The sentence constitutes cruel and unusual punishment and it is therefore unconstitutional under the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.
10. The sentence is an unconstitutional mandatory sentence.
11. The sentence was otherwise inappropriate, illegal and unconstitutional.

STATEMENT OF THE CASE

In this matter, following Appellant's conviction, and since his Pre-Sentence Investigation showed that he had been convicted of raping his three young daughters, the Court imposed what it believed to be an appropriate sentence under the statute – a mandatory life sentence. Following his first appeal from the sentence imposed, the Superior Court of Pennsylvania in an Opinion entered on January 14, 2015, held that the three offenses should have been treated as one offense, vacated the Judgment of sentence, and relinquished jurisdiction. *Commonwealth v. Bowers*, 54 WDA 2013. Thereafter, on May 12, 2015, Appellant was sentenced to a total term of incarceration for a period of not less than twenty-five years, nor more than fifty years.

DISCUSSION

All of the errors complained of by Appellant relate to the sentence imposed and fall into two general groups. The first group claims that the sentence was unconstitutional, not within the Sentencing Guidelines, exceeded the standard and aggravated range for the charge, and exceeded the allowable sentence for the grading of the offense. The second group claims that the Court failed to consider the Sentencing Guidelines, failed to state on the record the reasons for deviating from the Sentencing Guidelines, abused its discretion, and failed to adequately consider Appellant's age, family history, education, and employment history. We will initially address the first group of issues.

In *Bowers*, supra., our Superior Court held “that the trial court erred in sentencing Appellant as a third-strike offender to a mandatory term of life imprisonment. The applicable mandatory minimum term of imprisonment based on *Bowers*' prior record is 25 years pursuant to 42 Pa.C.S.A. §9718.2(a)(1).” *Id.* at 28-29. Neither the Superior Court of Pennsylvania nor the Supreme Court of Pennsylvania has held that sentencing

in accordance with 42 Pa.C.S.A. §9718.2(a)(1) is unconstitutional, not within the Sentencing Guidelines, or infirm in any manner.

Thus, since Appellant was sentenced pursuant to 42 Pa.C.S.A. §9718.2 (a)(1) based upon the offense for which he was found guilty and his prior record, these issues are without merit.

We now turn to the second set of issues raised by Appellant, that the Court failed to consider the Sentencing Guidelines, failed to state on the record the reasons for deviating from the Sentencing Guidelines, abused its discretion, and failed to consider Appellant's age, family history, education, and employment history.

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. *Commonwealth v. Mastromarino*, 2 A.3d 581, 589 (Pa.Super. 2010). An abuse of discretion is not shown merely by an error in judgment; rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision. *Id.*

With regard to the imposition of sentence, the Superior Court of Pennsylvania has held:

In imposing sentence, the trial court is required to consider the particular circumstances of the offense and the character of the defendant. The trial court should refer to the defendant's prior criminal record, age, personal characteristics, and potential for rehabilitation. However, where the sentencing judge had the benefit of a presentence investigation report, it will be presumed that he or she was aware of the relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors. Additionally, the sentencing court must state its reasons for the sentence on the record. The sentencing judge can satisfy the requirement that reasons for imposing sentence be placed on the record by indicating that he or she has been informed by the pre-sentencing report; thus properly considering and weighing all relevant factors. *Commonwealth v. Fowler*, 893 A.2d 758, 766 (Pa.Super. 2006).

Commonwealth v. Ventura, 975 A.2d 1128, 1135 (Pa.Super. 2009). Thus, when being informed by a pre-sentence report, sentencing judges are under no compulsion to employ checklists or any extended or systematic definitions of their punishment procedure and their discretion should not be disturbed. *Commonwealth v. Macias*, 968 A.2d 773, 778 (Pa.Super. 2009).

In imposing sentence, we noted that the Superior Court, in vacating the Judgment of Sentence, stated the case was remanded to the trial court for re-sentencing pursuant to 42 Pa.C.S.A. §9718.2(a)(1). N.T., 5/12/15, at 4. Further, we stated that we had taken

into consideration the nature and seriousness of the offense; that the victim was a child; the offense to which the Appellant had been found guilty; the pre-sentence report prepared by the Fayette County Adult Probation Department; Appellant's prior record and his rehabilitative needs; and the gravity of the offense. *Id.* at 8. Further, this Court stated that a lesser sentence would depreciate the seriousness of the crime and that Appellant was in need of correctional treatment that could be provided most effectively by his commitment to an institution. *Id.* Thus, it is clear that this Court did provide adequate reasons for imposing the mandatory sentence.

As to the family history of Appellant, it was certainly considered. His family history showed that he had had been convicted of raping his three young daughters. It was this family history that triggered the mandatory sentence which was imposed.

Wherefore, it is respectfully submitted that this appeal is without merit and should be denied.

BY THE COURT,
GERALD R. SOLOMON
SENIOR JUDGE

ATTEST:
CLERK OF COURTS

*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI

& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219