

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHRISTOPHER RAUCH,	:	
	:	
Appellant	:	No. 851 WDA 2013

Appeal from the PCRA Order entered on February 11, 2013
in the Court of Common Pleas of Erie County,
Criminal Division, No. CP-25-CR-0003497-2003

BEFORE: BOWES, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED: February 28, 2014

Christopher Rauch ("Rauch") appeals from the Order denying his Motion for Time Credit While in Custody Prior to the Imposition of Sentence and Consistent With Sentencing Structure/Order (hereinafter "Motion for Time Credit"). We reverse and remand.

On July 16, 2004, a jury found Rauch guilty of two counts of possession with intent to deliver (cocaine and marijuana), two counts of possession (cocaine and marijuana) and one count of possession of drug paraphernalia.¹ On October 29, 2004, the trial court sentenced Rauch to an aggregate sentence of three to seven years in prison, to be served concurrently with sentences that he was already serving for prior convictions. On November 27, 2006, this Court affirmed the judgment of

¹ **See** 35 §§ 780-113 (a)(30), (16), (32).

sentence. ***See Commonwealth v. Rauch***, 913 A.2d 945 (Pa. Super. 2006) (unpublished memorandum).

On February 6, 2013, Rauch filed a Motion for Time Credit. The trial court denied the Motion for Time Credit on February 11, 2013. Rauch filed a Notice of Appeal.

On March 18, 2013, this Court directed the trial court to return the appeal after Rauch had provided the trial court with the requisite proofs of service, and submitted the appropriate filing fee or an order certifying that he is indigent. On that same day, Rauch filed a Motion for Assignment of Counsel and a Motion for Continued *in Forma Pauperis* Status. Also on that same day, the trial court entered an Order denying the Motion for Assignment of Counsel, and granting the Motion for Continued *in Forma Pauperis* Status.

On September 3, 2013, this Court issued a *per curiam* Order for the appointment of counsel, and directed counsel to file an appellate brief addressing whether Rauch's Motion for Time Credit qualifies as his first petition for relief pursuant to the Post Conviction Relief Act ("PCRA").² This Court retained jurisdiction. The trial court appointed counsel for Rauch. Counsel has filed an appellate brief for Roach.

In his brief, Rauch contends that, because his judgment of sentence became final on November 27, 2006, his Motion for Time Credit qualifies as

² ***See*** 42 Pa.C.S.A §§ 9541-9546.

his first PCRA Petition, thereby entitling him to appointment of counsel.³ Rauch's claim implicates the legality of his sentence, a claim that is cognizable under the PCRA. **See *Commonwealth v. Johnson***, 967 A.2d 1001, 1003, (Pa. Super. 2009) (stating that a claim of lack of credit for time served implicates the legality of a sentence); ***Commonwealth v. Beck***, 848 A.2d 987, 989 (Pa. Super. 2004) (stating that issues concerning the legality of sentence are cognizable under the PCRA). We agree. **See** Pa.R.Crim.P. 904(C); ***Commonwealth v. Karanickolas***, 836 A.2d 940, 945-46 (Pa. Super. 2003) (stating that counsel must be appointed in every case in which a defendant has filed a motion for post-conviction collateral review for the first time and is unable to afford counsel).

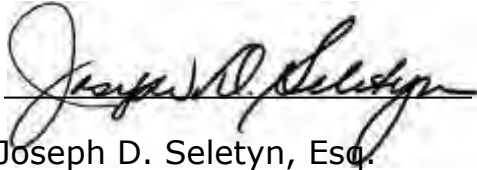
We reverse the PCRA court's Order denying Rauch's Motion for Assignment of Counsel and the Order denying Rauch's Motion for Time Credit. Upon remand, the PCRA court is instructed to appoint PCRA counsel to assist Rauch with his first PCRA Petition. Further, the PCRA court must determine that Rauch is still eligible for PCRA relief. **See** 42 Pa.C.S.A § 9543(a)(1)(i) (stating that, to be eligible for relief, the petitioner must be serving a prison, probation or parole sentence for the crime in question).⁴

Order reversed. Case remanded with instructions. Jurisdiction relinquished.

³ Rauch filed a prior PCRA Petition in 2005 seeking to reinstate his appeal rights, which petition was granted.

⁴ Rausch's most recent submission to this Court indicates that he is in prison.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/28/2014