

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
EX REL. MANIE LEIGH FOSKEY, III,	:	PENNSYLVANIA
	:	
Appellant	:	
	:	
v.	:	
	:	
SUPERINTENDENT BRIAN COLEMAN,	:	
	:	
Appellee	:	No. 1244 WDA 2013

Appeal from the Order entered on July 23, 2013  
in the Court of Common Pleas of Beaver County,  
Criminal Division, No. CP-04-CR-0000919-1992

BEFORE: BOWES, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: FILED: April 22, 2014

Manie Leigh Foskey, III ("Foskey") appeals, *pro se*, from the Order denying his Writ of *Habeas Corpus Ad Subjiciendum*. We affirm.

On September 20, 1993, Foskey pled guilty to one count of first-degree murder, two counts of attempted murder, and one count of aggravated assault. The trial court immediately sentenced Foskey to life in prison for the first-degree murder conviction. On May 23, 1994, Foskey was sentenced on the remaining counts to five to twenty years in prison, to be served consecutively to the life in prison sentence. Foskey did not file a direct appeal. However, Foskey has filed numerous Post Conviction Relief

Act ("PCRA") and *habeas corpus* Petitions. Foskey was not provided relief on any of the Petitions.<sup>1</sup>

On July 8, 2013, Foskey filed the instant Writ of *Habeas Corpus Ad Subjiciendum*. The trial court treated Foskey's Writ as a *habeas corpus* Petition and denied the Writ.

Foskey filed a timely Notice of Appeal. The trial court ordered Foskey to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Foskey filed a timely Concise Statement and the trial court issued an Opinion.

On appeal, Foskey raises the following questions for our review:

- I. Did [the] trial court abuse its discretion in not discharging [Foskey] under the great writ from an illegal detention when it relied upon a footnote of an unofficial publication prohibited by 1 Pa.C.S. § 503 and 101 Pa.Code § 11.4 where the pamphlet law [*sic*] 18 Pa.C.S. § 1102(A)[, Foskey] was sentence [*sic*] to violated his substantive due process rights because it was being mandatory controlled by § 1311(D) that had been repealed 13 years [before] his judgment became final?
- II. Did [the] trial court abuse its discretion in not discharging [Foskey] under the great writ from a constitutionally infirm and illegal detention where Superintendent Brian Coleman accepted and confined him into custody without a lawful court order[, ] thus violating 27 Pa.Code § 91.3, 42 Pa.C.S. § 9762 and 9764?

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<sup>1</sup> The trial court has set forth a detailed procedural history in its Opinion. **See** Trial Court Opinion, 7/23/13, at 1-4; **see also Com. ex rel Foskey v. Coleman**, 82 A.3d 466 (Pa. Super. 2013) (unpublished memorandum at 1-5).

Brief for Appellant at 3 (capitalization omitted).<sup>2</sup>

Foskey contends that his detention was illegal because the statutes under which he was sentenced for first-degree murder, 18 Pa.C.S.A. §§ 1102, 1311, were declared unconstitutional prior to his sentencing. Brief for Appellant at 10-12, 16. Foskey asserts that 42 Pa.C.S.A. § 9711, which is constitutional, was applicable at the time of his sentencing. Brief for Appellant at 11, 12-14. Foskey claims that even though he pled guilty and stated that he understood the sentencing provision for first-degree murder, there was no authority to sentence him under the unconstitutional statutes. ***Id.*** at 15-16.

In his next claim, Foskey contends that his detention was illegal because the prison's superintendent confined him without a lawful sentencing order, which violated 42 Pa.C.S.A. § 9764(a)(8). Brief for Appellant at 17-19; ***see also id.*** at 17-18 (arguing that the failure to provide a valid sentencing order also violated 37 Pa.Code § 93.1 and 42 Pa.C.S.A. § 9762).

Here, the trial court determined that Foskey's claims are not subsumed by the PCRA and that his Writ should be reviewed as a *habeas corpus*

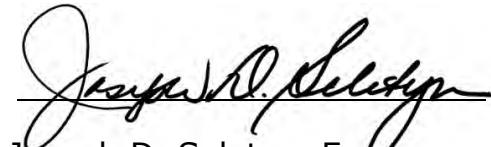
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<sup>2</sup> For ease of disposition, we will address Foskey's claims together.

petition. **See** Trial Court Opinion, 7/23/13, at 5-7.<sup>3</sup> The trial court then addressed Foskey's claims and determined that they are without merit. **See id.** at 8-12. We agree with the sound reasoning of the trial court and adopt its Opinion for the purpose of this appeal. **See id.** at 5-12.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/22/2014

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<sup>3</sup> With regard to Foskey's first claim, the record supports the trial court's finding that Foskey has not raised a legality of sentence claim and therefore, the claim is not subsumed by the PCRA. It is well-settled that legality of sentence claims apply to a narrow class of cases, including "double jeopardy, [**Apprendi v. New Jersey**, 530 U.S. 466 (2000)] challenges, mandatory minimum sentencing, and other traditional illegal sentencing claims pertaining to sentences that exceed the statutory maximum[.]" **Commonwealth v. Watley**, 81 A.3d 108, 118 (Pa. Super. 2013) (*en banc*) (footnote omitted). Indeed, our Court has concluded that a claim that the sentencing court relied on an unconstitutional statute when it sentenced a defendant does not implicate the legality of the sentence. **Commonwealth v. Williams**, 787 A.2d 1085, 1087 (Pa. Super. 2001); **accord Commonwealth v. Berry**, 877 A.2d 479, 483 (Pa. Super. 2005). Furthermore, Foskey's claims regarding the failure to provide a written sentencing order under 42 Pa.C.S.A. § 9764(a)(8) tests "the legality of [his] commitment and detention," and therefore his petition for review sounded in *habeas corpus*." **Brown v. Pennsylvania Dep't. of Corr.**, 81 A.3d 814, 815 (Pa. 2013) (*per curiam*) (citation omitted).

156.  
J-503037-14

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY  
PENNSYLVANIA  
CRIMINAL DIVISION – LAW

COMMONWEALTH OF PENNSYLVANIA :  
ex rel. MANIE LEIGH FOSKEY, III, :  
 :  
vs. : No. 919 of 1992  
 :  
SUPERINTENDENT BRIAN COLEMAN. :

OPINION

Tesla, J. July 23, 2013

Before this Court is a request for the Writ of Habeas Corpus Ad Subjiciendum and a Petition to Proceed In Forma Pauperis filed by Defendant Manie Leigh Foskey, III (hereinafter, “Defendant”). The procedural background of this matter follows.

On May 1, 1992, Defendant was charged with criminal homicide, criminal attempt to commit homicide, aggravated assault, recklessly endangering another person, and firearms not to be carried without a license in connection with a shooting that occurred on May 1, 1992 in Center Township, Beaver County, Pennsylvania. On September 20, 1993, the Defendant entered guilty pleas to first-degree murder, attempted murder, and aggravated assault. On that same date, the Honorable Judge Joseph S. Walko sentenced Defendant to life in prison for the murder conviction. Sentencing on the count of aggravated assault occurred on May 23, 1994, when Judge Walko ordered that Defendant undergo five to twenty years imprisonment and that the sentence run consecutive to the September 20, 1993 life sentence. Defendant did not file a post-sentence motion or a direct appeal of any of the Court’s sentencing orders.

Since the sentencing, however, Defendant has filed numerous petitions for writ of habeas corpus and petitions for collateral relief under the Post-Conviction Relief Act (hereinafter, "PCRA"), 42 Pa.C.S.A. §§ 9541-9546. On January 15, 1997, Defendant filed a PCRA petition alleging ineffective assistance of counsel and the entry of an involuntary guilty plea. Following an evidentiary hearing on Defendant's petition on May 9, 1997, Defendant's petition was denied on July 11, 1997. Defendant appealed, and the Superior Court of Pennsylvania affirmed the Court's decision on May 15, 1998. On October 25, 2002, Defendant filed his second PCRA petition in which he alleged ineffectiveness of counsel, that his pleas were not knowingly, intelligently, and voluntarily tendered due to an illegal sentence and double jeopardy, and that the Court lacked subject matter jurisdiction to accept Defendant's guilty pleas. On October 29, 2002, the Court denied Defendant's second petition without a hearing, and the Superior Court affirmed the Court's decision on March 1, 2004.

Prior to the Superior Court's decision addressing Defendant's second PCRA petition, Defendant filed a request for writ of habeas corpus ad subjiciendum on January 15, 2004, alleging that his detention was unlawful. Because the issues and remedies sought in Defendant's habeas corpus petition were cognizable under the PCRA statute and because the record had not yet been remanded, the Court denied Defendant's habeas corpus petition on January 26, 2004. Defendant filed a second habeas corpus petition on April 15, 2004 in which he alleged that he was not arraigned and that the prosecution fraudulently amended the original criminal information. Defendant's second petition was denied without a hearing on April 28, 2004, and, on July 20, 2004, the Superior Court dismissed Defendant's appeal of the April 28, 2004 Order because Defendant failed to file a docketing statement. On February 25, 2005, Defendant filed a third request for writ of habeas corpus ad subjiciendum claiming that the criminal information

was fraudulently amended, that he was deprived of an arraignment and a pre-trial conference, and that 18 Pa.C.S.A. § 2502(a) was unconstitutional. On April 4, 2005, the Court denied Defendant's petition because the arguments he raised were previously raised in another petition, and, on December 14, 2005, the Superior Court affirmed the Court's decision. Defendant's petition for allowance of appeal to the Pennsylvania Supreme Court was subsequently denied. On February 26, 2007, Defendant filed his fourth habeas corpus petition, claiming that the Pennsylvania Constitution and the Crimes Code were unconstitutional. On March 6, 2007, the Court denied Defendant's petition, calling it frivolous and without support. The Superior Court affirmed, finding that the issues raised by Defendant were cognizable under the PCRA and that his petition should therefore be treated as an untimely PCRA. The Pennsylvania Supreme Court denied Defendant's Petition for Allowance of Appeal on April 28, 2008.

On June 30, 2008, Defendant filed another petition which he described as both a habeas corpus and a PCRA petition. In Orders dated July 3, 2008 and July 7, 2008, the Court denied Defendant's habeas corpus / PCRA petition, and, on June 9, 2009, the Superior Court affirmed, again concluding that Defendant's petition was untimely. Defendant's petition for allowance of appeal to the Pennsylvania Supreme Court was denied on October 28, 2009. On October 30, 2009, Defendant filed his third PCRA Petition again claiming that certain provisions of the Crimes Code were unconstitutional and that his rights were somehow violated because the charges against him referred to the annotated edition of the Pennsylvania Consolidated Statutes. On January 11, 2010, the Court entered an order indicating its intention to dismiss Defendant's petition for being untimely and issuing a rule on Defendant to show cause why the petition should not be dismissed. Defendant's petition was ultimately dismissed as untimely on February 3, 2010, and, on November 8, 2010, the Superior Court affirmed this Court's decision.

On October 17, 2011, Defendant filed his fifth petition for writ of habeas corpus, arguing that the Commonwealth unlawfully induced him to enter his guilty pleas. The Court again denied Defendant's petition because the arguments he raised in his habeas corpus petition were cognizable under the PCRA and, accordingly, Defendant's petition should be treated as an untimely PCRA. Defendant appealed, and the Superior Court affirmed the Court's decision on July 16, 2012. On September 25, 2012, Defendant filed his sixth petition for writ of habeas corpus, again arguing that his guilty pleas were unlawfully induced. The Court again dismissed Defendant's petition as untimely, and the Superior Court affirmed the Court's decision on June 20, 2013.

Defendant now presents to this Court for consideration his eleventh petition requesting relief pursuant to either the PCRA or writ of habeas corpus since he was sentenced. In his request for the Writ of Habeas Corpus Ad Subjiciendum, Defendant raises the following two issues:

A. Relator's Detention Is Illegal and Constitutionally Infirm Where Superintendent Brian Coleman Accepted and Confined Him Into Custody Without a Lawful Court Judgment Order Whereby Violating 37 Pa. Code § 91.3, 42 Pa.C.S. § 9762 and 9764.

B. Relator's Detention is Illegal and Constitutionally Infirm Where The "Sentencing Statute" In His Case Had Been Repealed 13 Years Prior To The Entry Of A Final Judgment.

Def.'s Pet., at 3. In support of these issues, Defendant attaches to his petition as exhibits a copy of the September 20, 1993 sentencing order as well as a letter from an attorney and an attestation from a records supervisor at the Pennsylvania Department of Corrections (hereinafter, "D.O.C.") indicating that the May 23, 1994 sentencing order is not in the possession of the D.O.C. Defendant claims that, based on these allegations and exhibits, he has demonstrated that his detention is illegal and that he is entitled to the relief provided by the writ of habeas corpus. He,



therefore, requests that the Court issue a rule upon Superintendent Brian Coleman to inquire into the true cause of Defendant's detention, that an appropriate hearing be scheduled pursuant to 42 Pa.C.S.A. § 6504, that the convictions for first degree murder and aggravated assault be dismissed, and that Defendant be extricated from illegal detention without delay.

“[A]n application for habeas corpus to inquire into the cause of detention may be brought by or on behalf of any person restrained of his liberty within this Commonwealth[,]” but, “[w]here a person is restrained by virtue of sentence after conviction for a criminal offense, the writ of habeas corpus shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law.” 42 Pa.C.S.A. § 6503. Phrased differently, unless the PCRA cannot provide for a potential remedy, “the PCRA statute subsumes the writ of *habeas corpus*.” Commonwealth v. Taylor, 2013 Pa. Super. 89, 65 A.3d 462, 465-66 (2013). The broad scope of the PCRA has been repeatedly acknowledged, with courts frequently stating that “any petition filed after the judgment of sentence becomes final will be treated as a PCRA petition.” Commonwealth v. Jackson, 2011 Pa. Super. 219, 30 A.3d 516, 521 (2011) (quoting Commonwealth v. Johnson, 2002 Pa. Super. 238, 803 A.2d 1291, 1293 (2002)); Commonwealth v. Fowler, 2007 Pa. Super. 219, 930 A.2d 586, 591 (2007).

Despite the broad scope of the PCRA statute, the common law writ of habeas corpus has not been eliminated. 42 Pa.C.S.A. § 6501; Taylor, 65 A.3d at n.3. For example, an appellant was permitted to seek habeas corpus relief based on his claim that, after nine years at liberty on an appeal bond, he was incarcerated pursuant to an approximately eleven-year-old sentence order that was not executed when the appellant's judgment became final. Commonwealth v. West, 595 Pa. 483, 938 A.2d 1034 (2007). Although the appellant's petition was not granted, the Pennsylvania Supreme Court did conclude that the appellant's claim fell outside the ambit of

potential claims cognizable under the PCRA and that the Superior Court properly reviewed it as a habeas corpus petition. Id. at 1044-45. The Court further found that the appellant's claim was not cognizable under the PCRA because it did not implicate the truth-determining process underlying his conviction and sentence, nor did it implicate the legality of the sentence imposed. Id. at 1044.

Similarly, the Court finds in this matter that Defendant is permitted to seek habeas corpus relief. Section 9543 of the PCRA sets forth the criteria for eligibility for relief under the PCRA.

It states, in part, as follows:

(a) General rule.—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

[...]

(2) That the conviction or sentence resulted from one or more of the following:

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

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) Deleted.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

42 Pa.C.S.A. § 9543. Defendant claims that he was sentenced pursuant to a repealed statute and that he was committed without a lawful court order. These allegations are not consistent with any of the claims listed in subsection (a)(2). Furthermore, these allegations do not implicate the truth-determining process underlying Defendant's conviction and sentence, and they do not implicate the legality of the imposed sentence by asserting that it was greater than the lawful maximum. As a result, Defendant's claims are not cognizable under the PCRA, and his petition shall be reviewed as a habeas corpus petition.

“The petition for habeas corpus must specifically aver facts which, if true, would entitle the relator to an award of a writ of habeas corpus and a hearing thereon.” Balsamo v. Mazurkiewicz, 417 Pa. Super. 36, 40, 611 A.2d 1250, 1253 (1992). “A habeas corpus court, in determining whether a petition for a writ requires a hearing, must accept as true all allegations of fact contained in the petition which are non-frivolous, specific, and not contradicted by the record, even though those allegations may be controverted by the Commonwealth.” Commonwealth ex rel. West v. Myers, 423 Pa. 1, 4, 222 A.2d 918, 920 (1966). “[T]he petition may be denied summarily and without a hearing where it fails to allege facts making out a prima facie case for the issuance of the writ.” Balsamo, 417 Pa. Super. at 41, 611 A.2d at 1253. A hearing is also not required when there is no issue of fact to be decided or when the facts averred by relator, even if believed, are insufficient to warrant granting the writ of habeas corpus. Commonwealth v. Judge, 591 Pa. 126, 142, 916 A.2d 511, 521, n.13 (2007) (citing Commonwealth ex rel. Butler v. Rundle, 407 Pa. 535, 536, 180 A.2d 923, 924 (1962)).

As stated above, Defendant argues in his first issue that he cannot be incarcerated on D.O.C. property because the Court's May 23, 1994 order sentencing him to five to twenty years for aggravated assault was not provided to the D.O.C. upon Defendant's commitment, as required by 37 Pa. Code § 91.3 and 42 Pa.C.S. §§ 9762, 9764. In his petition, Defendant quotes section 91.3, which states, in part, that "[t]he Department will accept and confine those persons committed to it under lawful court orders which conform to 42 Pa.C.S. § 9762...when information has been provided to the Department as required by 42 Pa.C.S. § 9764 (relating to information required upon commitment and subsequent disposition)." 37 Pa. Code § 91.3. Defendant also quotes section 9764(a)(8), which states, in part: "Upon commitment of an inmate to the custody of the Department of Corrections, the sheriff or transporting official shall provide to the institution's records officer or duty officer...the following information:...(8) A copy of the sentencing order and any detainers filed against the inmate which the county has notice." 42 Pa.C.S.A. §9764(a)(8). In citing these sections, Defendant asserts that a copy of the May 23, 1994 sentencing order was never submitted to the records officer or duty officer of the State Correctional Institution at Fayette (hereinafter, "SCI-Fayette), the facility in which he is currently incarcerated. To support this assertion, Defendant attaches a letter, on which Defendant is copied, from an Attorney Valerie Janosik-Nehilla to an appeals officer of the Office of Open Records. In the letter, Attorney Janosik-Nehilla states that Defendant's Right to Know Law request was denied because the document Defendant requested did not exist. Attorney Janosik-Nehilla also references and attaches the attestation of Samantha Batta, Records Supervisor for SCI-Fayette. In the attestation, Ms. Batta confirms that the requested May 23, 1994 sentencing order was not in the possession of SCI-Fayette.

A review of the record in this case and of the statutes cited by Defendant establishes that Defendant is not entitled to relief based on this claim for several reasons. First, section 9764(a)(8), the subsection containing the requirement that a copy of the sentencing order be provided to the correctional institution at the time of commitment, was not applicable at the time that Defendant was committed. Defendant was sentenced on the aggravated assault count by Judge Walko on May 23, 1994, and the commitment form was issued on the same date. Section 9764, however, was approved on June 18, 1998 and made effective 120 days later. As a result, this section provides no relief to Defendant because it was not effective at the time that Defendant was committed.

Second, even if section 9764 was in effect, Defendant's allegations and exhibits do not necessarily establish a violation of subsection (a)(8). Ms. Batta's attestation states that the requested May 23, 1994 sentencing order was not in the possession of SCI-Fayette. This does not foreclose the possibility that the requested document is available at another facility. The commitment form that was issued on the same date as the May 23, 1994 sentencing order indicates that Defendant was to "be delivered by the proper authority to and treated as the law directs at the State Institution facility located at Pittsburgh." (See attached certified copy). Defendant presents nothing indicating that the sheriff failed to provide a copy of the sentence order to the records officer of the State Institution in Pittsburgh or another D.O.C. facility at the time of Defendant's commitment. As a result, Defendant's allegations, even if accepted as true, do not demonstrate that a violation of section 9764(a)(8) occurred.

Third, even if section 9764 was in effect and the alleged violation of that section occurred, Defendant's claim would not provide him with the relief he is requesting. On September 20, 1993, Defendant entered a plea to first degree murder, and Judge Walko

sentenced him to life in prison. The accompanying commitment order was sent to the D.O.C. (See attached certified copy). Defendant does not allege that the D.O.C. does not have a copy of the September 20, 1993 sentencing order, nor does he argue that he is being held illegally by the D.O.C. because they do not have a copy of the September 20, 1993 sentencing order. Regardless of the location of the May 23, 1994 sentencing order, Defendant's detention is lawful based on the September 20, 1993 order sentencing him to life in prison. Therefore, Defendant's claim is without merit based on the facts in the record.

Finally, Defendant cites no authority indicating that a violation of section 9764(a)(8) entitles him to the relief he is requesting when the sentence imposed was otherwise lawful. A review of the record reveals that Defendant was lawfully sentenced on the aggravated assault count and committed. Nevertheless, Defendant argues that an alleged violation of this provision of the Pennsylvania Code not only renders the May 23, 1994 sentence and subsequent detention unlawful but also entitles him to the issuance of a rule to show cause, a hearing, and, ultimately, dismissal of the charges and release from incarceration. No authority has been cited for this argument, and the Court finds Defendant's argument to be without merit.

With respect to the other issue raised in his petition, Defendant claims that his detention is illegal because the sentencing statute utilized in his case was repealed at the time he was sentenced. In his petition, Defendant cites a version of section 1102(a) of the Crimes Code that was in effect after 1980 but prior to 1995 or, in other words, that was in effect at the time he was sentenced for first degree murder. He quotes this section as follows: "A person who has been convicted of a murder first degree *shall* be sentenced to death or to a term of life imprisonment *in accordance with section 1311(d) of this Title.*" (Emphasis in Defendant's petition). According to Defendant, a problem arises from the fact that 18 Pa.C.S.A. § 1311(d) was repealed and

replaced with 42 Pa.C.S.A. § 9711 in 1980; however, the reference to section 1311(d) in 18 Pa.C.S.A. § 1102(a) was not changed to a reference to 42 Pa.C.S.A. § 9711 until 1995, which is after he was sentenced. Defendant argues “[w]hat this means is that from December 5, 1980 to March 15, 1995 18 Pa.C.S. § 1311(d) controlled the *mandatory* sentencing procedure at § 1102(a), a penalty / punishment that no longer exist under Pa. Laws.” (Emphasis in Defendant’s petition). Defendant claims that this alleged inconsistency requires that his first degree murder sentence be dismissed.

Again, Defendant’s argument fails for several reasons. First, 42 Pa.C.S.A. § 9711 was in effect at the time Defendant was sentenced. 18 Pa.C.S.A. § 1311 was renumbered 42 Pa.C.S.A. § 9711 and amended on October 5, 1980 and made effective 60 days later. Therefore, Defendant was sentenced pursuant to proper statutory authority that was not later overturned. Second, Defendant misquotes 18 Pa.C.S.A. § 1102(a). The language in effect at the time of Defendant’s sentencing contained a reference to “section 1311(d)” followed by a footnote, which stated “Transferred; see, now, 42 Pa.C.S.A. § 9711.” 18 Pa.C.S.A. § 1102 (copyright West 1993). Therefore, 18 Pa.C.S.A. § 1102(a) contained a reference to the appropriate sentencing statute at the time of Defendant’s sentencing. Third, numerous appellate decisions recognized the applicability of 42 Pa.C.S.A. § 9711 around the time of Defendant’s sentencing, despite the fact that 18 Pa.C.S.A. § 1102(a) contained a reference to a repealed section. *See e.g., Commonwealth v. Rainey*, 540 Pa. 220, 656 A.2d 1326 (1995); *Commonwealth v. Gamboa-Taylor*, 535 Pa. 266, 634 A.2d 1106 (1993); *Commonwealth v. McNair*, 529 Pa. 368, 603 A.2d 1014 (1992); *Commonwealth v. Heidnik*, 526 Pa. 458, 587 A.2d 687 (1991). Finally, Defendant stated at his September 20, 1993 plea and sentence hearing that he understood the mandatory sentencing provision for first degree murder and that he still intended to enter a guilty plea.

N.T., 9/20/93, at 8, 21-22, 26. Approximately 20 years later, Defendant now seeks to set aside his life sentence based upon what he perceives to be an inconsistency in the language of the sentencing statute at that time. As a result, in addition to finding this issue to be without merit, the Court deems this issue waived. Commonwealth ex rel. Lewis v. Maroney, 420 Pa. 39, 215 A.2d 629 (1966).

Although the Court finds that Defendant's request should be construed as a petition for writ of habeas corpus, the Court is also mindful of the possibility that Defendant's petition could be construed as a PCRA petition. After all, the legality of a defendant's sentence is a cognizable issue under the PCRA. Commonwealth v. Jackson, 30 A.3d 516, 521 (2011) (citing 42 Pa.C.S.A. § 9542; Commonwealth v. Hockenberry, 455 Pa. Super. 626, 689 A.2d 283, 288 (1997)). If Defendant's petition constitutes a PCRA petition, his petition, like many of his previous petitions, is untimely and, therefore, denied. In support of a decision to deny Defendant's petition as untimely, the Court hereby incorporates the rationale set forth in this Court's January 10, 2012 and March 7, 2012 Opinions as well as the Superior Court's well-reasoned June 20, 2013 Opinion.

For the foregoing reasons, Defendant's request for Writ of Habeas Corpus Ad Subjiciendum is denied.