2014 PA Super 158

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| MIGUEL HEREDIA, | : | |
| | : | |
| Appellant | : | No. 1154 EDA 2013 |

Appeal from the PCRA Order Entered March 28, 2013,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-0000880-2009.

BEFORE: SHOGAN, OTT and PLATT*, JJ.

CONCURRING AND DISSENTING OPINION BY SHOGAN, J. :**FILED JULY 24, 2014**

I agree with the Majority's conclusion that Appellant's claim is not cognizable under the PCRA. However, because there is a patent inconsistency between the sentencing order and commitment order, both of which the Department of Corrections is required to follow, I am compelled to write separately. As discussed below, a writ of *habeas corpus ad subjiciendum* is the proper means by which Appellant should seek redress. Accordingly, I respectfully dissent from the Majority's conclusion that Appellant is required to pursue an original action in the Commonwealth Court.

In ***Commonwealth v. Perry***, 563 A.2d 511 (Pa. Super. 1989), a panel of this Court clarified the appropriate procedure for presenting a

*Retired Senior Judge assigned to the Superior Court.

sentencing challenge based on credit for time served, as follows: 1) If the alleged error is thought to be the result of an **erroneous computation of sentence by the Department of Corrections, the appropriate vehicle for redress is in an original action in the Commonwealth Court challenging the Department's computation of time**; 2) if the defendant is challenging the legality of a trial court's alleged failure to award credit for time served, it presents a due process claim that is cognizable under the PCRA; and 3) if the alleged error is thought to be attributable to **ambiguity in the sentence imposed by the trial court, the defendant should file a writ of *habeas corpus ad subjiciendum* with the trial court for clarification and/or correction** of the sentence imposed. ***Perry***, 563 A.2d at 512-513 (citations omitted) (emphasis added).

Here, there is no erroneous computation of time by the Department of Corrections. The sentencing transcript reveals that the trial court awarded Appellant credit for time served (N.T., 12/7/09, at 19), and the sentencing order granted Appellant credit for time served (Order of Sentence, 12/7/09). However, Form DC-300B, the **trial court** document that commits a defendant into custody, does not provide Appellant credit for time served.

Form DC-300B is a Court Commitment **order** that is generated by the Common Pleas Criminal Court Case Management System of the Unified Judicial System. ***See*** 42 Pa.C.S.A. § 9764(a); ***see also*** 37 Pa. Code § 96.4.

Thus, I agree with the Majority that Form DC-300B is required when an inmate is placed into DOC custody. Maj. Op. at footnote 3. However, because, as the Majority points out, the court-generated Form DC-300B is required in tandem with the sentencing order, I cannot agree that the Department of Corrections may ignore or correct inconsistencies between Form DC-300B and the sentencing order. Form DC-300B is a court commitment order, not a Department of Corrections document, and it cannot be modified or disregarded by the Department of Corrections. ***See Spotz v. Commonwealth***, 972 A.2d 125, 131 (Pa. Cmwlth. 2009) (stating "Even though the Court Commitment **order**, Form DC-300B, was completed on the court's behalf by the clerk and was not signed by the sentencing judge, the Department did not err in relying on that form which indicated that Boyd had been ordered to pay $5,000.00 in fines, $335.20 in costs and $3,240.00 in restitution by the sentencing court.") (emphasis added), quoting ***Boyd v. Com., Pennsylvania Dept. of Corrections***, 831 A.2d 779, 783 n.6 (Pa. Cmwlth. 2003). Thus, there is a patent inconsistency in the trial court's sentencing order and commitment order.

Indeed, it is apparent from Appellant's PCRA petition and brief that he is not simply challenging the Department of Corrections' computation of credit for time served or the trial court's failure to award credit for time served. Rather, Appellant is arguing ambiguity in that the Philadelphia

County Court of Common Pleas issued a Form DC-300B containing incorrect information. Therefore, Appellant is seeking clarification and/or correction of the sentence imposed.

Accordingly, a petition for a writ of *habeas corpus ad subjiciendum*, for clarification and/or correction of the sentence, rather than an original action in Commonwealth Court[1] or a PCRA petition, is the proper vehicle for Appellant's challenge. ***Perry***, 563 A.2d at 513. Therefore, I would affirm the PCRA court's order denying Appellant PCRA relief without prejudice to his ability to pursue his claim in a writ of *habeas corpus ad subjiciendum* in the trial court.

[1] In contrast to the result reached by the Majority, I conclude that an action pursuant to the original jurisdiction of the Commonwealth Court would be improper inasmuch as the Department of Corrections did not err in its computation of Appellant's sentence. ***Perry***, 563 A.2d at 512-513. Rather, as explained above, the error asserted is in Form DC-300B. Form DC-300B is a court document that the Department must follow, and the Commonwealth Court could not direct the Department of Corrections, an executive branch agency, to modify a document created by the judicial branch.