

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MALIK SABOR ROSS

Appellant

v.

ROBERT GILMORE

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2048 MDA 2014

Appeal from the Order Entered October 7, 2014
In the Court of Common Pleas of Centre County
Civil Division at No(s): 2014-3738

BEFORE: BOWES, J., ALLEN, J., and LAZARUS, J.

JUDGMENT ORDER BY LAZARUS, J.:

FILED MAY 27, 2015

On September 29, 2014, Malik Sabor Ross filed a petition for writ of habeas corpus and a petition to proceed *in forma pauperis* in the Civil Division of the Court of Common Pleas of Centre County. On October 7, 2014, the trial court dismissed both petitions and directed Ross to refile them in the court's criminal division.

In his petition for habeas corpus, Ross raises issues related to the legality of his current sentence of incarceration. Accordingly, his petition should properly have been filed under the criminal docket number of the case for which he is serving his sentence.

Section 5103 of the Judicial Code provides, in relevant part, as follows:

§ 5103. Transfer of erroneously filed matters

(a) General rule. -- If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth

which does not have jurisdiction of the appeal or other matter, the court or district justice shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth. . . .

. . .

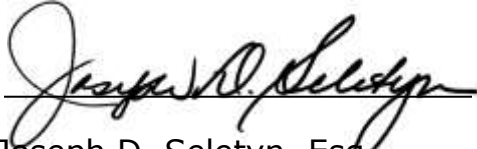
(c) Interdivisional transfers. -- If an appeal or other matter is taken to, brought in, or transferred to a division of a court to which such matter is not allocated by law, the court shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper division of the court, where the appeal or other matter shall be treated as if originally filed in the transferee division on the date first filed in a court or magisterial district.

42 Pa.C.S.A. § 5103.

The language of section 5103 is absolute, admitting to no exceptions. ***Lucidore v. Novak***, 570 A.2d 93, 95 (Pa. Super. 1990). It states that a court lacking jurisdiction **shall** transfer the action. ***Id.*** (emphasis added). Further, the language states that a matter brought before the incorrect division may not be dismissed. ***Id.***

Accordingly, the order dismissing Ross' petition for writ of habeas corpus and petition to proceed *in forma pauperis* is hereby reversed and the case is remanded to the criminal trial division of the Court of Common Pleas of Centre County for further proceedings. Jurisdiction relinquished.

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: 5/27/2015