

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHRISTOPHER RUDOLF

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2876 EDA 2013

Appeal from the PCRA Order September 9, 2013
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0004873-2009

BEFORE: GANTMAN, P.J., JENKINS, J., and FITZGERALD, J.*

MEMORANDUM BY JENKINS, J.:

FILED JULY 22, 2014

Appellant Christopher Rudolf appeals from the October 9, 2013 order of the Court of Common Pleas of Bucks County vacating the court's prior orders, denying PCRA relief, and finding no violation of Pennsylvania Rule of Criminal Procedure 600. We affirm.

On December 7, 2009, Rudolf entered into a negotiated guilty plea to criminal attempt of rape by forcible compulsion,¹ criminal attempt of aggravated indecent assault by forcible compulsion,² two counts of

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 901(a).

² 18 Pa.C.S. § 901(a), 3125(a)(2). The Commonwealth initially charged Rudolf with criminal attempt – involuntary deviated sexual intercourse. This charge was amended to criminal attempt – aggravated indecent assault forcible compulsion.

(Footnote Continued Next Page)

burglary,³ aggravated assault,⁴ two counts of criminal trespass,⁵ indecent assault by forcible compulsion,⁶ simple assault,⁷ recklessly endangering another person,⁸ and two counts of loitering and prowling at night time.⁹ The Commonwealth withdrew an indecent assault without the consent of the other¹⁰ count.

On March 12, 2010, the trial court sentenced Rudolf to an aggregate term of 8 to 16 years imprisonment followed by a 20-year term of probation. Rudolf did not file post-sentence motions or an appeal.

On February 22, 2011, Rudolf filed a timely petition pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. § 9541 *et seq.* On February 2, 2012, the trial court appointed counsel. The court held a hearing on July 3, 2012. On November 26, 2012, Rudolf filed a second amended PCRA

(Footnote Continued) _____

³ 18 Pa.C.S. § 3502(a).

⁴ 18 Pa.C.S. § 2702(a)(1).

⁵ 18 Pa.C.S. § 3503(a)(1)(i).

⁶ 18 Pa.C.S. § 3126(a)(2).

⁷ 18 Pa.C.S. § 2701(a)(3).

⁸ 18 Pa.C.S. § 2705.

⁹ 18 Pa.C.S. § 5506.

¹⁰ 18 Pa.C.S. § 3126(a)(1).

petition and supporting brief. The proposed order attached to this petition requested that the court grant the "motion to amend his PCRA petition," vacate the judgment of conviction, and order the Commonwealth to comply with Rule 600. **See** Defendant's Second Amended PCRA Petition and Supporting Brief and the accompanying proposed order.

The Court entered the following order:

And now, this 30th day of November, 2012, the Defendant's motion to amend his PCRA petition is granted and the judgment of conviction is vacated and the Commonwealth is directed to bring this matter to trial in compliance with Pa. R.Crim.P. 600.

On December 3, 2012, the court issued the following order:

AND NOW, this 3rd day of December, 2012, the Order of November 30, 2012 vacating judgment of conviction is hereby RESCINDED. Defendant's motion to amend his PCRA petition is granted and the Commonwealth is directed to bring this matter to [trial] in compliance with Pa.R.Crim.Pro. 600.

On August 7, 2013, the Bucks County Court Administrator scheduled trial for September 10, 2013. The Court Administrator cancelled the trial date after the Commonwealth informed it that the court had not granted Rudolf a new trial. On August 27, 2013, Rudolf filed a motion to dismiss pursuant to Rule 600 because the Commonwealth had not commenced trial within 120 days. On August 28, 2013, the Commonwealth filed a petition seeking a hearing, which sought clarification of the case's status. The court held a hearing on October 9, 2013.

On October 9, 2013, the court issued the following order:

AND NOW, this 9th day of October, 2013, it is hereby ORDERED and DIRECTED:

1. The orders signed by this court dated November 30, 2012 and December 3, 2012 are hereby vacated.
2. It was never this Court's intention to grant Petitioner post-conviction relief in this matter.
3. Petitioner Rudolf remains convicted of all crimes to which he entered a Negotiated Guilty Plea on December 7, 2009, and was sentenced for on March 12, 2010 on the above criminal information.
4. Petitioner is hereby DENIED Post-Conviction Relief on all Motions and Petitions previously filed in this court on the above criminal information.^[11]
5. There was no Rule 600 violation in this matter which would have entitled Petitioner relief.
6. Petitioner has 30 days from today's date in which to file an appeal to Superior Court of Pennsylvania from this order.
7. The Bucks County Clerk of Court is hereby DIRECTED to enter this order so that the CPCMS docket entries reflect the issuance of this order.

¹¹ The hearing on July 3, 2012 addressed the claims raised in the counseled PCRA petition and the amended PCRA petition. The amended petition, asserting an additional claim that his plea was involuntary because he was coerced by counsel, was not filed until November 26, 2012. At the hearing, however, Rudolf's counsel informed the court he would file an amended petition asserting Rudolf's guilty plea was involuntary because of coercion by counsel and the court heard testimony in support of this claim. N.T., 7/3/2012. Because the court held a hearing, it was not required to provide notice of its intent to dismiss the petition. **See** Pa.R.Crim.P. 908(D) ("Upon the conclusion of the hearing the judge shall determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any").

Rudolf appealed. Both Rudolf and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925.¹²

Rudolf raises the following issue on appeal:

Did the lower court err in vacating and reversing a ruling granting the Defendant post-conviction relief in the form of a new trial (1) ten months after making the ruling, (2) after the case was scheduled for a new trial and (3) upon a request by the Commonwealth made nine months after the order was issued, even though it did not appeal the order nor seek reconsideration within thirty days of its issuance?

Appellant's Brief at 4.

The trial court found it could modify any order within 30 days of its entry pursuant to 42 Pa.C.S. § 5505, and it had the inherent common law authority to correct clerical errors in its orders. Trial Court 1925(a) Opinion, 12/19/2013, at 7. The trial court found it modified the November 30, 2012

¹² Rudolf's concise statement of matters complained of on appeal pursuant to Rule 1925(b) raised two arguments: (1) "The Court erred in denying the Defendant's petition for post-conviction relief because the Defendant's plea was the result of unlawful coercion by counsel"; and (2) "The Court erred in vacating the December 3, 2013 order because it lacked jurisdiction to do so." Defendant's Statement Pursuant to Pa.R.App.Pro. 1925(b). In his appellate brief, Rudolf raises only the second issue, i.e., court error in vacating the December 3, 2013 order. Because not contained in his questions presented, or elsewhere in his brief, he has waived any claim regarding the denial of the PCRA petition. **See** Pa.R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."); **Commonwealth v. Bryant**, 57 A.3d 191, 196 n.7 (Pa.Super.2012) (appellant waived claims for when failed to include them in statement of questions).

order on December 3, 2012, within the 30 day time period set out in § 5505.

It next stated that it

never intended to sign that order in November because I vacated it within a couple of days . . . so the Order issued on November 30, 2012, quite clearly was entered erroneously and was not my intent . . . I regret that it happened and that you may have relied upon it and thought you were entitled to some relief, but the fact of the matter is, in my opinion, its nothing more than a clerical or administrative error . . . I vacated the conviction by mistake. I'm permitted within a certain period of time, and I did within a certain period of time[,] vacate that Order when I realized it was done by mistake.

Trial Court 1925(a) Opinion, 12/19/2013, at 8.

The trial court did not err in vacating its prior orders and issuing its October 9, 2013 order.

Pursuant to 42 Pa.C.S. § 5505, "a court upon notice to the parties may modify or rescind any order within 30 days after its entry." Section 5505, however, applies only to final orders. **Commonwealth v. Harper**, 890 A.2d 1078, 1081 (Pa.Super.2006). Orders granting a new trial are not final for the purposes of section 5505. **Id.** Therefore, the Commonwealth may seek, and the court may grant, reconsideration of an order granting a new trial after 30 days. **Id.**¹³

¹³ This Court can "affirm the court's decision if there is any basis to support it, even if we rely on different grounds to affirm." **Commonwealth v. McLaurin**, 45 A.3d 1131, 1138 n.2 (Pa.Super.2012) (quoting **Commonwealth v. Williams**, 35 A.3d 44, 47 (Pa.Super.2011)).

Further, a trial court has the inherent power to “correct[] a patent defect or mistake in the record.” ***Commonwealth v. Klein***, 781 A.2d 1133, 1135 (Pa.2001), ***accord Commonwealth v. Holmes***, 933 A.2d 57, 66 (Pa.2007) (finding court had inherent power to correct order sentencing parole violator to a new sentence, rather than recommitting violator to the remainder of the original sentence, and the power to correct order imposing new sentence of incarceration for a violation of probation where probation was never imposed). “[T]he inherent power of trial courts to correct orders is a limited power.” ***Commonwealth v. Borrin***, 80 A.3d 1219, 1228 (Pa.2013) (quoting ***Holmes***, 933 A.2d at 617-18). It is “the ‘obviousness’ of the illegal and erroneous nature” of the trial court order “rather than the illegality itself that trigger[s] the courts’ authority.” ***Borrin***, 80 A.3d at 1228 (quoting ***Holmes***, 933 A.2d at 617-18).

Here, because the November 30, 2012 and December 3, 2012 orders were not final orders, the court had the authority to reconsider and modify the orders at any time. ***See Harper***, 890 A.2d at 1081.

Further, even if the time limitation contained in section 5505 applied to the orders, the court had the inherent power to modify its prior orders on October 9, 2013. The December 3, 2012 order rescinded the portion of the November 30, 2012 order that vacated the judgment of conviction. It, therefore, re-instated Rudolf’s guilty plea and judgment of sentence. The December 3, 2012 order also ordered the Commonwealth to proceed to trial pursuant to Pennsylvania Rule of Criminal Procedure 600. Rule 600 governs

the time period within which the Commonwealth must commence trial. Pursuant to 18 Pa.C.S. § 109(3), however, the Commonwealth cannot proceed to trial where “a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution,” where the “[t]he former prosecution resulted in a conviction.” There is a conviction for § 109 purposes if “the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court.”

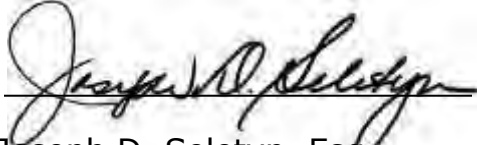
The December 3, 2012 order rescinded the order vacating Rudolf’s judgment of conviction. Rudolf, therefore, had a former prosecution based upon the same facts and the same statutes that resulted in a judgment of conviction and, under 18 Pa.C.S. § 109, the Commonwealth could not prosecute and, therefore, Rule 600 did not apply. Accordingly, because the December 3, 2012 order both reinstated Rudolf’s judgment of conviction and required the Commonwealth to prosecute Rudolf within the time period delineated in Rule 600, it contained an obvious and patent error and the trial court had the inherent authority to correct the error.¹⁴ ***See Klein***, 781 A.2d at 1135.

¹⁴ The November 30, 2012 order and December 3, 2012 order did not grant Rudolf’s PCRA petition. Rather, it stated “Defendant’s motion to amend his PCRA petition is granted.”

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Order affirmed.

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: 7/22/2014