

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

DEMETRIUS BAILEY

Appellant

v.

VINCENT MOONEY

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2000 WDA 2013

Appeal from the Order of November 25, 2013  
In the Court of Common Pleas of Allegheny County  
Civil Division at No.: GD 13-018998

BEFORE: BENDER, P.J.E., WECHT, J., and PLATT, J.\*

MEMORANDUM BY WECHT, J.:

**FILED JULY 28, 2014**

Demetrius Bailey ("Bailey") appeals the November 25, 2013 order that dismissed his praecipe for a writ of *habeas corpus* ("praecipe") and his petition for leave to proceed *in forma pauperis* ("IFP"). We affirm.

On October 8, 2013, while incarcerated at SCI-Coal Township, Bailey filed an IFP petition and a praecipe for writ of *habeas corpus* in the Civil Division of the Court of Common Pleas of Allegheny County. Bailey named Vincent Mooney, the warden of SCI-Coal Township, as the respondent. Bailey stated that he was serving a life sentence for a conviction for homicide following a jury trial. Praecipe for Writ of *Habeas Corpus* ("Praecipe"), 10/8/2013, at 3. Bailey alleged that his detention was illegal

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\* Retired Senior Judge assigned to the Superior Court.

because a commitment form had not been completed. He further alleged that he was being kept in a restricted housing unit ("RHU") and was not receiving mental health treatment. **Id.** at 7. Bailey asked to be released from custody, or to be released from the RHU, and an evidentiary hearing. **Id.** at 12.

On October 24, 2013, the trial court, treating the praecipe as a Post Conviction Relief Act<sup>1</sup> ("PCRA") petition, filed a notice of intention to dismiss the petition pursuant to Pa.R.Crim.P. 907. The trial court stated that it intended to dismiss the petition as time-barred because Bailey's judgment of sentence had been entered in December 1994. Notice of Intent, 10/24/2013, at 1 (unnumbered). The trial court found that Bailey's second request for relief, release from the RHU, was controlled by **Brown v. Pa. Dep't of Corrs.**, 913 A.2d 301 (Pa. Cmwlth. 2006), which held that the judiciary has limited ability to rule upon internal prison operations that are "more properly left to the legislative and executive branches." **Id.** at 2. The trial court determined that the request for relief was frivolous and announced its intent to dismiss Bailey's IFP request pursuant to Pa.R.C.P. 240(j)(1). **Id.**

On November 21, 2013, Bailey filed a response, in which he argued that his filing was a praecipe for writ of *habeas corpus* and should not be

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<sup>1</sup> 42 Pa.C.S.A. §§ 9541-46.

treated as a PCRA petition. He again asserted that his detention was illegal. On November 25, 2013, the trial court dismissed the petition as time-barred pursuant to the PCRA, found that the request to be released from the RHU was frivolous, and dismissed the IFP petition as moot.<sup>2</sup>

On December 19, 2013, Bailey filed a notice of appeal. The trial court did not order, and Bailey did not file, a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). The trial court did not file an opinion pursuant to Pa.R.A.P. 1925(a).

Bailey presents two issues for our review:

1. Whether state courts had subject matter jurisdiction due to unconstitutional statute, judgment void and no "statutory authorization" illegal sentence and criminal information defective/unconstitutional.
2. Petitioner is entitled to state writ of *habeas corpus* not a Post Conviction Relief Act petition when challenging [an] unconstitutional statute judgment void should be granted in the "interest of justice."

Bailey's Brief at 3 (verbatim; capitalization modified for clarity).

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<sup>2</sup> It appears that, at the same time Bailey filed his petitions in the trial court, he also filed a petition with the Commonwealth Court to review a decision of the Office of Open Records. Because the Commonwealth Court transferred the matter to the Court of Common Pleas on January 3, 2014, some of the documents related to that case have been filed in the Court of Common Pleas. It does not appear that the trial court has ruled upon this matter and it is not on appeal to this Court.

Mooney takes the position that Bailey's request for release from the RHU is waived pursuant to Pa.R.A.P. 2116 because it was not preserved in Bailey's statement of the questions. Mooney's Brief at 6-7. We concur.

Rule 2116 provides, in pertinent part, that, "No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby." Neither of Bailey's stated questions involve the RHU, nor do they fairly suggest that issue. Bailey filed a reply brief in which he argues that the RHU issue is incorporated, but Bailey's argument is that his detention is unauthorized, not that his detention in the RHU is illegal. Bailey's Reply Brief at 1 (unpaginated). Therefore, we hold that any issue related to the RHU has been waived. **See Commonwealth v. Bryant**, 57 A.3d 191, 196 n.7 (Pa. Super. 2012).

Bailey's first issue was not raised in his praecipe. As best we can discern from his disjointed argument, Bailey asserts that the criminal court in which he was convicted did not have subject matter jurisdiction, rendering his judgment of sentence void and his sentence illegal. Bailey's Brief at 7-9.

Normally, when an issue is not first presented to the trial court, we will find it waived as an issue cannot be raised for the first time on appeal. **See** Pa.R.A.P. 302(a); **Commonwealth v. Spatz**, 18 A.3d 244, 320 (Pa. 2011). However, subject matter jurisdiction may be raised at any stage of the proceedings. **Commonwealth v. Jones**, 929 A.2d 205, 208 (Pa. 2007). Similarly, a challenge to the legality of a sentence is not waivable. **Commonwealth v. Foster**, 17 A.3d 332, 345 (Pa. 2011). However, we

have held that both subject matter jurisdiction and legality of a sentence, while not waivable, are subject to the time bar provision of the PCRA. **See Commonwealth v. Dickerson**, 900 A.2d 407, 412 (Pa. Super. 2006) (holding that subject matter jurisdiction claim “does not overcome the PCRA’s one year jurisdictional time-bar as it does not fall within one of the statutory exceptions”); **Commonwealth v. Fahy**, 737 A.2d 214, 223 (Pa. 1999) (holding that, to review the legality of a sentence, petitioner must satisfy PCRA time limits). Therefore, if these claims were treated properly as PCRA claims, they are subject to the time bar.

It is well-settled that the PCRA is intended to be the sole means of achieving post-conviction relief. 42 Pa.C.S.A. § 9542; **Commonwealth v. Haun**, 32 A.3d 697 (Pa. 2011). Unless the PCRA could not provide for a potential remedy, the PCRA statute subsumes the writ of *habeas corpus*. **Fahy**, 737 A.2d at 223–24; **Commonwealth v. Chester**, 733 A.2d 1242 (Pa. 1999). Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a *habeas corpus* petition. **See Commonwealth v. Peterkin**, 722 A.2d 638 (Pa. 1998); **see also Commonwealth v. Deaner**, 779 A.2d 578 (Pa. Super. 2001) (a collateral petition that raises an issue that the PCRA statute could remedy is to be considered a PCRA petition). Phrased differently, a defendant cannot escape the PCRA time-bar by titling his petition or motion as a writ of *habeas corpus*.<sup>3</sup>

<sup>3</sup> The common law writ of *habeas corpus* has not been eliminated. In both **Commonwealth v. West**, 938 A.2d 1034 (Pa. 2007), and **Commonwealth v. Judge**, 916 A.2d 511 (Pa. 2007), our Supreme Court held that claims that fall outside the sphere of the PCRA can be advanced via a writ of *habeas corpus*.

**Commonwealth v. Taylor**, 65 A.3d 462, 465-66 (Pa. Super. 2013) (citations modified). Therefore, if the PCRA provides an avenue for relief for

claims of lack of subject matter jurisdiction and illegal sentence, then those issues cannot be raised in a *habeas* petition and are subject to the PCRA time bar.

The PCRA specifically includes challenges to an illegal sentence within its stated scope. 42 Pa.C.S.A. § 9542. Further, an issue regarding the jurisdiction of the trial court also lies within the scope of the PCRA. 42 Pa.C.S.A. § 9543(a)(2)(viii). Therefore, both claims are subject to the PCRA relief and are subject to the PCRA time bar.

To be timely, a PCRA petition must satisfy the following criteria:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S.A. § 9545(b). Here, Bailey did not plead or prove any of the enumerated exceptions. Bailey's judgment of sentence was imposed on December 20, 1994. On November 20, 1995, we affirmed that judgment of

sentence. ***Commonwealth v. Bailey***, 161 Pittsburgh 1995, at \*5 (Pa. Super. Nov. 20, 1995) (unpublished memorandum). On April 23, 1996, the Pennsylvania Supreme Court denied Bailey's petition for allowance of appeal. ***Commonwealth v. Bailey***, 675 A.2d 1241 (Pa. 1996) (table). Therefore, Bailey's judgment of sentence became final one year after the expiration of his time to file for review with the United States Supreme Court, on or about July 23, 1997, and any PCRA petition filed after July 23, 1998 is facially untimely. Because Bailey has not alleged any exception to the time bar, his PCRA claims are untimely and this court lacks jurisdiction to consider them.

In his next issue, Bailey alleges that the trial court erred in treating his praecipe as a PCRA petition. Bailey's actual argument is difficult to discern as he reiterates his subject matter jurisdiction argument and includes allegations of violations of the single-subject rule, allusions to the First Amendment to the United States Constitution, and assertions of the illegality of his sentence. Viewing his brief in the most favorable light, we presume that Bailey argues that *habeas corpus* is still available as a remedy. Bailey's Brief at 9-15.

As noted above, *habeas* relief is available when the PCRA does not provide a remedy. ***See Taylor, supra***. The claims that Bailey has raised in his brief, including subject matter jurisdiction, are subject to the PCRA. However, in his praecipe, Bailey challenged the illegality of his detention. A claim of illegal detention is raised properly in a *habeas* petition. ***See Brown v. Pa. Dep't of Corrs.***, 81 A.3d 814, 815 (Pa. 2013) (holding claim of illegal

detention for failure to produce a sentencing order is properly raised in *habeas* petition).<sup>3</sup> Therefore, the trial court erred in treating Bailey's praecipe as a PCRA petition with regard to that issue. However, rather than remanding the case, we may dispose of the case on the merits. **See *Commonwealth v. Judge***, 916 A.2d 511, 521 (Pa. 2007) (reaching merits of issues raised in petition when trial court incorrectly review it under the PCRA instead of as a *habeas* petition and dismissed without reaching the merits).

Bailey argues that his detention is illegal because the "DC-300B Court Commitment form" was not completed properly and the prison did not have a copy of the form on file.<sup>4</sup> "[T]he court commitment form DC-300B [is] generated from the Common Pleas Criminal Court Case Management System" and is given to the prison upon the prisoner's commitment to the Department of Corrections ("DOC"). 42 Pa.C.S.A. § 9764. The form is an administrative memo and does not have the "same force and effect" as a

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<sup>3</sup> In ***Brown***, our Supreme Court held that the Commonwealth Court erred in dismissing the petition for lack of jurisdiction and that the Commonwealth Court should have transferred the matter to the Court of Common Pleas.

<sup>4</sup> Bailey also argues in his praecipe that the failure to complete the form also rendered his sentence illegal. Because the illegality of a sentence is an issue properly raised in a PCRA petition and Bailey's praecipe, if treated as a PCRA petition, was untimely, that allegation cannot be raised at this time.



court order. **Everett v. Varner**, 74 M.D. 2009 (Pa. Cmwlth. Sept. 19, 2011) (unreported memorandum).

We previously have held that:

The language and structure of section 9764, viewed in context, make clear that the statute pertains not to the DOC's authority to detain a duly-sentenced prisoner, but, rather, sets forth the procedures and prerogatives associated with the transfer of an inmate from county to state detention. None of the provisions of section 9764 indicate an affirmative obligation on the part of the DOC to maintain and produce the documents enumerated in subsection 9764(a) upon the request of the incarcerated person. Moreover, section 9764 neither expressly vests, nor implies the vestiture, in a prisoner of any remedy for deviation from the procedures prescribed within.

**Joseph v. Glunt**, 2014 PA Super 107 at \*5 (May 23, 2014) (footnote omitted). Further:

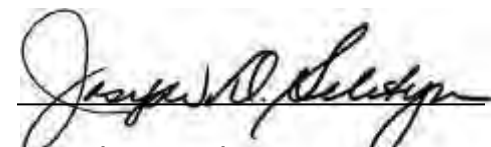
When a petitioner is in custody by virtue of a judgment of sentence of a court of competent jurisdiction, the writ generally will not lie. **Commonwealth ex rel. Wilson v. Keeper of the Jail of Philadelphia County**, 26 Pa. 279, 280 (1856). The rationale for this limitation is the presumption of regularity which follows the judgment. **Commonwealth ex rel. Spencer v. Ashe**, 71 A.2d 799 (Pa. 1950); **see Commonwealth ex rel. DeSimone v. Cavell**, 138 A.2d 688 (Pa. Super. 1958). The writ, as stated above, is an extraordinary remedy and, therefore, a judgment rendered in the ordinary course is beyond the reach of *habeas corpus*. That conviction cannot be put aside lightly, and it becomes stronger the longer the judgment stands. **Commonwealth ex rel. Hoch v. Banmiller**, 140 A.2d 625 (Pa. Super. 1958). Consequently, *habeas corpus* generally is not available to review a conviction which has been affirmed on appeal. **Commonwealth ex rel. Dugan v. Day**, 122 A.2d 90 (Pa. Super. 1956).

**Joseph**, 2014 PA Super 107 at \*5-\*6 (quoting **Commonwealth v. Wolfe**, 605 A.2d 1271, 1273 (Pa. Super. 1992)) (citations modified).

Here, the court entered a judgment of sentence. While SCI-Coal Township may not have been able to provide Bailey with the DC-300B form, the statute requiring the form does not speak to the DOC's authority to detain Bailey, but merely the procedures for a prisoner who is entering state custody. **See Joseph**, *supra*. Further, the statute does not compel the DOC to maintain the paperwork, nor does it provide a remedy to a prisoner for failure to do so. Bailey was sentenced properly following his trial. This Court affirmed that judgment of sentence. There is no indication that his detention is illegal. Therefore, we affirm the trial court's dismissal of Bailey's petition.

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: 7/28/2014