NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JEFFREY L. ARMOLT, Appellant v. JOHN KERESTES, SUPERINTENDENT, SHAWN WAGNER, DA OF ADAMS CO., JUDGE JOHN KUHN, KATHLEEN KANE, AG, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 53 MDA 2014

Appeal from the Order Entered November 22, 2013
In the Court of Common Pleas of Adams County
Civil Division at No(s): 2013-SU-0000125

BEFORE: BENDER, P.J.E., BOWES, and PANELLA, JJ.

MEMORANDUM BY BOWES, J.: **FILED JULY 23, 2014**

Jeffrey Armolt appeals *pro se* from the order dismissing this civil *habeas corpus* action that he filed against various government officials. We affirm.

At action number CP-01-CR-0000509-2002 in the Court of Common Pleas of Adams County, Appellant was charged with raping a twelve-year-old girl fifteen to twenty times between September 2001 and February 2002. On December 22, 2003, Appellant entered a negotiated guilty plea to three counts of rape in the Adams County criminal case. Due to the age of the victim, Appellant was subject to a five-year mandatory minimum sentence as to each offense. The plea agreement mandated an aggregate sentence of fifteen to thirty years incarceration. On April 12, 2004, Appellant was

sentenced to a total term of imprisonment of fifteen to thirty years. Appellant's post-sentence motions were resolved by an order entered on July 21, 2004, and he did not file a direct appeal. On January 16, 2007, Appellant filed a PCRA petition, which was dismissed as untimely. On appeal, we affirmed. ***Commonwealth v Armolt***, 968 A.2d 785 (Pa.Super. 2009) (unpublished memorandum), *appeal denied,* 983 A.2d 1246 (2009). The docket entries at CP-01-CR-0000509-2002 indicate that on July 30, 2012, Appellant filed another request for PCRA relief, which also was denied.

Appellant filed the present civil action against the superintendent of the state correctional institution where he is imprisoned, the district attorney of the county where he was prosecuted, one of the judges who presided over his criminal proceedings, and the Attorney General of Pennsylvania. He requested *habeas corpus* relief. The trial court treated Appellant's request for relief as a PCRA petition and denied it as untimely. This appeal followed.[1] Appellant raises these issues for our review:

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[1] In response to a rule to show cause why this appeal should not be dismissed as untimely filed, Appellant produced cash slips demonstrating that he filed three notices of appeal that were timely under the prisoner mailbox rule. ***See Commonwealth v. Jones****,* 700 A.2d 423, 426 (Pa. 1997) (direct appeals filed by *pro se* litigants are deemed filed when the notices of appeal are deposited in a prison mailbox). Since the notices of appeal were defective under the rules of appellate procedure, the Office of the Prothonotary of Adams County refused to file them and returned them to Appellant. However, the prothonotary did not have the authority to reject the *pro se* appeals due to procedural defects; instead, those documents should have been accepted for filing and also returned to Appellant to be cured of their mistakes. ***Commonwealth v. Willis***, 29 A.3d 393 (Pa.Super.
(Footnote Continued Next Page)

> 1). Is the writ of *habeas corpus* a matter where relief is sought in the context of a separate case, record; the beginning of an independent civil action/inquiry which, is not subject to criminal appellate review or jurisdiction?
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> 2). When challenges to jurisdiction arise, is the burden of proof upon the government a matter that must be decided?
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> 3). Pursuant to the *habeas corpus* act and present-day law, is there a condition precedent that entitles the applicant to specific practices and procedures from the court ?
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> 4). Do the no answer letters submitted either personally or on behalf of the respondents render a form of confessed judgment warranting plaintiff's relief ?
>
> 5). Was plaintiff's privilege/right to the writ of *habeas corpus* unlawfully suspended through constructive deprivations by the specific acts, omissions or conduct of the specially presiding court (judge) ?

Appellant's brief at 4.

We first note that Appellant clearly is seeking relief from the judgment of sentence imposed at CP-01-CR-0000509-2002, which is the only criminal case against Appellant that we could locate in public records. Appellant's brief at 20 ("appellant respectfully requests this Honorable Court to . . . ORDER appellant's immediate and unconditional release from unlawful restraint [and] DISMISSAL of the charges "with prejudice'" . . .). Appellant avers that he can litigate this independent *habeas corpus* action because it is

(Footnote Continued) ———————————

2011); ***Commonwealth v. Alaouie***, 837 A.2d 1190 (Pa.Super. 2003). The notices of appeal, if uncorrected, could then have been stricken. Accordingly, we consider this appeal as timely filed.

not subsumed by the PCRA. Accordingly, we first outline the interplay between the PCRA and a request for *habeas corpus* relief. In ***Commonwealth v. Stout***, 978 A.2d 984, 986 (Pa.Super. 2009), we observed that

> the PCRA has subsumed the writ of *habeas corpus* as a means for obtaining post-conviction collateral relief from a judgment of sentence. The premise applies to the extent the claim at issue is capable of being redressed under the PCRA. On this issue, our supreme court has stated:
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> > [W]e note that both the PCRA and the state *habeas corpus* statute contemplate that the PCRA subsumes the writ of *habeas corpus* in circumstances where the PCRA provides a remedy for the claim. ***Commonwealth v. Peterkin****,* 554 Pa. 547, 722 A.2d 638 at 640. ***See also*** 42 Pa.C.S. § 9542 ("The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including *habeas corpus* and *coram nobis.");* 42 Pa.C.S. § 6503(b) ("The writ of *habeas corpus* shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law.").
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> ***Commonwealth v. Hackett****,* 598 Pa. 350, 362–363, 956 A.2d 978, 985–986 (2008).

Only if a prisoner's claim falls outside of the ambit of relief provided by the PCRA can the prisoner maintain a *habeas corpus* petition. ***See Commonwealth v. West****,* 938 A.2d 1034 (Pa. 2007); ***Commonwealth v. Judge****,* 916 A.2d 511 (Pa. 2007).

While Appellant's allegations are prolix and confusing, we have been able to discern that his argument is that the Adams County Court of

Common Pleas lacked jurisdiction over the criminal matter in question. The PCRA expressly provides relief for this type of claim. Section 9543 of the PCRA governs the parameters of a prisoner's eligibility for relief under the PCRA. That section states, in pertinent part,

> **(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:
>
> . . . .
>
> (viii) **A proceeding in a tribunal without jurisdiction**.

42 Pa.C.S. § 9543 (emphasis added). In ***Stout***, ***supra*** at 987, we noted that § 9543(a)(2)(viii)

> demonstrates clearly that a convicted individual serving a sentence of confinement may allege and seek redress for a claim that the tribunal in which his conviction was obtained lacked jurisdiction. While there appears to be a dearth of cases wherein challenges to the court's jurisdiction have been raised, in ***Commonwealth v. Hughes***, 581 Pa. 274, 865 A.2d 761 (2004), the supreme court considered an allegation that appellant's murder conviction was held in a tribunal without jurisdiction as the petitioner was a minor and the case should have been transferred to juvenile court. On this matter, the court stated: "the issue whether charges should be prosecuted in the juvenile court or adult court system implicates jurisdictional concerns. Therefore, Appellant's claim is facially cognizable under the PCRA." ***Id.*** at 301, 865 A.2d at 776.

Hence, the PCRA encompasses the claim raised herein, and the trial court correctly treated this proceeding as a collateral attack on Appellant's conviction and, therefore, a PCRA proceeding. "[A] defendant cannot escape the PCRA time-bar by titling his petition or motion as a writ of *habeas corpus.*" ***Commonwealth v. Taylor****,* 65 A.3d 462, 466 (Pa.Super. 2013). "Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a *habeas corpus* petition." ***Id****.*

Our Supreme Court has observed that limited appellate review applies in the PCRA context. ***Commonwealth v. Spotz***, 84 A.3d 294 (Pa. 2014). As delineated in ***Commonwealth v. Feliciano***, 69 A.3d 1270, 1274-75 (Pa.Super. 2013) (citation omitted),

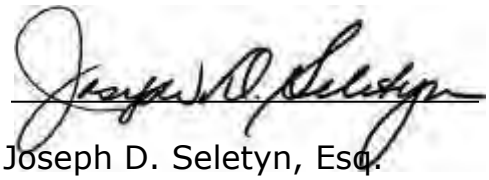
> Our standard of review of the denial of a PCRA petition is limited to examining whether the court's rulings are supported by the evidence of record and free of legal error. This Court treats the findings of the PCRA court with deference if the record supports those findings. It is an appellant's burden to persuade this Court that the PCRA court erred and that relief is due.

All PCRA petitions must be filed within one year of when a defendant's judgment of sentence becomes final. 42 Pa.C.S. § 9545(b)(1). Appellant's judgment of sentence in the criminal action became final in 2004, and he had until 2005 to file a PCRA. This 2013 action therefore is a facially untimely request for relief from Appellant's judgment of sentence. There are three exceptions to the one-year time bar: when the government has interfered with the defendant's ability to present the claim, when the defendant has recently discovered the facts upon which his PCRA claim is

predicated, and when either our Supreme Court or the United States Supreme Court has recognized a new constitutional right and made that right retroactive. 42 Pa.C.S. § 9545(b)(1)(i-iii). Herein, Appellant has not invoked any exception. Therefore, we affirm the dismissal of this action as an untimely collateral attack on Appellant's conviction at CP-01-CR-0000509-2002. ***Taylor***, ***supra*** at 468 (where defendant did not allege on appeal that any exceptions to the time-bar of § 9545 applied, we held that the petition was untimely).

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014