

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JEROME FITZGERALD JUSTICE,	:	
	:	
Appellant	:	No. 179 WDA 2014

Appeal from the Judgment of Sentence entered on August 6, 2013  
in the Court of Common Pleas of Clearfield County,  
Criminal Division, No. CP-17-CR-0000112-2013;  
CP-17-CR-0000114-2013

BEFORE: PANELLA, JENKINS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JULY 24, 2014**

Jerome Fitzgerald Justice ("Justice") appeals from the judgment of sentence resulting from his guilty plea to one count each of Risking Catastrophe, Arson-Endangering Property, Disorderly Conduct, and Aggravated Harassment by Prisoner.<sup>1</sup> We affirm.

On September 14, 2012, Justice was serving a prior sentence at the State Correctional Institution in Houtzdale, Pennsylvania ("SCI Houtzdale"). On that day, Justice lit clothing and paper on fire inside of his cell. On November 7, 2012, Justice spit in the face of a corrections officer at SCI Houtzdale. As a result, Justice was charged with the offenses listed above and was served by summons. On February 15, 2013, a preliminary hearing

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<sup>1</sup> 18 Pa.C.S.A. §§ 3302(b), 3301(c)(2), 5503(a)(4), 2703.1.

was held for each charge. At that hearing, counsel for Justice moved to dismiss the charges, alleging lack of jurisdiction, on the basis that Justice was served by summons rather than by warrant, as required by Pennsylvania Rule of Criminal Procedure 509. Justice's Motions were denied, and the charges were held over to court.

In the trial court, Justice again moved to dismiss the charges for lack of jurisdiction, and the Motion was denied. Thereafter, Justice pled guilty to the charges and was sentenced on August 6, 2013, to a total of one to two years in prison, to be served consecutively to his prior sentence. Justice then filed a Post-Sentence Motion *Nunc Pro Tunc* challenging the consecutive sentence. His Post-Sentence Motion was denied.

Justice filed a timely Notice of Appeal. The trial court ordered Justice to file a Concise Statement of Matters Complained of On Appeal pursuant to Pa.R.A.P. 1925(b). Justice filed a timely Concise Statement.

On appeal, Justice raises the following issue for our review:

Whether the Court of Common Pleas [] lacked jurisdiction and therefore erred in not dismissing the [charges] due to failure to comply with [Pennsylvania] Rule of Criminal Procedure 509 regarding the issuance of a warrant when one or more offenses charged is a felony[?]

Brief for Appellant at 7.

Initially, we note that a "plea of guilty constitutes a waiver of all nonjurisdictional defects and defenses. When [Justice pled] guilty, he waive[d] the right to challenge anything but the legality of his sentence and

the validity of his plea.” **Commonwealth v. Jones**, 929 A.2d 205, 212 (Pa. 2007).

Justice contends that his convictions should be dismissed for lack of subject matter jurisdiction because he was served by summons rather than by warrant, in violation of Criminal Rule 509. Brief for Appellant at 11-13. Here, Justice raises a jurisdictional issue; thus, we will review his claim. **See Jones**, 929 A.2d at 212.

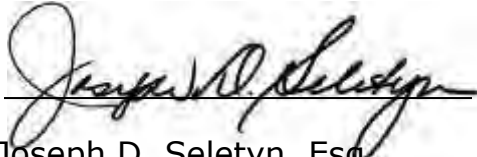
Issues raising the question of subject matter jurisdiction are purely questions of law. **Id.** at 211. Our standard of review is *de novo*, and our scope of review is plenary. **Id.**

The trial court set forth the relevant law, addressed Justice’s claim and determined that he is not entitled to relief. **See** Trial Court Opinion, 2/27/14, at 3-6. We adopt the sound reasoning of the trial court and affirm on this basis. **See id.**; **see also** Pa.R.Crim.P. 109 (stating that “[a] defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a ... summons, or warrant, or a defect in the procedures of these rules, unless the ... defect is prejudicial to the rights of the defendant.”); **Jones**, 929 A.2d at 211 (stating that “[t]he existence of a procedural mistake in and of itself [] does not divest the trial court of subject matter jurisdiction.”).

Judgment of sentence affirmed.

J-S42038-14

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: 7/24/2014

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

vs. :

Case No. CP-17-CR-112-2013

Case No. CP-17-CR-114-2013

JEROME JUSTICE, :

Defendant :

**OPINION**

***Background Facts and Procedural History***

Criminal Complaints were filed with the magisterial district judge's office, in the above-captioned dockets, on December 27, 2012. In the Complaint for docket number CP-17-CR-112-2013, Jerome Justice (hereinafter "Defendant")<sup>1</sup> was charged with one count of Risking Catastrophe (18 Pa.C.S.A. § 3302(b) (F3)), one count of Arson-Reckless Place Persons Danger (18 Pa.C.S.A. § 3301(c)(2) (F2)), and one count of Disorderly Conduct (18 Pa.C.S.A. § 5503(a)(4) (M3)). These charges arose from an indecent where Defendant allegedly stuffed clothing items and paper products around the inside of his cell door at SCI-Houtzdale and then lit the items with lighter causing a fire. In the Complaint for docket number CP-17-CR-114-2013, Defendant was charged with one count of Aggravated Harassment by Prisoner (18 Pa.C.S.A. § 2703.1 (F3)). Defendant was charged with this offense, because Defendant purportedly spat saliva in the face of a corrections officer. The Complaints were filed with the local magistrate judge, and summons were issued thereafter.

A Preliminary Hearing was held on February 5, 2013. At the beginning of Defendant's Preliminary Hearing, defense counsel moved for the dismissal of the charges for

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<sup>1</sup> Defendant committed the crimes discussed in this Opinion while he was an inmate at SCI-Houtzdale. Defendant is currently confined in SCI-Camp Hill.

lack of jurisdiction, since summons were issued instead of warrants in violation of Pa.R.Crim.P. 509. Said motions were denied and the charges were held over to this Court.

On May 1, 2013, Defendant renewed his argument and filed a Motion to Dismiss Charges Due to Lack of Jurisdiction. Defendant stated in his Motion that, since both of the cases against him were initiated through the issuance of a summons, this Court lacked jurisdiction which is only obtained through compliance with the Criminal Rules of Procedure. The Court heard oral argument on the Motion on May 7, 2013. At the conclusion of argument the Court denied Defendant's Motion stating that Pa.R.Crim.P. 509 does not mandate that a warrant be used in all circumstances involving a felony charge.

Defendant later entered into a negotiated plea agreement, wherein Defendant plead guilty to all of the above-described charges. On August 5, 2013, Defendant was sentenced on the offense of Arson-Reckless Place Persons Danger, 18 Pa.C.S.A. § 3301(c)(2) (F2), to a minimum of one (1) year to a maximum of two (2) years of incarceration to be served consecutive to all other periods of incarceration. For Risking Catastrophe, 18 Pa.C.S.A. § 3302(b) (F3), Defendant was sentenced to a minimum of one (1) year and to a maximum of two (2) years concurrent to the Arson sentence. For the offense of Aggravated Harassment by Prisoner, 18 Pa.C.S.A. § 2703.1 (F3), Defendant was sentenced to a minimum of one (1) year and to a maximum of two (2) years of incarceration, which was to be served concurrently to the other sentences imposed.

Defendant filed a Post-Sentence Motion *Nunc Pro Tunc* on December 11, 2013.<sup>2</sup> In said Motion Defendant asked this Court to reconsider the sentence imposed on August 5, 2013. Namely, Defendant requested that the Court allow the sentence to be served concurrent to Defendant's current period of incarceration. The Court heard arguments on Defendant's Motion and denied such on January 7, 2014. Defendant filed a Notice of Appeal on January 28, 2014, appealing to the Superior Court of Pennsylvania this Court's Order of January 7, 2014. Per Rule of Appellate Procedure 1925(b), the Court ordered that Defendant file a concise statement of matters complained of on appeal. Defendant did so on February 19, 2014 and raised the following issue on appeal:

1. Defendant alleges that the Court lacked jurisdiction and therefore erred in not dismissing the cases due to a failure to comply with Rule of Criminal Procedure 509 regarding the issuance of a warrant when one or more of the offenses charged is a felony.

### *Analysis*

After the criminal complaint is filed in Pennsylvania, the accused is brought into custody by arrest, by the issuance of a warrant, or voluntarily by a written summons. The district judge will issue either a summons or a warrant of arrest, depending generally on the gravity of the alleged offense. In less serious cases a summons is usually used to provide notice of the criminal defendant's scheduled preliminary hearing. Simply stated, a summons is a notice issued to a defendant to appear for a preliminary hearing and a warrant instructs the

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<sup>2</sup> The Court notes that the request for *nunc pro tunc* relief was granted, because Defendant was raising the issue of the consecutive sentence that was imposed. The Motion *Nunc Pro Tunc* was allowed for this reason only and the Court decided the issue on its merits. The Court was perplexed to see in Defendant's Matters Complained of on Appeal that Defendant was again raising this jurisdictional issue instead of appealing the consecutive sentence that Defendant received. Such *nunc pro tunc* relief would not have been granted if this was the issue Defendant wanted to appeal. The Court will exercise more caution in the future when permitting *nunc pro tunc* motions.

police to apprehend a defendant if found and place the defendant into custody for his purported crimes.

Criminal Rule of Procedure 509 dictates when a summons or warrant is to be issued.

In full, the Rule states:

If a complaint charges an offense that is a court case, the issuing authority with whom it is filed shall:

- (1) *issue a summons and not a warrant of arrest* in cases in which the most serious offense charged is a *misdemeanor of the second degree or a misdemeanor of the first degree* in cases arising under 75 Pa.C.S. § 3802, except as set forth in paragraph (2);
- (2) *issue a warrant of arrest* when:
  - (a) one or more of the offenses charged is a *felony* or murder; or
  - (b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or
  - (c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or
  - (d) the summons was mailed pursuant to Rule 511(A) and has been returned undelivered; or
  - (e) the identity of the defendant is unknown; or
- (3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2).

Pa.R.Crim.P. 509 (emphasis added). The Rule provides for the *mandatory use* of a summons instead of a warrant in court cases, except in the special circumstances enumerated in paragraphs (2) and (3). Pa.R.Crim.P. 509 *Comment*.

The Court believes that Rule 509 does not necessarily preclude the use of a summons when a felony charge is involved. It would be illogical in this instance to issue a warrant when Defendant was already in custody. A summons would be the more practical and appropriate vehicle to inform Defendant of his preliminary hearing.

Additionally, the spirit of Rule 509 envisions and prefers the use of a summons in criminal cases. Pa.R.Crim.P. 509 *Comment*. Only in special circumstances are warrants to be

used. The Court would be more sympathetic to Defendant's contention if he had committed a crime deemed to be a misdemeanor and a warrant was issued for his arrest. This hypothetical scenario is the situation the Rules of Criminal Procedure seeks to deter, not the circumstances Defendant faces.

Moreover, Criminal Rule of Procedure 109 states that a defendant will not be discharged nor will a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of the Rules of Criminal Procedure, unless the defendant raises the defect before the conclusion of the preliminary hearing in a court case, and the defect is prejudicial to the rights of the defendant. Pa.R.Crim.P. 109. Thus, two requirements must be satiated before a case is dismissed: (1) a defendant must raise the defect issue prior to the conclusion of the preliminary hearing, and (2) the defect must be prejudicial to the defendant.

While it is uncontested that Defendant did raise the procedural defect claim at his Preliminary Hearing, the Court believes that Defendant was not prejudiced in any manner by the issuance of a summons instead of a warrant. Defendant was already being housed in SCI-Houtzdale and this procedural defect, assuming it is one, did not deleteriously infringe upon Defendant's rights in any manner. Defendant would have remained in his lodgings at SCI-Houtzdale whether or not a summons was issued or a warrant. Therefore, assuming *arguendo* that the issuance of a summons was procedurally improper, Defendant has failed to demonstrate that he was prejudiced in any manner and the case should not be dismissed per Rule 109.

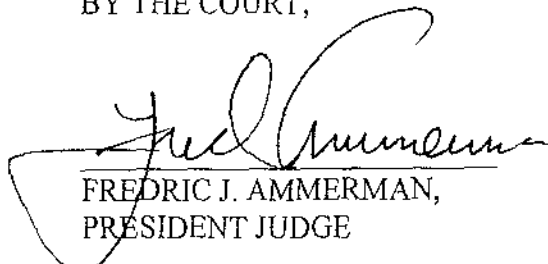
Lastly, the Court would concede that subject matter jurisdiction is an issue not susceptible to waiver. See *Commonwealth v. Little*, 314 A.2d 270, 272 (Pa. 1974) ("An

objection to lack of subject-matter jurisdiction can never be waived; it may be raised at any stage in the proceedings by the parties or by a court in its own motion."'). However, the existence of a *procedural mistake* in the charging process, in and of itself, *does not divest a trial court of subject matter jurisdiction*. See *Commonwealth v. Jones*, 929 A.2d 205 (Pa. 2007); *Commonwealth v. Mockaitis*, 834 A.2d 488, 495 (Pa. 2003). The Supreme Court in *Jones* held that a flaw in the bill of information did not deprive the trial court of subject matter jurisdiction. *Jones*, 929 A.2d at 206. Moreover, the high Court has also declared that, so long as the defendant received formal notice, even the lack of a proper criminal indictment would not deprive the trial court of subject matter jurisdiction to accept a plea. *Commonwealth v. Khorey*, 555 A.2d 100, 108 (Pa. 1989) (holding that absence of proper signature did not divest the court of jurisdiction, especially where defect was curable).

In this instance, the issuance of a summons was, at most (if at all), a *de minimis* procedural error that did not prejudice Defendant in any manner. Defendant received proper notice of the charges that he faced and appeared at his Preliminary Hearing. The defect was relatively minor in that it did not reflect infidelity to the traditional purposes of issuing a warrant or summons. See *id.* at 109. Finally, the Court would remark that the issuance of a summons was *not* incurable, in the sense that the defect would prevent Defendant from being prosecuted at all. *Id.* If the error was in service of any party, it was in Defendant's favor.

BY THE COURT,

Date: February 26, 2014

  
FREDRIC J. AMMERMAN,  
PRESIDENT JUDGE