NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. IRA S. EINHORN, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 92 EDA 2012

Appeal from the PCRA Order of December 7, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0412961-1979

BEFORE: GANTMAN, DONOHUE AND OLSON, JJ.

MEMORANDUM BY OLSON, J.: **FILED FEBRUARY 21, 2014**

Appellant, Ira S. Einhorn, appeals from an order entered on December 7, 2011 in the Criminal Division of the Court of Common Pleas of Philadelphia County that denied his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.[1]

We have previously summarized the facts in this case as follows:

> In 1972, [Appellant] and his girlfriend at the time, Helen "Holly" Maddux, shared an apartment in the City of Philadelphia. By September 1977, the relationship between [Appellant] and Maddux was over and Maddux was residing in New York. About that time, Maddux received a telephone call from [Appellant] wherein he threatened to throw away Maddux's belongings that remained in his apartment unless she returned to Philadelphia to see him. As a result, on September 10, 1977, Maddux made a

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[1] We grant the motions of Appellant and the Commonwealth to exceed the word-count limitation set forth in Pa.R.A.P. 2135.

trip to Philadelphia, and joined [Appellant] with another couple for a movie that evening. Thereafter, Paul Herre, who rented the apartment directly below [Appellant's] apartment, recalled hearing a woman's screams and repeated loud thumps, which he thought originated from [Appellant's] apartment. Maddux was never again seen or heard from by her friends or family.

In late September 1977, residents and visitors of [Appellant's] apartment building began to complain of a rancid odor emanating from [Appellant's] apartment. Visitors described the odor as that of decaying flesh. Herre, in the apartment below [Appellant's], noticed a brown, sticky liquid seeping from [Appellant's] apartment into a pantry in his unit. The landlord, Norman Lerner, hired a roofer to investigate the source of the smell and the liquid seepage, and the roofer determined that the problem was most likely caused by a dead animal. The roofer isolated the source of the smell and seepage as a closet in the rear of [Appellant's] apartment, but [Appellant] refused to allow the roofer to enter the closet, which was secured with a large padlock.

Meanwhile, Maddux's friends and family, who had not heard from her, contacted [Appellant] to ask whether he knew of Maddux's whereabouts. [Appellant] stated that she was traveling, and claimed that he had not heard from Maddux. Adding to the suspicion regarding [Appellant's] involvement with Maddux's disappearance was an intriguing piece of information discovered by investigating police officers: Towards the end of 1978, [Appellant] attempted to purchase a book on mummification, but the owner of the bookstore was unable to locate the requested book.

On March 28, 1979, pursuant to a search warrant, police entered [Appellant's] home, where they proceeded directly to the rear closet. The police officers pried off the padlock on the closet while [Appellant] silently watched from several feet away. The closet was filled with boxes, mostly containing Maddux's personal items, as well as a locked steamer trunk which showed significant evidence of decay and fluid damage. The officers pried off the lock to the trunk and opened the lid, and were immediately struck by a strong smell of decay. Inside the trunk were the remains of Maddux, buried beneath layers of air fresheners, plastic bags, foam peanuts, newspapers, insects, and larvae. The keys to the padlock securing the closet door, as well

as the keys to the steamer trunk, were hanging from a hook in the hallway of [Appellant's] apartment.

[Appellant] was arrested and charged with first-degree murder. An autopsy revealed that Maddux had been killed by craniocerebral injuries resulting from six fractures to her face, forehead, eye sockets, and jaw, all resulting from being hit with a heavy object with great force. In April 1979, [Appellant] petitioned the court for release on bail, which was subsequently granted in early May 1979. [Appellant] posted security in the amount of $40,000.00 and was released. By June 1979, the pre-trial motion and discovery processes were underway, and continued through the end of December 1980.

In early January 1981, [Appellant] fled the United States prior to a court-ordered appearance set to schedule a trial date. On January 14, 1981, a bench warrant was issued for [Appellant's] arrest, bail was revoked, and the case was listed for trial to begin on January 21, 1981. On that date, with the bench warrant outstanding, the Honorable Paul Ribner re-listed the case for trial in thirty days with [Appellant on] fugitive status. The case remained in that posture until early 1993.

On March 9, 1993, the Commonwealth filed a petition for a trial in *absentia* pursuant to Pennsylvania Rule of Criminal Procedure 1117, now renumbered as Rule 602, which provides that a "defendant's absence without cause shall not preclude proceeding with the trial including the return of the verdict and the imposition of sentence." Pa.R.Crim.P., Rule 602(A), 42 Pa. Cons. Stat.Ann. On April 15, 1993, the Honorable Juanita Kidd Stout granted the Commonwealth's petition and ordered that [Appellant] be tried in *absentia*. After permitting the defense additional time for preparation, on September 13, 1993, jury selection began and was completed two days later. Following a two week trial, the jury returned a verdict of guilty of first-degree murder. On September 29, 1993, [Appellant] was sentenced to life imprisonment in *absentia*.

[Appellant's] counsel filed timely post-trial motions, arguing that [Appellant's] trial in *absentia* violated both the United States and Pennsylvania Constitutions. The post-trial motions were denied on June 7, 1994, and on September 22, 1994, with [Appellant's] whereabouts unknown, the timely appeal filed on his behalf was quashed.

In June 1997, [Appellant] was located living in southern France when a driver's license application by Annika Flodin, a woman Einhorn had met and married during his fugitive years, set off a records check. [Appellant] was then arrested by French police on June 13, 1997, in the village of Champagne–Mouton. Upon [Appellant's] arrest, the United States immediately sought his extradition from France. In December 1997, La Cour Administrative d'Appel de Bordeaux, which had jurisdiction over [Appellant], refused to permit [Appellant's] extradition to the United States. The denial of extradition was based on the French extradition court's rule that fugitives found guilty in *absentia* should automatically receive a new trial.

Faced with the possibility that [Appellant] could remain free in southern France and never be brought to justice in the United States, the Pennsylvania General Assembly, in response to the decision of La Cour Administrative d'Appel de Bordeaux, amended the [PCRA] by late January 1998, to include the following section:

> (c) Extradition.—If the petitioner's conviction and sentence resulted from a trial conducted in his absence, and if the petitioner has fled to a foreign country that refuses to extradite him because a trial in *absentia* was employed, the petitioner shall be entitled to the grant of a new trial if the refusing country agrees by virtue of this provision to return him, and if the petitioner upon such return to this jurisdiction so requests. This subsection shall apply notwithstanding any other law or judgment to the contrary.

42 Pa.[C.S.A.] § 9543(c).

On February 19, 1999, La Cour Administrative d'Appel de Bordeaux ordered [Appellant's] extradition to the United States based on the amended statute along with other assurances not relevant to our discussion herein. In July 2001, U.S. Marshals accompanied [Appellant] back to Philadelphia.

On September 12, 2001, [Appellant] filed a PCRA petition requesting a new trial, explicitly invoking § 9543(c). Simultaneously, [Appellant] filed a petition for the exercise of King's Bench powers before the Pennsylvania Supreme Court, seeking a stay of his prosecution and arguing that § 9543(c)

> should be declared unconstitutional. [Appellant] requested that the trial court not rule on his PCRA petition until the Pennsylvania Supreme Court addressed his request for a stay.
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> On November 14, 2001, following the Supreme Court's denial of [Appellant's] petition for the exercise of its King's Bench powers, the Honorable D. Webster Keogh granted [Appellant's] PCRA petition and ordered a new trial. On September 30, 2002, [Appellant's] new trial began with [Appellant] pleading not guilty to the charge of murder generally. [At trial, Appellant testified in his own defense that the government framed him for Maddux's murder in retaliation for his role as an environmental activist.] After thirteen days of trial testimony, the jury returned a verdict of guilty to first-degree murder. Immediately thereafter, [Appellant] was sentenced to life in prison.
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> On October 28, 2002, post-sentence motions in the nature of a motion in arrest of judgment or for a new trial were filed. Supplemental post-sentence motions were filed on November 19, 2002. On November 25, 2002, after argument, the trial court denied [Appellant's] motions. [We affirmed Appellant's judgment of sentence on direct appeal.]

Commonwealth v. Einhorn, 911 A.2d 960, 964-966 (Pa. Super. 2006), *appeal denied*, 920 A.2d 831 (Pa. 2007).

Appellant did not seek further review of his direct appeal claims and, acting *pro se*, timely filed the instant PCRA petition on October 22, 2007. The PCRA court appointed counsel and, after several extensions, counsel filed an amended petition on March 4, 2010. Thereafter, the Commonwealth moved to dismiss the amended petition on October 21, 2010. On November 28, 2011, the court issued notice pursuant to Pa.R.Crim.P. 907, advising the parties that it intended to dismiss Appellant's petition without a hearing. When no response was forthcoming, the PCRA court dismissed the petition by order on December 7, 2011. A timely notice of appeal followed on

December 20, 2011. Pursuant to court order, Appellant filed a concise statement of errors complained of on appeal on February 9, 2012. The PCRA court filed its opinion on May 4, 2012.

In his brief, Appellant raises the following questions for our consideration:

> Whether the [PCRA court] was in error in denying the Appellant's PCRA petition without an evidentiary hearing on the issues raised in the amended PCRA petition regarding trial counsel's ineffectiveness[?]
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> Whether the [PCRA] court erred in concluding that trial counsel provided effective assistance of counsel[?]
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> Whether the [PCRA] court erred in concluding that appellate counsel provided effective assistance of counsel[?]
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> Whether the [PCRA] court erred in determining that 42 Pa.C.S. § 9543(c) was constitutional[?]

Appellant's Brief at 4.

As most PCRA appeals involve mixed questions of fact and law, "[o]ur standard of review of a [PCRA] court order granting or denying relief under the PCRA calls upon us to [consider] whether the determination of the PCRA court is supported by the evidence of record and is free of legal error." ***Commonwealth v. Barndt***, 74 A.3d 185, 191-192 (Pa. Super. 2013) (internal quotation marks and citation omitted). "The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." ***Commonwealth v. Cintora***, 69 A.3d 759, 762 (Pa. Super. 2013) (citation omitted).

Because Appellant alleges in his initial claim that he was entitled to an evidentiary hearing, we note that it is well-settled that:

> [T]he right to an evidentiary hearing on a post-conviction petition is not absolute. It is within the PCRA court's discretion to decline to hold a hearing if the petitioner's claim is patently frivolous and has no support either in the record or other evidence. It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing.

Commonwealth v. Wah, 42 A.3d 335, 338 (Pa. Super. 2012) (citations omitted)**.**

Apart from his constitutional challenge to § 9543(c) of the PCRA, all of Appellant's substantive claims relate to the purported ineffectiveness of his trial and appellate counsel. A "defendant's right to counsel guaranteed by the Sixth Amendment to the United States Constitution and Article I, [Section] 9 of the Pennsylvania Constitution is violated where counsel's performance so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." ***Commonwealth v. Simpson***, 66 A.3d 253, 260 (Pa. 2013) (internal quotation marks and citation omitted). "Counsel is presumed to be effective." ***Commonwealth v. Bennett***, 57 A.3d 1185, 1195 (Pa. 2012) (citation omitted). In order to overcome the presumption that counsel was effective, Appellant must establish that "(1) the underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some

reasonable basis designed to effectuate his client's interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different." ***Commonwealth v. Luster***, 71 A.3d 1029, 1039 (Pa. Super. 2013) (internal alterations, quotation marks, and citation omitted). "The burden of proving ineffectiveness rests with the appellant," and "[t]he failure to satisfy any one of the prongs of the test for ineffective assistance of counsel requires rejection of the claim." ***Commonwealth v. Hill***, 42 A.3d 1085, 1089-1090 (Pa. Super. 2012), *appeal granted on other grounds*, 58 A.3d 749 (Pa. 2012) (citations omitted).

In considering and disposing of Appellant's claims of ineffective assistance on the part of trial and appellate counsel, the PCRA court concluded that Appellant failed to establish both arguable merit and sufficient prejudice to support his claims for collateral relief. These conclusions find ample support in the record and are free of legal error; hence, we concur in the PCRA court's assessments for the reasons set forth in the court's opinion.[2] Moreover, based upon our own review of the certified record, we are compelled to emphasize that the term "ample," as used above, severely underestimates the vast and compelling quantum of

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[2] Because Appellant's claims lack arguable merit, and because of the quantum of inculpatory evidence which remains unchallenged by Appellant, we also reject Appellant's claim that the ineffectiveness of trial and appellate counsel, taken together, entitles him to a new trial.

inculpatory evidence that the Commonwealth presented at trial to establish Appellant's guilt. For these reasons, we affirm the PCRA court's dismissal of Appellant's claims of ineffective assistance of counsel and further conclude that the court correctly denied those claims without conducting an evidentiary hearing.

We turn now to consider Appellant's constitutional challenge to § 9543(c) (also referred to as the "Einhorn amendment"), which we have quoted at length in our recitation of the facts.[3] Appellant asserts that § 9543(c) is unconstitutional because it violates the separation of powers doctrine implicit in both the federal and Pennsylvania Constitutions. ***See*** Appellant's Brief at 80-89. Specifically, Appellant argues that § 9543(c) is constitutionally infirm because, by directing that a petitioner be granted a new trial where certain circumstances are present (***see*** § 9543(c) ***supra***), the provision compels the judiciary to re-open a judgment of sentence after

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[3] We note that Rule 235 of our Rules of Civil Procedure requires a party challenging the constitutionality of a statute to forward notice of the claim to the office of the Attorney General, if the Commonwealth is not a party to the action. Pa.R.Civ.P. 235. In requiring notice of constitutional challenges, Rule 235 aims to afford an attorney for the Commonwealth the opportunity to be heard on such objections. ***See id*.** ("The Attorney General may intervene as a party or may be heard without the necessity of intervention."). Failure to provide notice under Rule 235 results in waiver of the constitutional issue. ***Adelphia Cablevision Associates of Radnor, L.P. v. University City Housing Co.***, 755 A.2d 703, 709 (Pa. Super. 2000). Since the Commonwealth was a party in the proceedings before the PCRA court and remains a party in this appeal, Rule 235 has not been implicated and notice was not required in this case.

it has become final. ***See id*.** at 80 and 84-85. According to Appellant, a mandatory legislative impairment of a final judgment entered by a court violates the separation of powers doctrine. ***See id*.** at 85.

The Commonwealth advances several positions to counter Appellant's claim, some of which assert that we cannot reach the merits of Appellant's contention and a separate argument in support of the constitutionality of § 9543(c). ***See*** Commonwealth's Brief at 69-79. Initially, the Commonwealth notes that, on direct appeal from Appellant's judgment of sentence, we declined to address Appellant's constitutional challenge because we lacked authority to declare Appellant's extradition unlawful, the relief Appellant requested based upon the alleged constitutional infirmity of § 9543(c). ***See Einhorn***, 911 A.2d at 969-970. Hence, the Commonwealth claims that Appellant previously litigated his constitutional challenge and that our disinclination to address this claim constitutes the law of the case. ***See*** Commonwealth's Brief at 70 and 72-73.[4] Next, the Commonwealth

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[4] Our reading of the published decision disposing of Appellant's direct appeal claims differs somewhat from that of the Commonwealth. In its brief, the Commonwealth argues that we "considered and rejected [Appellant's constitutional challenge] when [we] held [on direct appeal] that regardless of the constitutionality of Section 9543(c), no relief was possible. That holding constitutes the law of the case, and may not be reconsidered." Commonwealth Brief at 70. As stated ***supra***, however, our prior opinion expressly declined to consider the merits of Appellant's constitutional challenge because the requested relief – a declaration that Appellant's extradition was unlawful – lay beyond our power. ***See Einhorn***, 911 A.2d at 969-970. We followed this approach because of the well-established

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contends that Appellant was not aggrieved by the application of the statute because he successfully invoked it to obtain a new trial. ***See id*.** at 73. Third, the Commonwealth maintains that Appellant's challenge is pointless since the proper remedy would be recommitment under the 1993 judgment of sentence if Appellant were to succeed on his constitutional claim. ***See id*.** at 77-79. Lastly, the Commonwealth argues that § 9543(c) represents a valid exercise of legislative authority and does not violate the separation of powers doctrine. Because we agree with the Commonwealth's final contention that § 9543(c) is constitutional, we dispose of Appellant's constitutional claim on this ground.[5]

(Footnote Continued) ———————————

principle that "a court should not reach [a] constitutional claim if a case can be decided on non-constitutional grounds[.]" ***Id*.** at 970 n.3 (citation omitted). In his present appeal, Appellant claims, at least in part, that because § 9543(c) is unconstitutional, the PCRA court lacked subject-matter jurisdiction to order a new trial and his conviction should be declared a nullity. ***See*** Appellant's Brief at 89; ***but see id*.** at 86 ("Thus, the retrial of Appellant, pursuant to § 9543(c), was unconstitutional and the Appellant should be returned to France."). Because Appellant has now come forward with a request for relief which lies within our power to grant, we do not view our prior disposition as a declaration that precludes consideration of Appellant's constitutional challenge, nor are we inclined to agree that it has become the law of the case to forego review of this claim. We understand, however, the Commonwealth's skepticism about Appellant's motives in raising this claim given the potential negative consequences of even a favorable ruling. ***See infra*** at n.5.

[5] Like the Commonwealth, we agree that Appellant's constitutional claim seems disingenuous given the fact that Appellant invoked the challenged provision and obtained a new trial by order of the PCRA court. We also share the Commonwealth's view that, if Appellant were entitled to prevail on his constitutional challenge (which we conclude he is not), the appropriate
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In reviewing the constitutionality of a legislative enactment:

> [w]e note that duly enacted legislation carries with it a strong presumption of constitutionality. ***Commonwealth v. Swinehart***, 664 A.2d 957, 961 (Pa. 1995); ***Commonwealth v. Parker White Metal Co.***, 515 A.2d 1358 (Pa. 1986). The presumption of constitutionality will not be overcome unless the legislation clearly, palpably, and plainly violates the constitution. ***Swinehart***, 664 A.2d at 961; ***Commonwealth v. Blystone***, 549 A.2d 81 (Pa. 1988).

Commonwealth v. Turner, 80 A.3d 754, 759 (Pa. 2013) (parallel citations omitted).

Our Supreme Court has previously explained the relevant legal principals governing the separation of powers doctrine:

> The doctrine of separation of powers is based upon the longstanding recognition that the powers of the three branches of government—judicial, legislative and executive—are coequal and distinct from one another. ***Commonwealth v. Sutley***, 378 A.2d 780, 782 (Pa. 1977). As such, the branches should be kept separate, distinct and independent of one another. ***Id.*** at 783. "Thus, it necessarily follows that any encroachment upon the power of one of the branches by the action of another of the branches is offensive to the fundamental scheme of our government." ***Id.***
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> In 1968, the legislature granted th[e Supreme Court] exclusive rulemaking authority in Article V, § 10 of the Pennsylvania Constitution. This provision states that:
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> > (c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide

(Footnote Continued) ———————

remedy would be recommitment to life in prison pursuant to the 1993 judgment of sentence and not a return trip to France.

> for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

> Pa. Const. Art. V, § 10(c). This provision outlines the scope of th[e Supreme Court's] rulemaking authority by both defining the extent of its power and placing limitations on its power. For example, it grants the judiciary the exclusive power to establish rules of procedure for state courts, ***In re 42 Pa.C.S. § 1703***, 394 A.2d 444, 448 (Pa. 1978), yet limits the rulemaking power by requiring that the rules cannot "affect the right of the General Assembly to determine the jurisdiction of any court...." In ***In re 42 Pa.C.S. § 1703***, we explicitly rejected that the legislature may have concurrent power in this arena. ***Id.***; ***see also*** Pa. Const. Art. V, § 10. Thus, under this framework, in determining whether [§ 9543(c)] violates the separation of powers doctrine, the inquiry is whether [§ 9543(c)] establishes a rule of procedure which state courts must follow.

Commonwealth v. Morris, 771 A.2d 721, 736 (Pa. 2001) (parallel citations omitted).

In ***Morris***, our Supreme Court further explained:

> [I]n reviewing whether a particular statute interferes with [the judiciary's] rulemaking authority granted in Art. 5, § 10[, the threshold inquiry] must be whether the section is procedural or substantive in nature, given that [the courts] have exclusive rulemaking authority only over procedural law. ***See In re 42 Pa.C.S. § 1703***, ***supra***. The limitation placed on the legislature's power by Art. V, § 10(c) does not affect its ability to address the substantive law in a particular area, it merely limits the legislature's authority over procedural law. "The rulemaking power of th[e Supreme Court] is not for the purpose of defining

> new rights of litigants but rather to provide the procedure by which established rights are to be effectuated." ***Commonwealth v. Fowler***, 304 A.2d 124, 127 (Pa. 1973). As a general rule, substantive law is that part of the law which creates, defines and regulates rights, while procedural laws are those that address methods by which rights are enforced. ***Morabito's Auto Sales v. Commonwealth, Department of Transportation***, 715 A.2d 384, 386 (Pa. 1998); ***see also Commonwealth v. Fisher***, 741 A.2d 1234 (Pa. 1999). Although the demarcation between substance and procedure may be difficult to determine, such a determination is necessary to answer a separation of powers question.

Morris, 771 A.2d 721, 737-738 (parallel citations omitted).

Section 9543 of the PCRA is entitled "Eligibility for relief." Subsection (a) supplies the general rules with respect to PCRA pleading standards and burdens of proof for demonstrating eligibility for collateral relief. 42 Pa.C.S.A. § 9543(a). It is divided into four parts. Part one requires that the petitioner has been convicted of a crime under Pennsylvania law and is (or will be) serving a sentence for that crime. ***Id.*** Part two requires that the petitioner's conviction or sentence resulted from one or more identified circumstances. ***Id.*** Part three requires that the allegation of error has not been previously litigated or waived. ***Id.*** Part four requires that the failure to previously litigate the issue must not be the result of any rational, strategic, or tactical decision by counsel. ***Id.*** Subsection (b) provides an exception to the eligibility for relief, stating that even if a petitioner has met the requirements of subsection (a), his petition shall be dismissed if it appears that the delay in filing the petition will prejudice the Commonwealth. 42 Pa.C.S.A. § 9543(b).

Section 9543(c) addresses instances in which extradition from a foreign country comes into play. The provision applies if a petitioner's conviction and sentence resulted from a trial conducted in the petitioner's absence and where the petitioner has fled to a foreign country that refuses to extradite him because a trial *in abstentia* was conducted. The statute provides that the petitioner shall be entitled to a new trial if the refusing nation agrees to return him because of § 9543(c) and he requests a new trial. 42 Pa.C.S.A. § 9543(c). The provision concludes by stating that the subsection shall apply "notwithstanding any other law or judgment to the contrary." ***Id*.**

At the outset, we conclude that § 9543(c) operates as a legitimate exercise of legislative power to the extent it addresses the jurisdiction of the PCRA court to adjudicate Appellant's petition for a new trial. The provision states that it shall apply "notwithstanding any other law or judgment to the contrary." ***Id*.** Because the General Assembly enjoys the power to determine the jurisdiction of courts within the Commonwealth, § 9543(c) may properly be read as conferring jurisdiction, and thus competence, upon the PCRA court to entertain Appellant's request for a new trial, notwithstanding other provisions governing the timeliness of PCRA petitions generally. ***See Morris***, 771 A.2d at 737 (legislative provisions that pertain to jurisdiction do not fall within the exclusive rulemaking authority of the courts and therefore do not run afoul of the separation of powers doctrine).

Moreover, upon careful inspection, § 9543(c) represents merely a legislative effort to define the circumstances and criteria under which a petitioner may request and secure a substantive right, *i.e.*, a new trial, after he has been extradited to Pennsylvania from a foreign country. Through § 9543(c), the General Assembly does not purport to set forth the procedural mechanism to enforce the substantive right; instead, the legislature has simply attempted to clarify the circumstances under which a petitioner possesses the right to a new trial where extradition has occurred. Hence, § 9543(c) is substantive, not procedural, in nature and does not fall within the exclusive procedural rulemaking authority of the judiciary. Accordingly, § 9543(c) does not violate the separation of powers doctrine and Appellant's constitutional challenge fails.

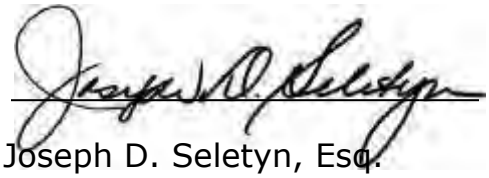
We cannot agree with Appellant's assertion that ***Commonwealth v. Sutley***, 378 A.2d 780 (Pa. 1977), and other cases, properly support the contention that § 9543(c), as well as every other legislative enactment that alters a final judicial judgment, fosters an impermissible encroachment on the judicial power and violates the separation of powers doctrine. The Supreme Court's decision in ***Sutley*** recognized the General Assembly's power to promulgate substantive laws. ***Sutley***, 378 A.2d at 784. In addition, ***Sutley*** focused upon the preservation of final judicial orders entered in accordance with the law at the time of issuance. ***See Parker v. Children's Hospital of Philadelphia***, 394 A.2d 932, 943 (Pa. 1978).

When considered in the context of the PCRA, which explicitly authorizes the re-examination of criminal judgments that have previously become final, Appellant's reading of ***Sutley***, and other cases found in his brief, would effectively render every provision of the collateral relief statute constitutionally invalid. This does not seem to be a sensible interpretation of the cited case law. Thus, we reject Appellant's argument.

We have carefully reviewed the certified record, the submissions of the parties, and the opinion of the PCRA court. We conclude that the court's determinations are supported by the record and free of legal error. Accordingly, we affirm the order denying Appellant's petition for collateral relief.

Motions of Appellant and the Commonwealth to exceed word-count limitation of Pa.R.A.P. 2135 granted. Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/21/2014