NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ERIN DWAYNE CANADY Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1157 WDA 2013

Appeal from the Order Entered July 2, 2013
In the Court of Common Pleas of Erie County
Criminal Division at No.: CP-25-CR-0002265-1995

BEFORE: PANELLA, J., OLSON, J., and WECHT, J.

MEMORANDUM BY WECHT, J.: **FILED APRIL 10, 2014**

Erin Dwayne Canady challenges the trial court's order dismissing without a hearing Canady's petition for a writ of *habeas corpus*. We affirm.

In a prior memorandum, we related the factual and procedural history of this case as follows:

> On January 29, 1996, a jury found Canady guilty of first[-]degree murder, aggravated assault, robbery, firearms not to be carried without a license, and possessing instruments of crime.[1] Canady's conviction arose from his murder and robbery of a taxi driver in Erie on July 24, 1995. On February 14, 1996, Canady was sentenced to an aggregate term of life plus 5 to 10 years' imprisonment.
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> [1] 18 Pa.C.S. §§ 2502(a), 2702, 3701, 6106, and 907, respectively.
>
> Following his conviction, Canady pursued a direct appeal. This Court affirmed the judgment of sentence on May 7, 1997. ***Commonwealth v. Canady***, 660 A.2d 123 (Pa. Super. 1995) (unpublished memorandum). Canady did not seek allowance of appeal before the Supreme Court.

Commonwealth v. Canady, 1209 WDA 2001, slip op. at 1-2 (Pa. Super. Mar. 11 2002) (unpublished memorandum).

Canady initiated the instant case on April 22, 2013, by filing a Petition for Writ of Habeas Corpus Ad Subjiciendum ("HCP" or the "Petition") in the Court of Common Pleas of Erie County. Therein, Canady recounted his efforts to obtain from the Department of Corrections ("DOC") a written copy of his sentencing order. In connection therewith, Canady appears to have exhausted his administrative remedies for obtaining public records. When DOC failed to produce such records, and Canady's grievances were denied, Canady sought "immediate relief from the unlawful restraint of [his] liberty" upon the basis that he was in detention "without a [w]ritten [judgement] of [s]entence [o]rder" in violation of his Fifth Amendment due process rights and the statutory requirements of 42 Pa.C.S. § 9764(a)(8), *infra*. HCP at 2.

Upon receipt of the Petition, which Canady had directed to the civil division of the trial court, the court transferred the Petition to Canady's pre-existing criminal docket. The trial court then denied Canady's Petition for the following reasons:

> [Canady] has previously filed several [PCRA] petitions, all of which were denied by this [c]ourt. This [c]ourt . . assumes that [Canady] now seeks a Writ of Habeas Corpus in order to circumvent the timeliness requirements of the PCRA. However, it is the law of Pennsylvania that all claims for collateral relief are subsumed by the PCRA, to the extent a remedy is available under the Act. ***Commonwealth v. West***, 938 A.2d 1034 (Pa. 2007); 42 Pa.C.S. § 9542. It follows that a petition for [a] writ of habeas corpus is only an option if the relief a petition seeks falls outside the eligibility requirements of the PCRA. ***See***

> ***Commonwealth v. Hackett***, 956 A.2d 978 (Pa. 2008); ***Commonwealth v. West***, 938 A.2d 1034 (Pa. 2007).
>
> To summarize, in the instant Petition, [Canady] argues that he is being unlawfully detained on a DC-300B form, rather than a sentencing order entered by a judge. This [c]ourt finds that this claim is not cognizable under the PCRA. Because [Canady's] claim falls outside the eligibility requirements of the PCRA, this [c]ourt will entertain his Petition for Writ of Habeas Corpus on the merits. ***See*** 42 Pa.C.S. § 9543.
>
> That said, this [c]ourt finds [Canady's] claims to be completely without merit. The Honorable Judge Bozza entered a sentencing order in this matter on February 14, 1996. The original sentencing order is being maintained by the Clerk of Courts of this [c]ourt as a part of [Canady's] case file in this matter. Accordingly, [Canady's] Petition for Writ of Habeas Corpus for lack of a Sentencing Order is demonstrably frivolous and is denied.

Trial Court Opinion, 7/2/2013, at 1-2 (citations modified).

On July 12, 2013, Canady filed a timely notice of appeal. On July 16, 2013, the trial court filed an order directing Canady to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On July 17, 2013, Canady timely complied. On September 3, 2013, the trial court issued a Rule 1925(a) opinion that reaffirmed the reasoning provided in its July 2, 2013 opinion.

Canady raises the following issues for our consideration:

> 1) Is not the transferring of [Canady's] petition for Writ of Habeas Corpus from the Civil Court of record to the Criminal Court of record improper as the Writ of Habeas Corpus is a Civil remedy?
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> 2) Is not [Canady's] petition for Writ of Habeas Corpus improperly dismissed without a hearing due to conjecture exhibited by the lower court in which Appellant's claim(s) were given no meaningful review?

> 3) Is not it improper for the lower court to fail to examine the law(s) as they pertain to [Canady's] claim(s) in the petition for Writ of Habeas Corpus?

Brief for Canady at 4.

We may dispose quickly of Canady's first issue. The details of this issue as argued in Canady's brief are inessential: The question distills to whether the Petition properly lay in the trial court's civil or criminal jurisdiction. Our Supreme Court recently confronted this very question in the context of a similar claim. In ***Brown v. DOC***, 81 A.3d 814 (Pa. 2013) (*per curiam*), the appellant filed a petition for review in the Commonwealth Court against the department of corrections challenging his confinement for precisely the same reason as set forth in this case. The Court found that the appellant's petition for review sounded in *habeas corpus*. The Court further held that "matters sounding in *habeas corpus* lie in the jurisdiction and venue of the court of record from which the order of detention came." ***Id.*** at 815 (citing ***Commonwealth ex rel. Bryant v. Hendrick***, 280 A.2d 110, 112 (Pa. 1971); ***Warren v. DOC***, 616 A.2d 140, 143 (Pa. Cmwlth. 1992); 42 Pa.C.S. § 6502). By transferring Canady's claims from the civil to the criminal divisions of the Erie County Court of Common Pleas, the trial court effectuated the correct result, vesting responsibility for disposing of Canady's petition in the court and division that sentenced him. Accordingly, Canady's first issue lacks merit.

This leaves us with Canady's second and third issues, which in substance challenge the trial court's refusal to furnish *habeas corpus* relief

due to DOC's inability to produce certain documents pursuant to which Canady remains in detention. Canady's most substantial argument is based upon statutory subsection 9764(a)(8) of the Sentencing Code, which provides, in relevant part, as follows:

> **(a) General rule.—**Upon commitment of an inmate to the custody of the Department of Corrections, the sheriff or transporting official shall provide to the institution's record officer or duty officer, in addition to a copy of the court commitment form DC-300B generated from the Common Pleas Criminal Court Case Management System of the unified judicial system, the following information:
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> * * *
>
> (8) A copy of the sentencing order and any detainers filed against the inmate [of] which the county has notice.

Canady also cites 37 Pa.Code § 91.3 ("Reception of inmates"), which provides as follows: "[DOC] will accept and confine those persons committed to it under lawful court orders . . . when information has been provided to [DOC] as required by 42 Pa.C.S. § 9764 (relating to information required upon commitment and subsequent disposition)." In substance, Canady argues that the word "shall," as used in section 9764, is mandatory and provides the only means to establish DOC's jurisdiction to detain a prisoner. Consequently, DOC's inability to produce Canady's sentencing order upon his repeated requests manifested a fatal failure to establish DOC's authority to detain him.

Canady is not the first individual to press this issue. In addition to ***Brown***, which was disposed of by our Supreme Court on procedural grounds that do not bear on the present inquiry, our Commonwealth Court has decided at least one similar claim on the merits, albeit in an unpublished decision. In ***Travis v. Giroux***, No. 489 C.D. 2013, 2013 WL 6710773 (Pa. Cmwlth. Dec. 18, 2013), the appellant challenged DOC's authority to hold him in custody because *inter alia*, no sentencing order existed for his conviction. Citing federal decisions, the court found that subsection 9764(a)(8) "does not create any remedy or cause of action for a prisoner based upon the failure to provide a copy to the DOC. The statute regulates the exchange of prisoner information between the state and county prison systems, and does not provide a basis for habeas relief." ***Id.*** at *3 (quoting ***Gibson v. Wenerowicz***, No. 11-CV-7751, slip op. at 3 n.6 (E.D.Pa. Mar. 5, 2013), report and recommendation adopted as modified, (E.D.Pa. Jul. 10, 2013); citing ***Mundy v. Kerestes***, No. 13-6081, slip op. at 1 (E.D.Pa. Oct. 24, 2013)). The court further emphasized that the appellant did not dispute that he pleaded guilty and that he was sentenced upon that plea, as reflected in the criminal docket. Thus, even where there appeared to be no written sentencing order in the possession of DOC **or** the trial court, the Commonwealth Court held that section 9764 and 37 Pa.Code § 91.3 furnished no basis for relief. ***Id.*** at *3-4.

While we are not bound by the Commonwealth Court's decision in ***Travis***, ***see Commonwealth v. Wilson***, 744 A.2d 290, 291 n.4

(Pa. Super. 1999) (Commonwealth Court decisions do not bind the Superior Court); ***cf. Coleman v. Wyeth Pharma., Inc.***, 6 A.3d 502, 522 n.11 (Pa. Super. 2010) (Superior Court not bound by its own unpublished decisions), nor by the federal decisions cited therein, ***see In re Stevenson***, 40 A.3d 1212, 1221 (Pa. 2012) ("We are not constrained to accept the reasoning of the lower federal courts merely because those courts addressed an issue before a Pennsylvania state court had an opportunity to do so."), we find the reasoning of those cases to be probative and correct. As found by the Commonwealth Court in ***Travis***, the language and structure of section 9764, viewed in context, make clear that the statute pertains not to DOC's authority to detain an undisputedly duly-sentenced prisoner, but rather to the procedures and prerogatives associated with the transfer of an inmate from county to state detention. Subsection (b) of the statute provides for the transmission by the court of various sentencing-related documents to the county jail; subsection (c) addresses the transmission of the documents identified in subsection (b) by the county jail to DOC in the event that the prisoner is transferred before those documents arrived at the county jail; subsection (d) addresses DOC's obligations to transfer certain documents to the county jail when a prisoner is returned to county custody from state custody; subsections (e), (f), and (g) address various administrative steps that must occur prior to or in tandem with the release of an inmate from county or state custody into county or state probation or parole; subsections (h) and (i) pertain to the disposition of inmate moneys

and the satisfaction of any remaining restitution or other financial obligations; subsection (j) provides for the transfer of certain documentation upon the release of a prisoner by DOC upon the expiration of a prisoner's maximum sentence; and subsections (k) and (l) concern the scope and implementation of section 9764. None of these provisions creates or suggests any particular right of a prisoner, nor does any subsection indicate an affirmative obligation on the part of DOC to maintain and/or produce upon request the documents enumerated in subsection 9764(a). Moreover, section 9764 neither expressly vests, nor implies the vestiture, in a prisoner of any remedy for any official deviation from the procedures prescribed by section 9764.

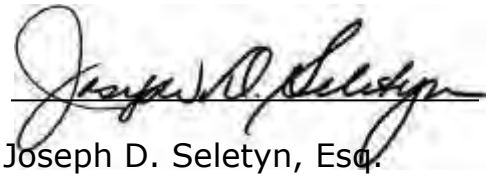
Critically, Canady provides no authority whatsoever for the proposition that the undisputed record of his judgment of sentence maintained by the sentencing court constitutes insufficient authority for his continuing detention. As evinced by ***Travis*** and the federal cases cited therein, courts that have confronted this question in the past have deemed a record of the valid imposition of a sentence as sufficient authority to maintain a prisoner's detention notwithstanding the absence of, or DOC's inability to produce, the written sentencing order that section 9764 requires to be provided to DOC officials upon transferring custody of a prisoner to DOC.

For the foregoing reasons, we discern no meritorious argument upon which Canady might obtain the relief sought. Moreover, we do not find that the court erred in declining to hold an evidentiary hearing. The trial court

reviewed the record and found a valid sentencing order therein. It correctly concluded as a matter of law that even if DOC lacked possession of that record, DOC nonetheless had continuing authority to detain Canady pursuant to his sentencing order. Consequently, Canady is entitled to no relief.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/10/2014