

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Plaintiff	:	
	:	
v.	:	NO. 91-10,935
	:	
JERARD BRADLEY,	:	
Defendant	:	

OPINION and ORDER

The petitioner, Jerard Bradley, has asked this court to permit him to appeal nunc pro tunc his sentence imposed on 17 April 1996 for aggravated assault of a correction officer while incarcerated. Mr. Bradley pled guilty to the assault on 18 May 1992, and sentence was deferred until after his pending murder charge in another case had been resolved. Now, three years later, Mr. Bradley wants this court to permit him to appeal the sentence. In his petition filed on 16 February 1999 Mr. Bradley alleged that he requested his counsel to file a direct appeal on numerous occasions, but his counsel failed to do so.¹

Mr. Bradley's petition must be denied because it is not in compliance with the latest ruling of the Pennsylvania Supreme Court. In Commonwealth v. Lantzy, No. 66 W.D. Appeal Dkt. 1998 (Pa. July 7, 1999) the court held, "[T]he PCRA provides the exclusive remedy for post-conviction claims seeking restoration of appellate rights due to counsel's failure to perfect a direct appeal." This decision overturned the Superior Court's opinion on the case, which held that the issue was

¹ Mr. Bradley does not explain, however, why it took him so long to file the petition.

not cognizable under the PCRA because it did not implicate the truth-determining process. The Superior Court had indicated that a petition to appeal nunc pro tunc was the more appropriate road to relief.

We have no doubt that this new rule is to be applied retroactively. Generally, where an appellate decision overrules prior law and announces a new principle, it is to be applied retroactively to all cases where the issue is properly preserved unless the decision specifically declares the ruling to be prospective only.² See Commonwealth v. Cabeza, 503 Pa. 229, 469 A.2d 146 (1983). Despite this general rule, the decision whether to apply a rule retroactively is to be decided on a case by case basis and is a function of: (1) the purpose to be served by the new rule; (2) the extent of the reliance on the old rule; and (3) the effect on the administration of justice by the retroactive application of the new rule. Blackwell v. Commonwealth, State Ethics Com., 527 Pa. 172, 589 A.2d 1094 (1991).

There is no reason not to apply Lantzy to this case. This particular area of law has been somewhat uncertain since the PCRA was amended in 1995; therefore, Mr. Bradley could hardly claim reliance on a long-standing, hard-and-fast rule. Nor can he claim he is unfairly prejudiced by application of the new rule, for it does not strip him of any important rights previously enjoyed under the alternative practice of petitioning for a nunc pro tunc appeal. Relief is still available; the new rule merely requires him to initiate a different procedure to obtain it.

Admittedly, it would probably have been easier for Mr. Bradley to obtain

² The court realizes that this rule is usually expressed as applying to cases up to and including direct appeal. However, since Lantzy announced a new rule of law pertaining specifically to PCRA petitions, it logically must be applied to all pending PCRA petitions.

relief through a nunc pro tunc petition; however, it can hardly be perceived as unfair to make him raise his claim through a PCRA petition, because that is the vehicle specifically designated to resolve claims not litigated on direct appeal. As the Supreme Court made clear in Lantzy, the legislature has issued a directive “that the PCRA is intended to provide the sole means for obtaining collateral review and relief, encompassing all other common law rights and remedies, including habeas corpus.” The court also cited with approval Commonwealth v. Ahlborn, 548 Pa. 544, 699 A.2d 718, 721 (1997), which held that unlike the PCRA’s predecessor, the Post Conviction Hearing Act, the PCRA expressly supersedes all common-law remedies for obtaining post-conviction collateral relief.

Ordinarily, the court would treat Mr. Bradley’s nunc pro tunc motion as a PCRA petition and grant him an opportunity to amend it. However, it is crystal clear that such a petition would fail because it would be untimely. Although under Lantzy the petitioner need not show prejudice or demonstrate the merits of the issues to be appealed so long as there is an unjustified failure to file a requested direct appeal, the remaining requirements of the PCRA must be satisfied—including the one-year filing deadline.

The PCRA provides that a petition must be filed within one year of the date the judgment becomes final unless one of three exceptions applies. 42 Pa.C.S.A. § 9545(b).³ Mr. Bradley’s petition was filed far too late, and his counsel admitted at

³ The three exceptions are as follows: (1) the failure to previously raise the claim was the result of the Commonwealth’s interference, (2) 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, and (3) the right asserted is a constitutional right recognized after the time period and held to apply retroactively.

argument that none of the exceptions are applicable. Therefore, his motion must be denied.

ORDER

AND NOW, this _____ day of September, 1999, after argument, for the reasons stated in the foregoing opinion, the petitioner's Motion to Appeal Nunc Pro Tunc is denied.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Kyle Rude, Esq.
Kenneth Osokow, Esq.
Gary Weber, Esq., Lycoming Reporter