

**IN THE COURT OF COMMON PLEAS FOR
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No.: 99-10,573;
	:	99-11,043
CORNELL SMITH,	:	
Defendant	:	

OPINION AND ORDER

On March 17, 2003 Defendant filed a “Petitioner (sic) for Writ of Habeas Corpus” filed, in which it appears that the he raises two claims. First, he claims that he is currently held under an illegal sentence because following preliminary hearing in his case the magistrate dismissed all charges and the Commonwealth then refiled the charges upon which he is now sentenced. The second issue alleges the superintendent of the State Correctional Institution at Somerset is interfering with his access to the Courts by denying him his mail privileges.

Initially, Defendant claims that the Commonwealth’s refiling of his charges following their dismissal by the district magistrate constitutes a violation of “Double Jeopardy protection law.” Petition, p. 2. He is mistaken. The Double Jeopardy provisions of the United State Constitution and the Constitution of Pennsylvania do not attach to a criminal proceeding at the time of a preliminary hearing. Dowling v. United States, 493 U.S. 342, 110 S. Ct. 668, 107 L. Ed. 2d 708 (1990). (The core protection of the Double Jeopardy Clause attaches to an acquittal and prohibits retrial for the "same offense" after an acquittal.). See also United States v. Martin Linen Supply Co., 430 U.S. 564 (1977). Liciaga v. The Court of Common Pleas of Lehigh County, Pennsylvania, 523 Pa. 258, 566 A.2d 246 (1989), (The Court has

consistently adhered to the view that jeopardy does not attach, and the constitutional prohibition can have no application, until a defendant is "put to trial before the trier of facts, whether the trier be a jury or a judge.) It is therefore the determination of this Court that the Defendant has pleaded no Double Jeopardy issue upon which relief could be granted. His petition for habeas corpus on double jeopardy grounds will therefore be denied.

As his second issue, Defendant asserts that Respondent Raymond Sobina, Superintendent of Somerset State Prison, is "hindering Mr. Smith from exposing his illegal incarceration . . . by trying to denie (sic) Mr. Smith access to the court system through there (sic) mail service." This Court is an inappropriate venue for entertainment of this issue. Under Pennsylvania Rule of Criminal Procedure 108(B), "a petition for writ of habeas corpus challenging the conditions of the petitioner's confinement in a criminal matter shall be filed with the clerk of courts of the judicial district in which the petitioner is confined." The Somerset State Correctional Institution is not located within Lycoming County. For this reason, Defendant's habeas corpus petition with respect to alleged actions of the superintendent of SCI Somerset will be denied.

ORDER

Accordingly, this ____ day of July, 2003, Defendant's "Petitioner (sic) for Writ of Habeas Corpus" filed on March 17, 2003 is DENIED.

By the Court,

Nancy L. Butts, Judge J.

xc: Court Scheduling
DA

Mr. Cornell Smith
#EJ0379
1600 Walters Mill Road
Somerset, PA 15510