IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR- 1992-2008**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	**Intent to Dismiss Defendant's Motion to**
HARRY F. REYNOLDS,	**:**	**Redismiss which the Court is treating as**
Defendant	**:**	**a PCRA petition**

OPINION AND ORDER

AND NOW, this ___ day of April 2011, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the Court gives Defendant notice that it intends to treat his "pro see motion to redismiss this whole case under state statute clause act" as a second petition filed under the Post Conviction Relief Act (PCRA) and dismiss it without holding an evidentiary hearing.

Quite frankly, much of the Defendant's motion is nonsensical. He claims he is entitled to dismissal under a "state statute clause act," there is "new evidence of exceptory review," that "Jay Stillman your DA" knew his case had already been dismissed prior to presenting the case for sentencing and "by the laws set forth by the Constitution of law must be suppressed." Jay Stillman has never been the District Attorney or even an assistant district attorney in Lycoming County, and has had absolutely no involvement in this case.[1] The Court also has no idea to what the Defendant is referring when he speaks of a "state statute clause act" or "exceptory review." Nevertheless, it appears that the Defendant is alleging that

[1] At one time, Mr. Stillman was a criminal **defense** attorney in Lycoming County, but he hasn't appeared before a Lycoming County court in several years. The Court believes Mr. Stillman may have relocated to the Philadelphia area.

because he could not re-file a **civil** suit against Trooper McMunn and Magisterial District Judge Allen Page in federal court after it had been dismissed, the Commonwealth could not re-file the **criminal** charges against him after they were dismissed by Magisterial District Judge James Sortman when Trooper McMunn failed to appear for the Defendant's original preliminary hearing.[2] It further appears that the Defendant is asserting that the Commonwealth's action of re-filing the charges against him violated the Constitution and laws of the United States or Pennsylvania.

Since his claims that the re-filing of the charges violated the constitution and laws of the United States or Pennsylvania would be cognizable under the PCRA, the Court must treat the Defendant's motion as a PCRA petition. 42 Pa.C.S.A. §9542 (PCRA petition is "the sole means of obtaining collateral relief"); Commonwealth v. Peterkin, 554 Pa. 547, 722 A.2d 638, 641-42 (Pa. 1998)("Because Peterkin alleges violations of the constitution and of law which undermine the truth determining process, his claims were cognizable under the PCRA"); Commonwealth v. Kutnyak, 781 A.2d 1259, 1261 (Pa. Super. 2001)(regardless of the manner in which it was titled, appellant's "Notice of Post-Sentence Motion Challenging Validity of Guilty Plea to Permit Withdrawal, Nunc Pro Tunc" had to be treated as a PCRA petition).

To be eligible for relief under the PCRA, a petitioner must plead and prove, among other things, that "the petitioner has been convicted of a crime under the laws of this Commonwealth and is **at the time relief is granted**:

[2] The Court notes that state criminal cases are subject to different laws and rules than federal civil cases. Therefore, the Defendant's federal civil suit is absolutely irrelevant to his criminal conviction in this case.

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) awaiting execution of a sentence of death for the crime; or

(iii) serving a sentence which must expire before the person may commence serving the disputed sentence."

42 Pa.C.S.A. §9543(a)(1)(emphasis added).

The Defendant has not asserted in his motion that he is serving the disputed sentence and, in fact, the Defendant would be unable to verify such a statement or prove it at a hearing, because the Defendant has already completed the probationary sentence imposed in this case.

The Defendant pled no contest to driving under the influence of alcohol on January 22, 2010. The Court sentenced Defendant to 6 months probation supervision and to pay a $300 fine. This sentence was concurrent to the Defendant's Columbia County sentence for bad checks. Therefore, the Defendant's probation supervision expired on or about July 21, 2010, and he is not entitled to relief.

Even if the Defendant were still serving his sentence of probation, he would not be entitled to relief for several reasons:

1. The Defendant's claims are waived. When a defendant enters a plea, he waives the right to challenge anything but the legality of his sentence and the validity of his plea. Commonwealth v. Jones, 593 Pa. 295, 929 A.2d 205, 212 (Pa. 2007). Moreover, the Defendant acknowledged in his written guilty plea colloquy that he understood he was giving up any defense he had to the crimes charged and that he was knowingly giving up the

right to object to anything improper or illegal in his apprehension or arrest. Written Guilty Plea Colloquy, page 4, Questions 15 and 19.

2. The Defendant raised these claims in his first PCRA petition, which also was dismissed because the Defendant had completed his probation sentence.

3. The Defendant is just plain wrong. Rule 544 of the Pennsylvania Rules of Criminal Procedure specifically allows the Commonwealth to reinstitute charges that are dismissed or withdrawn at a preliminary hearing. Case law also provides that the re-filing of charges after a Magisterial District Judge dismisses them at the preliminary hearing stage does not violate double jeopardy. Liciaga v. Court of Common Pleas of Lehigh County, 523 Pa. 258, 566 A.2d 246, 249 (Pa. 1989)(until the Commonwealth has established a prima facie case, jeopardy does not attach; a determination that the Commonwealth has failed to establish a prima facie case does not preclude a reassessment of that judgment before another district justice); Commonwealth v. Rogers, 610 A.2d 970, 972 (Pa. Super. 1992)(jeopardy does not attach until *after* a prima facie case has been established by the prosecution at the preliminary hearing).

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the Petition. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition.

By The Court,

_____

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)

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Work file