

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CP-41-CR-1634-2017**
 : **CP-41-CR-1635-2017**
 :
 :
 GRAHAM NORBY-VARDAC, : **1925(a) Opinion**
 Appellant :

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's order dated March 28, 2024 which dismissed Appellant's Post Conviction Relief Act (PCRA) petition and granted Court appointed counsel leave to withdraw.

On January 17, 2024, this Court dismissed the Appellant's claims by opinion and order. Not only did the court consider PCRA counsel's filing but addressed Petitioner's *pro se* claims in its opinion. As a result of that opinion, and due to the failure of the Clerk of Court's office in mailing the decision to Appellant, Appellant did not receive the Court's decision until March 4, 2024. Petitioner objected to the January 17th decision and filed his response March 11, 2024. Despite being untimely, even considering the Mailbox Rule¹ the Court still addressed the objections in its order dated March 28, 2024 dismissing the PCRA petition. Appellant was notified that he had the right to appeal the order within 30 days of its entry².

¹ Under the prisoner mailbox rule, a prisoner's *pro se* appeal is deemed filed at the time it is given to prison officials or put in the prison mailbox. *See Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423 (1997); *Sweesy v. Pa. Bd. of Prob. & Parole*, 955 A.2d 501 (Pa. Commw. Ct. 2008). "At the heart of the 'prisoner mailbox rule' are the constitutional notions of due process and fundamental fairness." *Pettibone v. Pa. Bd. Of Prob. And Parole*, 782 A.2d at 608 (Pa. Commw. Ct. 2001); *Commonwealth v. Cooper*, 710 A.2d 76, 78 (Pa. Super.1998), *Kittrell v. Watson*, 88 A.3d 1091, 1096 (Pa. Commw. Ct. 2014).

² *See* Pa. R.A.P. 903

Instead of filing an appeal with the Superior Court, Petitioner filed a “Petition Objecting to the Court’s Construction of Existing Precedent and Court’s Appearance of Impropriety” with this Court which was undated but file stamped by the Lycoming County Clerk of Courts on April 11, 2024. In its order dated April 22, 2024, the Court addressed the additional issues raised and Appellant was reminded that should he wish to appeal this Court’s decision, it must be done within 30 days of this Court’s March 28, 2024 order.

This Court then received a Notice of Appeal dated April 26, 2024 file stamped to the Clerk’s Office on May 1, 2024. It appearing to the Court that the appeal was timely filed, the Court directed Appellant to file a concise statement of errors complained of on appeal within 21 days. Appellant filed his statement on May 28, 2024.

Appellant raises three issues on appeal:

- 1) Did the lower court err by considering a habeas corpus, transferred from civil division, after civil court granted the writ, then scheduled a hearing, filed on behalf of the Appellant, a PCRA action?,
- 2) Did the civil court, and criminal court violate 42 Pa. C.S. §6505 Interference with the writ as construed in *Com. v. R.D. Carbo*, 822 A.2d 60; 2003 Pa.Super. Lexis 777?, and
- 3) Did lower court err, by treating a next of friend filed habeas corpus, as a PCRA action?

All of the issues raised in Appellant’s Habeas/PCRA petition were addressed in this Court’s Opinion and Order dated January 17, 2024 as well as the Order dismissing Appellant’s PCRA dated March 28, 2024. Therefore, this Court will rely on those opinions and orders for

the purposes of this appeal, copies of which are attached for use by the appellate courts. The court will supplement them as follows.

All of the errors complained of on appeal relate to treating Appellant's Petition for Writ of Habeas Corpus ("Habeas") as a Post Conviction Relief Act (PCRA) petition. Appellant's Habeas was originally filed to a civil case number, CV-21-1149. The Commonwealth filed a petition to intervene, which was granted by the Honorable Ryan Tira in an order entered on March 14, 2022. The Commonwealth asserted that Appellant's Habeas must be treated as a PCRA petition. Judge Tira agreed and transferred the Habeas to Appellant's criminal case, CR-1634-2017. Appellant claims that it was error to do so. The court cannot agree.

Appellant is statutorily ineligible for habeas relief, and the court was required to treat his Habeas as a PCRA. Section 6503 of the Judicial Code governs the right to apply for a writ of habeas corpus. *See* 42 Pa. C.S.A. §6503. Appellant is not eligible to apply for a writ of habeas corpus because he comes within the exception contained in section 6503(b), which states:

Where a person is restrained by virtue of sentence after conviction for a criminal offense, the writ of habeas corpus **shall not** be available if a remedy may be had by post-conviction hearing proceedings authorized by law.

42 Pa. C.S.A. §6503(b)(emphasis added). Appellant is in the custody of the Department of Corrections because he was convicted of first-degree murder and sentenced to incarceration for life without parole. Therefore, he is not eligible to apply for a writ of habeas corpus. Instead, he must file a PCRA petition.

The PCRA also limits Appellant's eligibility for habeas relief. The PCRA states:

The action established in this subchapter shall be the sole means of obtaining collateral relief and **encompasses all other common law and statutory**

remedies for the same purpose that exist when this subchapter takes effect, **including habeas corpus** and coram nobis.

42 Pa. C.S. §9542 (emphasis added).

In his Habeas, Appellant asserted that his confinement was illegal and his rights to due process and a fair trial were violated during the proceedings to determine his competency to stand trial and the presentation of an insanity or diminished capacity defense at trial. The PCRA provides avenues for relief from convictions that resulted from a violation of the Constitution or the laws of the United States and this Commonwealth as well as illegal sentences. *See* 42 Pa. C.S.A. §9543(a)(2). Therefore, the PCRA provides the sole avenue for Appellant to assert his claims.

The unavailability of habeas relief for a convicted individual such as Appellant was recently explained by the Pennsylvania Superior Court in *Commonwealth v. Hagan* as follows:

It is well-established that the PCRA subsumes the remedy of habeas corpus with respect to remedies offered under the PCRA. Issues that are cognizable under the PCRA must be raised in a timely PCRA petition and cannot be raised in a habeas corpus petition. Regardless of how a petition is titled, courts are to treat a petition filed after a judgment of sentence becomes final as a PCRA petition if it requests relief contemplated by the PCRA.

306 A.3d 414, 420-21 (Pa. Super. 2023)(citations and quotation marks omitted). The court did not err in treating Appellant's Habeas as a PCRA; rather, the court was required to do so.

Appellant also asserts that the court violated 42 Pa. C.S. §6505 as construed in *Commonwealth v. R.D. Carbo*, 822 A.2d 60 (Pa. Super. 2003). Again, the court cannot agree.

Section 6505 states:

Any person who shall fail or refuse to respond to a writ or to an order issued under this chapter, or who shall change the place of detention of any person for the purpose of defeating the writ, or shall, without express authorization from a judge of a court of record, recommit on substantially the same facts and circumstances any person set at large upon a habeas

corpus, or shall do any act for the purpose of defeating the writ or the order, commits a misdemeanor of the second degree.

This section is meant to apply to instances where a court issues a rule to show cause or an order and someone else, like the Department of Corrections for example, fails or refuses to respond to it or honor it or moves the individual to a different correctional facility for the purpose of avoiding or defeating the writ. Furthermore, the court did not fail or refuse to respond to Appellant's Habeas. It properly treated it as a PCRA petition, appointed counsel to assist Appellant, and dismissed it in accordance with the Rules of Criminal Procedure after counsel submitted a *Turner/Finley* no merit letter. Moreover, since Appellant was not eligible to apply for a writ of habeas corpus pursuant to section 6503(b), he had no right to habeas corpus relief with which the court could interfere. Finally, as the court noted in its Order dated March 28, 2024, *Carbo* is distinguishable because it involved a **pre-trial** request for habeas corpus relief. Post-conviction requests for habeas corpus relief are subsumed into the PCRA.

By the Court,

Date: July 2, 2024

Nancy L. Butts, President Judge

c. DA (MWade)
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