[J-66-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

PUBLIC DEFENDER'S OFFICE OF VENANGO COUNTY,	:	No. 16 WM 2005
	:	Petition for Writ of Prohibition.
Petitioner	:	
v.	:	
VENANGO COUNTY COURT OF COMMON PLEAS,	:	
Respondent	:	ARGUED: May 18, 2005

DISSENTING OPINION

MADAME JUSTICE NEWMAN **DECIDED: MARCH 24, 2006**

I respectfully dissent from the Majority Opinion because I believe that the Petition of the Public Defender's Office (Office) should be dismissed as moot rather than denied on its merits. Consequently, I offer no opinion as to the Majority's holding that the Court of Common Pleas of Venango County was vested with the discretionary authority to appoint a public defender to serve as standby counsel for a *pro se* criminal defendant whom the Office had previously determined to be financially ineligible for its services.

Before proceeding to the mootness question, I first note my agreement with the Majority's determination that this Court has jurisdiction to consider the Office's Petition. Originally, a writ of prohibition was intended primarily "to prevent an inferior judicial tribunal from assuming a jurisdiction with which it is not legally vested." Carpentertown Coal & Coke Co. v. Laird, 61 A.2d 426, 428 (Pa. 1948). "In addition to total absence of jurisdiction, our cases have extended . . . the writ . . . to encompass situations in which an inferior court, which has jurisdiction, exceeds its authority in adjudicating the case. This latter situation has been termed an 'abuse of jurisdiction.'" Capital Cities Media, Inc. v. Toole, 483 A.2d 1339, 1342 (Pa. 1984) (collecting cases); see also Glen Mills Schs. v. Court of Common Pleas of Phila. County, 520 A.2d 1379, 1381 (Pa. 1987) ("Beyond the situation where the lower court wholly lacks jurisdiction in a matter, a writ of prohibition is proper where the inferior tribunal abuses its jurisdiction.").

In addition to the power to decide a case, the term "jurisdiction" refers to a court's authority to "issue a decree." Black's Law Dictionary 855 (17th ed. 1999). The word "decree," in turn, means "[a]ny court order." Id. at 419. Therefore, a petition alleging that a lower court has abused its authority to issue an order comes within this Court's jurisdiction to grant a writ of prohibition. The Public Defender's Office presently challenges the authority of the Court of Common Pleas of Venango County to order, pursuant to Pennsylvania Rule of Criminal Procedure 121,[1] that an attorney from the Office act as standby counsel. Thus, I agree with the Majority that this Court has the power to grant the Petition of the Office.

[1] Pa.R.Crim.P. 121(d).

Whether this Court actually should exercise that power in the instant case, however, is a different question. To determine this, we would turn to "[t]he [two] criteria for **granting** a writ of prohibition," which this Court established in Capital Cities. See Capital Cities, 483 A.2d at 1342-43 (emphasis added). In his Dissenting Opinion, however, Justice Castille notes that he would apply this test to determine whether this is "an instance **implicating** the Writ of Prohibition." (See Dissenting Slip Op. at 8 (emphasis added); see also id. at 8-9 (suggesting, after applying the test, that the Petition should be dismissed without reaching its merits)). Nevertheless, merely by challenging the authority of the trial court to order that a public defender serve as standby counsel, the Public Defender's Office has presented an issue that comes within the scope of the Writ.

Although I agree with the Majority that this Court has the power to grant a writ of prohibition in this matter, I believe that the mootness doctrine prevents us from reaching the merits of the Office's Petition.[2] I disagree with the Majority's conclusion that this case is capable of repetition yet likely to evade review, and I join in that portion of Part I of the Dissenting Opinion in which Justice Castille explains why that exception is presently inapplicable. I find particularly persuasive the plain language of Rule 600,[3] pursuant to which a motion to discharge the defendant must be denied if the Commonwealth can show that it exercised due diligence and that the circumstances occasioning the delay of trial were beyond its control. As Justice Castille notes, if a case such as the one *sub judice* came to this Court as an interlocutory or certified appeal rather than a petition for a writ of prohibition, it would still be the Public Defender's Office rather than the Commonwealth

[2] As the Majority acknowledges, in the absence of an applicable exception to the doctrine, the issue before us is now moot because a public defender from the Office already has served as standby counsel at Bettelli's trial. (See Majority Slip Op. at 7).

[3] Pa.R.Crim.P. 600(G).

whose actions resulted in the postponement of trial. In light of these alternative avenues of appeal, the instant case is not likely to evade review and therefore must be considered moot.

As the Majority acknowledges, judicial avoidance of moot questions is "axiomatic." (See Majority Slip Op. at 7); see also Pap's A.M. v. City of Erie, 812 A.2d 591, 599 (Pa. 2002); Rogers v. Lewis, 656 A.2d 1368 (Pa. 1995) (dismissing moot appeal); In re Gross, 382 A.2d 116 (Pa. 1978) (declining to reach merits of issue after deeming it moot). Therefore, because the issue *sub judice* is now moot, it would be inappropriate to consider the merits of the Petition.

Accordingly, I would dismiss the Office's Petition for a Writ of Prohibition as moot. I dissent from the Majority's decision to deny the Petition on its merits, and I offer no opinion as to the authority of the Venango County Court of Common Pleas to appoint a public defender as standby counsel under the circumstances of this case.