

[J-141-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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| COMMONWEALTH OF PENNSYLVANIA, | : | No. 193 Capital Appeal Dkt. |
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| Appellee, | : | Appeal from the Order of the Court of |
| | : | Common Pleas of Philadelphia County |
| | : | entered on March 31, 1997 at CC Nos. |
| v. | : | 9101-2457, 2458, 2459 & 2460 denying |
| | : | Petition for Relief under the Post- |
| | : | Conviction Relief Act. |
| ROY L. WILLIAMS, | : | |
| | : | SUBMITTED: July 21, 1998 |
| Appellant. | : | |

CONCURRING OPINION

MR. JUSTICE CASTILLE

DECIDED: June 4, 1999

I agree with the majority that remand to the PCRA court for a hearing on factual and credibility issues, which cannot be decided by this Court based on the present record, is necessary. I write separately only to emphasize the portion of the Majority Opinion that criticizes the PCRA court's wholesale adoption of the Commonwealth's brief and because I believe that review of any of the issues raised in the petition is premature under the circumstances. The PCRA court's failure to draft an opinion addressing the claims constitutes an abdication of the trial court's duty which cannot be condoned. While the PCRA court undoubtedly intended only to conserve its judicial energies, this manner of conservation is inappropriate. This Court's review of certain of the issues raised in the PCRA petition should not proceed until a proper opinion is filed by the court below.

The obvious purpose of Pa.R.A.P. 1925(a) is to facilitate appellate review of a particular trial court order. Additionally, however, the rule fulfills an important policy

consideration by providing to disputing parties, as well as to the public at large, the legal basis for a judicial decision. The trial court's adoption of one party's advocacy brief, in lieu of an independent judicial opinion, deprives the parties and the public of the independent reasoning of the court. This is especially true for the public because the briefs themselves are normally not as accessible as a judicial opinion may be.

Of course, the incorporation of parts of the record is clearly permissible under Pa.R.A.P. 1925(a) and the PCRA court correctly considered the Commonwealth's brief as part of the record below.¹ However, there must be an independent judicial opinion in which the record can be incorporated. Here, the PCRA court's opinion merely recounts the procedural history of the case and then proceeds to adopt one of the advocate's briefs -- in its totality -- as the basis for denying the petition. This constitutes patently insufficient judicial review because the Commonwealth's brief reflects a spirit of advocacy, whereas a judicial opinion should evidence the reasoning of an impartial decision-maker. Commonwealth v. Scales, 309 Pa. Super. 171, 173 n.5, 454 A.2d 1138, 1139 n.5 (1983); see also Darlington, et al., 2 Pennsylvania Appellate Practice § 1925:1 (2d ed. 1998)(stating that in no event should the trial judge merely adopt a brief of counsel as the reasons for the order).

Notwithstanding the Majority's laudable interest in judicial economy by addressing some of the issues, I believe the preferred practice of this Court requires that we remand

¹ Pa.R.A.P. 1921 describes the composition of the record on appeal as including "the original papers and exhibits filed in the lower court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court...." Thus, the PCRA court properly considered the briefs as part of its record because the briefs were "original papers" filed in the PCRA court. See Dorn v. Stanhope Steel, Inc., 368 Pa. Super. 557, 563 n.1, 534 A.2d 798, 801 n.1 (1987)(citing Commonwealth v. Rini, 285 Pa. Super. 475, 482 n.6, 427 A.2d 1385, 1389 n.6 (1981). See generally Darlington, et al., 2 Pennsylvania Appellate Practice § 1921:7. (2d ed. 1998)(stating that briefs filed in the trial court are part of the record before the trial court).

the entire matter to the PCRA court for an opinion which addresses all the relevant issues and which states the court's reasons for denying relief. This Court should not review any of the issues until the PCRA court complies with Pa.R.A.P. 1925(a). See Commonwealth v. Wood, 432 Pa. Super. 183, 198, 637 A.2d 1335, 1342-43 (1994)(stating that failure to comply with Pa.R.A.P. 1925(a) normally warrants remand to the lower court for preparation of an opinion). Judicial economy would have been better served had the PCRA court filed a meaningful opinion in the first instance. Had the PCRA court followed the appropriate procedure, this Court would not have had to assume the responsibility that rightfully belongs in the lower court; that is, initially reviewing and disposing of issues that appellant may have later chosen not to pursue on appeal to this Court had a trial court opinion been rendered.