

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

|                              |   |                          |
|------------------------------|---|--------------------------|
| Commonwealth of Pennsylvania | : |                          |
|                              | : |                          |
| v.                           | : | No. 1908 C.D. 2011       |
|                              | : | Submitted: April 5, 2012 |
|                              | : |                          |
| 2002 Subaru Impreza          | : |                          |
| VIN#JF1GG68552G821124 and    | : |                          |
| Nokia Tracphone seized from  | : |                          |
| Andrew Glushko               | : |                          |
|                              | : |                          |
| Appeal of: Andrew Glushko    | : |                          |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: May 24, 2012

Andrew Glushko appeals, *pro se*, from the September 6, 2011, order of the Court of Common Pleas of Monroe County, Forty-Third Judicial District (trial court), denying his petition for leave to file an appeal *nunc pro tunc* from the trial court's May 18, 2010, forfeiture order. We affirm.<sup>1</sup>

On July 16, 2009, a jury convicted Glushko of attempted unlawful contact with a minor, attempted involuntary deviate sexual intercourse with a minor,

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<sup>1</sup> Our review of an order denying a petition for leave to appeal *nunc pro tunc* is limited to determining whether the trial court committed an error of law or an abuse of discretion. *Kaminski v. Montgomery County Board of Assessment Appeals*, 657 A.2d 1028, 1031 (Pa. Cmwlth. 1995).

and related offenses. On July 31, 2009, the Commonwealth of Pennsylvania filed a petition for forfeiture of property seized during the criminal investigation. After a hearing, the trial court granted the forfeiture petition by order dated May 18, 2010. Glushko did not appeal from this order.

More than one year later, on June 13, 2011, Glushko filed the instant petition for leave to appeal *nunc pro tunc*, claiming that his counsel was ineffective in failing to file a timely appeal from the forfeiture order and seeking reinstatement of his appellate rights. After a hearing on September 6, 2011, the trial court denied Glushko's petition, concluding that Glushko failed to establish any cognizable basis for the reinstatement of his appellate rights. This timely appeal followed.

The sole issue Glushko raises on appeal is whether the trial court had subject matter jurisdiction to adjudicate the forfeiture petition.<sup>2</sup> However, the only matter properly before this court is the denial of Glushko's petition for leave to file a *nunc pro tunc* appeal.<sup>3</sup> For reasons unbeknownst to this court, Glushko fails to assert that the trial court erred or abused its discretion in denying his petition for *nunc pro*

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<sup>2</sup> Glushko has expressly abandoned all other claims. (See Glushko's Br. at 4, 7.)

<sup>3</sup> An appellate court may grant equitable relief in the form of an appeal *nunc pro tunc* in certain extraordinary circumstances. *Schofield v. Department of Transportation, Bureau of Driver Licensing*, 828 A.2d 510, 512 (Pa. Cmwlth. 2003). A *nunc pro tunc* appeal may be permitted if the appellant proves that: (1) his or her appeal was filed late due to non-negligent circumstances; (2) he or she filed the notice of appeal shortly after the expiration of the appeal period; and (3) the appellee was not prejudiced by the delay. *Id.*

*tunc* relief and fails to present any argument on the merits of the petition.<sup>4</sup> Therefore, because there are no issues for this court to review, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>4</sup> In his brief, Glushko asserts that subject matter jurisdiction is a non-waivable issue. (Glushko's Br. at 10.) However, we do not find waiver here. Rather, we conclude that his challenge to the forfeiture order is beyond the scope of this court's review, as the order appealed from merely denied Glushko's petition for leave to appeal *nunc pro tunc*.

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O R D E R

AND NOW, this 24th day of May, 2012, we hereby affirm the September 6, 2011, order of the Court of Common Pleas of Monroe County, Forty-Third Judicial District.

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ROCHELLE S. FRIEDMAN, Senior Judge