

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lynn A. Padgett,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	
The County of Bradford; Bradford	:	
County Board of Commissioners;	:	
Nancy Shrader; Janet Foss Lewis;	:	
Douglas McLinko; The Bradford	:	
County Public Defenders Office;	:	
Theodore Hinkley, Esquire;	:	
Helen A. Stolinas, Esquire; The	:	
Bradford County District Attorney's	:	
Office; Robert B. McGuinness, Esquire;	:	
Rosanette B. Abrams, Esquire;	:	
Steven G. Downs, Esquire; James Petti,	:	
Unknown; Lou Altteri, Station	:	
Commander; Pennsylvania State	:	No. 222 C.D. 2009
Attorney	:	Submitted: December 11, 2009

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: January 11, 2010

Lynn A. Padgett (Padgett) appeals the order of the Court of Common Pleas of Bradford County (common pleas court) that dismissed Padgett’s action with prejudice against The County of Bradford; Bradford County Board of Commissioners; Nancy Shrader; Janet Foss Lewis; Douglas McLinko; The Bradford County Public Defenders Office; Theodore Hinkley, Esquire; Helen A. Stolinas, Esquire; The Bradford County District Attorney's Office; Robert B. McGuinness, Esquire; Rosanette B. Abrams, Esquire; Steven G. Downs, Esquire;

James Petti, Unknown; Lou Altteri, Station Commander; and Pennsylvania State Attorney (collectively, Appellees) for failure to file a complaint.

Padgett was “convicted of the rape and involuntary deviate sexual intercourse of two pre-pubescent children”. Common Pleas Court Opinion, June 30, 2009, at 2. When he accepted a plea agreement Padgett avoided trial on charges that could have resulted in a maximum imprisonment of five hundred and twenty-six years. Padgett filed two Post Conviction Relief Act petitions which were dismissed. He also filed a federal habeas corpus petition which was denied in district court and in the Third Circuit Court of Appeals. The United States Supreme Court denied his petition for writ of certiorari.

On July 26, 2005, Padgett filed a praecipe for a writ of summons in the common pleas court against the Appellees. Because there was no activity in the matter, the common pleas court notified Padgett on March 19, 2008, that it intended to terminate the case because of inactivity. On May 3, 2008, Padgett responded with a Notice of Intent to Proceed. On August 8, 2008, the common pleas court ordered Padgett to file a complaint. On August 28, 2008, Padgett moved for a stay of the proceedings. The common pleas court denied the motion on September 2, 2008. On October 2, 2008, the common pleas court dismissed the action with prejudice because Padgett failed to file a complaint.

Padgett contends that the common pleas court abused its discretion when it dismissed his action with prejudice “where the action was based on actions and in-actions of the Defendants [Appellees] in Plaintiff’s [Padgett] criminal

proceedings and the law requires Plaintiff [Padgett] to terminate the criminal proceedings in Plaintiff's [Padgett] favor before Plaintiff [Padgett] may pursue civil remedies against the Defendants [Appellees]." Padgett's Brief at iii.¹

The Honorable Jeffrey A. Smith ably disposed this issue in his comprehensive opinion. Therefore, this Court shall affirm on the basis of that opinion. Padgett v. Bradford County Commissioners et al. (No. 05CV000338, Filed June 10, 2009).

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

¹ Padgett raises the same argument with respect to the common pleas court's order which directed him to file a complaint and for its denial of his motion for stay. This Court notes that the order directing Padgett to file a complaint and the denial of the motion for stay are not final appealable orders. The only order of the common pleas court before this Court is the dismissal of the action with prejudice.

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Attorney :

ORDER

AND NOW, this 11th day of January, 2010, the order of Court of
Common Pleas of Bradford County in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge