

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

GEORGE IVAN LOPEZ

Appellant

No. 1065 EDA 2012

Appeal from the Order Entered on March 6, 2012  
In the Court of Common Pleas of Lehigh County  
Criminal Division at No(s): CP-39-MD-0001294-2012

BEFORE: PANELLA, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

**FILED MAY 07, 2013**

George Lopez [“Appellant”] appeals *pro se* from the trial court’s March 6, 2012 order denying Appellant’s “Petition for an Order to Compel the Department of Corrections to Comply with the Court Order of October 26, 2011.” Upon review, we affirm the trial court’s order denying Appellant’s petition.

The trial court summarized the relevant facts as follows:

On October 26, 2011, this Court entered an order granting the Defendant's Petition for Expungement pursuant to Pa.Crim.R.P. 790 [*sic*], with regard to criminal charges specified therein. Thereafter, on March 6, 2012, the Defendant filed a Petition for An Order to Compel the Department of Corrections to Comply with the Court Order of October 26, 2011. In said petition, the Defendant requested that this Court involve itself in the administrative policies of the Pennsylvania Department of Corrections.

Trial Court Opinion [“T.C.O.”], 4/4/12, at 1-2.

The trial court denied Appellant's petition. This appeal followed. Appellant was not ordered to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On April 4, 2012, the trial court filed a Rule 1925(a)(1) opinion explaining the reasons for its March 6, 2012 order. The trial court explained that it "lacked jurisdiction to compel the Pennsylvania Department of Corrections to deviate from its administrative procedures." T.C.O. at 2.

Indeed, a trial court does not have jurisdiction to compel performance by the Pennsylvania Department of Corrections. A request to compel performance is properly styled as a writ of *mandamus*.

*Mandamus* is an extraordinary writ of common law, designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy. ***Pugh v. Pennsylvania Board of Probation and Parole***, 100 Pa.Cmwlth. 130, 514 A.2d 284 (1986). *Mandamus* is not meant to create legal rights, but to enforce those legal rights already in existence. ***Jamieson v. Pennsylvania Board of Probation and Parole***, 90 Pa.Cmwlth. 318, 495 A.2d 623 (1985). *Mandamus* may properly lie to compel the Board to conduct a hearing or correct a mistake in applying the law. ***Bronson v. Pennsylvania Board of Probation and Parole***, 491 Pa. 549, 421 A.2d 1021 (1980), *cert. denied*, 450 U.S. 1050, 101 S.Ct. 1771, 68 L.Ed.2d 247 (1981).

***Bostic v. Pennsylvania Bd. of Prob. & Parole***, 682 A.2d 401, 403 (Pa. Cmwlth. 1996). The Commonwealth Court has original jurisdiction in cases of *mandamus*. ***Id.*** at 402. Thus, the trial court was without jurisdiction to hear Appellant's request to compel the Department of Corrections to remove

him from the restricted housing unit, where Appellant asserts that he was placed as a result of an escape charge that has since been removed from his record. Appellant's Brief at 3.

Having determined that it lacked jurisdiction, the trial court denied Appellant's petition. T.C.O. at 2. In so doing, the trial court identified its March 6, 2012 order as interlocutory. We agree that the trial court lacked jurisdiction, but we disagree that the order was interlocutory.

As we held in ***Commonwealth v. Anderson***, an order that determines that a court lacks jurisdiction is final, not interlocutory:

By dismissing for the lack of subject matter jurisdiction, the trial court's order disposes of all charges made by the Commonwealth and serves to put the litigants out of court, thus making the order final. ***Commonwealth v. Rosario***, 615 A.2d 740, 743 (Pa. Super. 1992); ***Commonwealth v. Swartz***, 579 A.2d 978, 980 (Pa. Super. 1990); Pa.R.App.P. 341(b).

***Commonwealth v. Anderson***, 630 A.2d 47, 51 (Pa. Super. 1993). Because the trial court determined that it lacked jurisdiction, it effectively put Appellant "out of court." ***Id.*** Accordingly, the trial court's March 6, 2012 order was final.

As the trial court's order was final, we do have jurisdiction over Appellant's appeal. 42 Pa.C.S. § 742; Pa.R.A.P. 341(a). However, we cannot decide Appellant's issue on the merits because, as explained above, the Commonwealth Court has original jurisdiction over writs of *mandamus*. ***Bostic***, 682 A.2d at 403. Accordingly, we affirm the trial court's order denying Appellant's petition for lack of subject matter jurisdiction. ***See***,

***Commonwealth v. Jackson***, 858 A.2d 627 (Pa. Super. 2004) (*en banc*) (affirming a trial court order denying a prisoner's request to stop the D.O.C. from garnishing funds from his prison account, where the trial court concluded that that it lacked subject matter jurisdiction claim).

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Kevin Gambett", written over a horizontal line.

Prothonotary

Date: 5/7/2013