

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHRISTOPHER MICHAEL RODLAND,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1170 WDA 2011

Appeal from the Order June 23, 2011
In the Court of Common Pleas of Blair County

Criminal Division at No(s):

CP-07-CR-0000890-1999
CP-07-CR-0000891-1999
CP-07-CR-0000892-1999
CP-07-CR-0000893-1999
CP-07-CR-0000894-1999
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CP-07-CR-0001107-1999
CP-07-CR-0001108-1999
CP-07-CR-0001109-1999
CP-07-CR-0001110-1999
CP-07-CR-0001111-1999

BEFORE: STEVENS, P.J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY STEVENS, P.J.

Filed: January 11, 2013

This is an appeal from the June 23, 2011 Order entered in the Court of Common Pleas of Blair County denying Appellant's *pro se* Application for Bail pending the disposition of his timely filed petition under the auspices of the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-46.¹ We affirm.

This Court has previously set forth the relevant procedural history, in part, as follows:

At the outset, we note this case has a convoluted procedural history which neither the parties nor the trial court has made clear for us. From what we can determine, however, there were thirty or more criminal complaints filed against Appellant. He pled guilty to some charges and underwent two jury trials—one involving various arson charges and another involving a second set of arson charges. After those trials, he was convicted and sentenced to extended periods of incarceration. Appellant then attempted to proceed on direct appeal but his appeals were dismissed, apparently because his counsel failed to file briefs. Appellant filed numerous petitions under the Post Conviction Relief Act, perhaps eleven of them, as

* Former Justice specially assigned to the Superior Court.

¹ We note that this Court has recognized that an order denying release on bail pending disposition of a PCRA petition is appealable under the collateral order doctrine. *See Commonwealth v. McDermott*, 547 A.2d 1236 (Pa.Super. 1988); *Commonwealth v. Bonaparte*, 530 A.2d 1351 (Pa.Super. 1987) (Kelly, J., plurality); Pa.R.A.P. 313(b) (defining collateral order). Furthermore, such an order is within our scope of review. *See* Pa.R.A.P. 1501 and 1762 (indicating an order related to bail is subject to review pursuant to Chapter 15 (judicial review of governmental determinations)).

well as collateral appeals from some of the denials of those petitions. Eventually, this case came to the point where Appellant's direct appeal rights were reinstated, [and he filed direct appeals *nunc pro tunc* from his judgments of sentence, which were entered in 2001].

Commonwealth v. Rodland, 1710 and 1777 WDA 2008, at 2-3 (Pa.Super. filed 6/15/10) (unpublished memorandum). On direct appeal *nunc pro tunc*, we noted Appellant's brief was "unfocused, rambling and lacking in adequate citation and legal and factual analysis," and therefore, we found all of his issues to be waived, except for a single suppression issue. ***Id.*** at 3. With regard thereto, we found no merit to Appellant's contention the suppression court should have suppressed his confessions and all other statements, which Appellant made to Sergeant White of the Altoona Police Department. ***Id.*** at 3-5. Consequently, on June 15, 2010, we affirmed Appellant's 2001 judgments of sentence, and Appellant filed a petition for allowance of appeal, which our Supreme Court denied on December 1, 2010. Appellant did not file a *writ of certiorari* with the United States Supreme Court.

Thereafter, on or about April 1, 2011, Appellant filed a timely *pro se* PCRA petition, as well as various other *pro se* documents, including a request for stand-by counsel, an evidentiary hearing, and discovery. Additionally, on or about May 4, 2011, Appellant filed a *pro se* "Application

for Bail Pending Disposition of Post-Conviction Relief Act Petition.”² On June 23, 2011, the lower court denied Appellant’s request for bail noting there have been “no changed circumstances that warrant the granting of bail for the Defendant.” On or about July 7, 2011, Appellant filed the instant *pro se* notice of appeal to this Court.³

Initially, we note our standard of review:

We will review the lower court’s order [denying a bail application] for an abuse of discretion and will only reverse where the trial court misapplies the law, or its judgment is manifestly unreasonable, or the evidence of record shows that [its] decision is a result of partiality, prejudice, bias, or ill will.

Commonwealth v. Bishop, 829 A.2d 1170, 1172 (Pa.Super. 2003)
(quotation marks and quotation omitted).

An application for release from bail is generally governed by the Rules of Criminal Procedure.⁴ Specifically, Pa.R.Crim.P. 534 provides, in relevant part, the following:

² “Bail has been long recognized as a procedure whereby an individual defendant provides a form of collateral in exchange for the defendant’s release from custody[.]” ***Commonwealth v. Chopak***, 532 Pa. 227, 238, 615 A.2d 696, 702 (1992). Pa.R.Crim.P. 103 specifically defines bail as “the security or other guarantee required and given for the release of a person, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and comply with all conditions set forth in the bail bond.”

³ Subsequently, the lower court appointed counsel to assist Appellant with the preparation of his PCRA petition.

⁴ Pa.R.A.P. 1762 provides, in relevant part, the following:

Rule 1762. Release in Criminal Matters

(Footnote Continued Next Page)

Rule 534. Duration of Obligation

Unless bail is revoked, a bail bond shall be valid until the full and final disposition of the case, including all avenues of direct appeal to the Supreme Court of Pennsylvania.

Comment: The intent of this rule is to continue the validity of the bail bond through all avenues of direct appeal in the state courts, but to exclude state post-conviction collateral proceedings, federal appeals and post-conviction *habeas corpus* proceedings, or any other collateral attacks.

Pa.R.Crim.P. 534 (bold and italics in original).

In interpreting Pa.R.Crim.P. 534, this Court has held that “a lower court’s power to set bail is valid until the defendant’s direct appeal rights are exhausted. The intent of [Rule 534] is to continue the validity of the bail bond through all avenues of direct appeal in state courts, but to exclude any post-conviction collateral proceedings.” *Commonwealth v. Dunlavey*, 805 A.2d 562, 565 (Pa.Super. 2002) (quoting *Commonwealth v. McMaster*, 730 A.2d 524, 527 (Pa.Super. 1999)) (quotation marks omitted). Thus, where a defendant has had a “full and final disposition” of his case, resulting in the expiration of direct appeal rights, the lower court has no authority under Pa.R.Crim.P. 534 to set bail. *See Commonwealth v. Culver*, 46 A.3d 786, 794 (Pa.Super. 2012) (*en banc*) (“A bail bond is valid until final

(Footnote Continued) _____

(b) Applications relating to bail when no appeal is pending:

(1) Applications relating to bail when no appeal is pending shall first be presented to the lower court, and shall be governed by the Pennsylvania Rules of Criminal Procedure.

Pa.R.A.P. 1762 (bold in original).

disposition of a case.”); ***Dunlavey, supra***. Accordingly, since, in the case *sub judice*, there is no question Appellant filed the instant application for bail during the pendency of his PCRA petition, following the expiration of his direct appeal rights, we conclude the lower court did not err in refusing to set bail pursuant to Pa.R.Crim.P. 534. ***See Dunlavey, supra***.

However, this does not end our inquiry as Pa.R.Crim.P. 908, which pertains to PCRA proceedings, permits the lower court to enter “interim orders as may be necessary in the interests of justice.” Pa.R.Crim.P. 908(A)(2). ***See Bishop, supra*** (recognizing PCRA court has jurisdiction to grant request for bail during pendency of a timely filed PCRA petition). With regard thereto, recognizing that the PCRA court retains limited discretion to release a PCRA petitioner on bail pending disposition of a PCRA petition, this Court has held that such discretion is limited to compelling reasons in “exceptional cases when required in the interests of justice.”⁵ ***Commonwealth v. McDermott***, 547 A.2d 1236, 1242 (Pa.Super. 1988) (quoting ***Bonaparte***, 530 A.2d at 1353-55) (quotation marks omitted). ***See Bishop***, 829 A.2d at 1172 (“***Bonaparte*** held that a post-conviction

⁵ As this Court has noted, “an individual’s legitimate interest in remaining at large on bail diminishes, and the Commonwealth’s legitimate interest in incarcerating the individual increases correspondingly, as the individual passes from suspect, to accused, to appellant, to *allacatur* petitioner, to *certiorari* petitioner, to [PCRA] petitioner.” ***McDermott***, 547 A.2d at 1243. Thus, the availability of release on bail is subject to increased restrictions at each level. ***See id.***

petitioner could be admitted to bail pending disposition of his petition when necessary in the interest of justice, in certain exceptional cases, for compelling reasons.”); *McMaster*, 730 A.2d at 527 n.1 (“[W]e note that a [PCRA] petitioner may be admitted to bail pending disposition of the petition when such an order would be necessary in the interest of justice in certain exceptional cases for compelling reasons.”) (citation omitted)).⁶

In determining what constitutes “compelling reasons in exceptional cases,” we note this Court, in *Bonaparte, supra*,⁷ indicated that such a standard is met when it is “so obvious to the [PCRA] court that the petitioner will ultimately prevail on the merits of his [petition] that it would be manifestly unjust for him to continue to serve one more day of incarceration as the result of a conviction which made a mockery of justice.” *Id.* at 1355 (quotation omitted). That is, “where it is obvious to the [PCRA] court that an injustice has probably been done, there is no impediment to releasing the petitioner [on bail] pending final formal disposition of his petition.” *Id.* (quotation omitted). However, as this Court cautioned in *Bonaparte*:

[W]hile it may be appropriate to exercise the power to admit a petitioner to bail pending final formal disposition of [PCRA]

⁶ To the extent Appellant contends the PCRA court erred in failing to analyze his application under the proper legal precepts, we note that we may affirm on any basis. *See Commonwealth v. Doty*, 48 A.3d 451 (Pa.Super. 2012) (indicating we are not bound by PCRA court’s rationale and may affirm on alternate grounds).

⁷ While *Bonaparte, supra* is a plurality opinion, we find its reasoning in this regard to be persuasive.

petitions in exceptional cases, it is important that this power be exercised in a way which does not provide an inducement to ingenious convicts to redouble their pursuance of meritless petitions.

Id. at 1355.⁸

In the case *sub judice*, Appellant asserts he is entitled to bail since (1) on direct appeal *nunc pro tunc*, this Court characterized his direct appeal counsel's brief as "unfocused, rambling, and lacking in adequate citation and legal and factual analysis;" and (2) the Commonwealth and trial court interfered with direct appeal *nunc pro tunc* counsel's effectiveness by not providing counsel with several portions of the certified record.⁹

In the case *sub judice*, Appellant essentially asserts he is entitled to bail because, on direct appeal *nunc pro tunc*, we found two of his issues to be waived due to lack of development by counsel, and previous counsel was allegedly not provided with all necessary items from the certified record. Similar to the PCRA court, we find that it is not "obvious" that Appellant will

⁸ We also caution that applications for bail should not be treated as a substitute for the formal, customary litigation and disposition of PCRA petitions.

⁹ Appellant contends counsel was not provided with the speedy trial hearing transcript and order, the sentencing transcript, an order amending the criminal information, and a claim for restitution to the Pennsylvania State Police crime lab for \$145.00. Appellant's Brief at 17-20. Appellant baldly asserts that his entire criminal record has been stored in a janitor's closet and the Commonwealth has engaged in "record tampering." Appellant's Brief at 20-22. Such bald, unsupported, self-serving statements certainly do not meet the burden required to establish "compelling reasons in exceptional cases." *See McDermott, supra.*

ultimately prevail on the merits of these assertions or that an “injustice has probably been done.” *Bonaparte, supra*. Although Appellant has correctly asserted that we found two of his issues to be waived in his direct appeal *nunc pro tunc*, this alone does not provide Appellant with PCRA relief; but rather, it will be necessary for him to plead and prove all three prongs of appellate counsel’s ineffectiveness in this regard. Additionally, to the extent prior counsel was not provided with all portions of Appellant’s certified record, this alone does not make it “obvious” Appellant will ultimately prevail. Rather, to the extent this claim is reviewable on its merits under the PCRA, Appellant will need to demonstrate the necessary prejudice, which he simply has not done at this stage. Therefore, we conclude the PCRA court did not abuse its discretion in finding this is not an “exceptional case” with “compelling reasons” necessitating bail in the “interest of justice.” Thus, we affirm the lower court’s order denying Appellant’s application for bail pending the litigation of his current PCRA petition.

Affirmed.