NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. MARK AARON LANDIS Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1186 MDA 2012

Appeal from the Order Entered June 11, 2012
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0004170-2011

BEFORE: BOWES, OLSON and WECHT, JJ.

MEMORANDUM BY OLSON, J.: Filed: February 15, 2013

The Commonwealth appeals from the interlocutory order of court, entered on June 11, 2012. We quash this appeal.

On September 7, 2011, the Commonwealth filed a criminal complaint against Mark Landis, charging him with two counts of aggravated indecent assault and two counts of indecent assault.[1] On September 14, 2011, counsel entered his appearance for Mr. Landis and notified the court that he was ready to proceed with the scheduled, September 22, 2011, preliminary hearing.

As Mr. Landis avers, on the day of the September 22, 2011 preliminary hearing, he and the Commonwealth arrived at the following

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[1] 18 Pa.C.S.A. §§ 3125(a)(1) and (4) and 3126(a)(1) and (4), respectively.

agreement: the Commonwealth agreed to withdraw the two aggravated indecent assault charges if Mr. Landis agreed to waive the preliminary hearing and plead guilty to the indecent assault charges. Mr. Landis' Petition to Remand for a Preliminary Hearing, 5/23/12, at 1. That same day, Mr. Landis waived his right to a preliminary hearing and the magisterial district judge (MDJ) held Mr. Landis for court on the indecent assault charges. MDJ Recommitment, 9/21/11, at 1. Further, within the MDJ's recommitment order, the MDJ noted that "both counts of aggravated indecent assault were withdrawn at the preliminary hearing." ***Id.***

According to Mr. Landis, on February 14, 2012, the Commonwealth informed him that it would not honor the bargain that was struck at the preliminary hearing and that it intended to amend the information to include the previously withdrawn charges of aggravated indecent assault. Mr. Landis' Petition to Remand for a Preliminary Hearing, 5/25/12, at 2. In response, on May 25, 2012, Mr. Landis filed – in the trial court – a "Petition to Remand for a Preliminary Hearing." Within this petition, Mr. Landis claimed that the case must be remanded for a preliminary hearing before the MDJ, as Mr. Landis "waived his right to a preliminary hearing in reliance [upon] the representation that a charge bargain had been struck. The Commonwealth's failure to honor the agreement can only be remedied by restoring [Mr. Landis] to the status he enjoyed prior to making the ill-fated bargain." ***Id.***

On May 25, 2012, the trial court heard oral argument on Mr. Landis' petition. During oral argument, the Commonwealth agreed that Mr. Landis was entitled to the reinstatement of his preliminary hearing rights. Trial Court Opinion, 8/10/12, at 1. However, the Commonwealth did not wish for the preliminary hearing to occur in front of the MDJ. Instead, the Commonwealth wanted the preliminary hearing to be held in the court of common pleas. ***Id.*** at 1-2. The Commonwealth thus argued that – since it did not consent to have the matter remanded to the magisterial district court – the preliminary hearing must be held in the court of common pleas. ***Id.*** In support of its argument, the Commonwealth cited Pennsylvania Rule of Criminal Procedure 541(D). This rule states:

> Once a preliminary hearing is waived and the case bound over to the court of common pleas, if the right to a preliminary hearing is subsequently reinstated, the preliminary hearing shall be held at the court of common pleas unless the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority.

Pa.R.Crim.P. 541(D).[2]

The trial court rejected the Commonwealth's argument and, on May 25, 2012, the trial court entered an order declaring that the preliminary hearing would be held in front of the magisterial district court. Trial Court Order, 5/25/12, at 1. As the trial court persuasively reasoned:

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[2] We note that Rule 541 was amended on October 23, 2012. The amendments, however, did not affect any language within Rule 541(D).

> [H]ere, [Mr. Landis' preliminary hearing] waiver was obtained as part of a bargain that the Commonwealth then renounced. . . . [The] Commonwealth's refusal to honor the agreement obviates [Mr. Landis'] agreement to waive the preliminary hearing before the issuing authority. [Mr. Landis'] Motion for Remand merely requested that he be returned to the status quo existing immediately prior to the agreement.
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> . . .
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> Beside the fact [that] the Commonwealth's refusal to honor the parties' agreement should be viewed as voiding the agreement so as to restore the parties to the status quo, there are strong policy reasons why Rule [541(D)] should not be literally enforced here. [Mr. Landis'] waiver was obtained by a Commonwealth promise. [Mr. Landis] surrendered a substantial right to a preliminary hearing at [the magisterial district court level and,] but for the Commonwealth's promise[, Mr. Landis] would not have given up [this right]. Under such circumstances[,] giving [Mr. Landis] only partial relief by granting a hearing at [the c]ommon [p]leas [court level would] reward[] the Commonwealth for its breach of promise by granting it the forum of its choosing. . . .
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> [Further, t]he potential for future mischief is apparent. [Indeed, t]he Commonwealth, unhappy with [a magisterial district court] preliminary hearing forum for whatever reason, might obtain a waiver by a plea bargain it has no intention of keeping, knowing that[, after it renounces upon] the agreement[,] any future preliminary hearing . . . would have to be, [unless it agrees otherwise], at [the c]ommon [p]leas [court level].

Trial Court Opinion, 8/10/12, at 1.

The Commonwealth filed a motion for reconsideration of the remand order and, on June 1, 2012, the trial court entered an order granting reconsideration of its May 25, 2012 order. Trial Court Order, 6/1/12, at 1.

On June 11, 2012, however, the trial court entered another order and finally remanded the case to the magisterial district court for a preliminary hearing. Trial Court Order, 6/11/12, at 1.

On June 26, 2012, the Commonwealth filed a notice of appeal from the trial court's June 11, 2012 order. The Commonwealth now raises the following claim to this Court:

> Whether the [c]ourt of [c]ommon [p]leas . . . disregarded the dictates of Pa.R.Crim.P. 541(D) by ordering this case remanded to the [m]agisterial [d]istrict [j]ustice level for a preliminary hearing where the Commonwealth objected and opposed the remand?

Commonwealth's Brief at 4. We conclude that we do not have jurisdiction over this appeal. Therefore, we quash the Commonwealth's appeal.

As we have explained, prior to reaching the merits of any appeal, this Court must "first ascertain whether the [order appealed from] is properly appealable." ***Commonwealth v. Borrero***, 692 A.2d 158, 159 (Pa. Super. 1997). Indeed, since "the question of appealability implicates the jurisdiction of this Court[, the issue] may be raised by [this] Court *sua sponte*." ***Commonwealth v. Baio***, 898 A.2d 1095, 1098 (Pa. Super. 2006).

In general, this Court's jurisdiction "extends only to review of final orders." ***Rae v. Pa. Funeral Dir's Ass'n***, 977 A.2d 1121, 1124-1125 (Pa. 2009); 42 Pa.C.S.A. § 742; Pa.R.A.P. 341(a). A final order is defined as any order that: "(1) disposes of all claims and of all parties; [] (2) is explicitly defined as a final order by statute; or (3) is entered as a final order pursuant to [Pennsylvania Rule of Appellate Procedure 341(c)]." Pa.R.A.P. 341(b).

Thus, in criminal cases, the general rule is that an appeal "can be taken only after judgment of sentence or some other final disposition." ***Commonwealth v. Fox***, 124 A.2d 628, 629 (Pa. Super. 1956). The purpose of this rule is to "prevent undue delay and avoid the disruption of criminal cases by piecemeal appellate review." ***Commonwealth v. Scott***, 578 A.2d 933, 941 (Pa. Super. 1990) (internal quotations, citations, and corrections omitted).

In the case at bar, the trial court's June 11, 2012 order did not finally dispose of the Commonwealth's case against Mr. Landis. Rather, the order merely declared that the preliminary hearing would occur in front of the magisterial district court – and not in front of the court of common pleas. The order thus constitutes a non-final, interlocutory order.

Further, while interlocutory orders are appealable in certain circumstances, none of those circumstances apply to the case at bar. Our Supreme Court has explained:

> in addition to an appeal from final orders of the Court of Common Pleas, our rules provide the Superior Court with jurisdiction in the following situations: interlocutory appeals that may be taken as of right, Pa.R.A.P. 311; interlocutory appeals that may be taken by permission, Pa.R.A.P. [312]; appeals that may be taken from a collateral order, Pa.R.A.P. 313; and appeals that may be taken from certain distribution orders by the Orphans' Court Division, Pa.R.A.P. 342.

Commonwealth v. Garcia, 43 A.3d 470, 478 n.7 (Pa. 2012) (internal quotations omitted), *quoting* ***McCutcheon v. Phila. Elec. Co.***, 788 A.2d 345, 349 n.6 (Pa. 2002).

Here, the trial court's June 11, 2012 order is not appealable as of right (*per* Pa.R.A.P. 311) and the Commonwealth did not ask for or receive permission to appeal the interlocutory order (*per* Pa.R.A.P. 312).[3] Moreover, although the Commonwealth claims that the June 11, 2012 order satisfies the requirements of the collateral order doctrine, the Commonwealth is mistaken. ***See*** Commonwealth's Brief at 1.

Pennsylvania Rule of Appellate Procedure 313 defines a collateral order as one that: "1) is separable from and collateral to the main cause of action; 2) involves a right too important to be denied review; and 3) presents a question that, if review is postponed until final judgment in the case, the claim will be irreparably lost." ***In re Bridgeport Fire Litigation***, 51 A.3d 224, 230 n.8 (Pa. Super. 2012); Pa.R.A.P. 313(b). Our Supreme Court has emphasized:

> the collateral order doctrine is a specialized, practical [exception to] the general rule that only final orders are appealable as of right. Thus, Rule 313 must be interpreted

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[3] We note that the Commonwealth did not "certif[y] in the notice of appeal that the order will terminate or substantially handicap the prosecution." Pa.R.A.P. 311(d); ***see also In re Twenty-Fourth Statewide Investigating Grand Jury***, 907 A.2d 505, 515 (Pa. 2006) (Rule 311(d) requires a "good-faith certification" that the order "will terminate or substantially handicap the prosecution").

> narrowly, and the requirements for an appealable collateral order remain stringent in order to prevent undue corrosion of the final order rule. To that end, each prong of the collateral order doctrine must be clearly present before an order may be considered collateral.

Melvin v. Doe, 836 A.2d 42, 46-47 (Pa. 2003) (internal citations omitted).

On appeal, we assume – without deciding – that the June 11, 2012 order satisfies the first and third prongs of the collateral order doctrine. Notwithstanding these assumptions, the order cannot constitute a collateral order, as the order clearly fails the "importance" prong of the collateral order doctrine.

As our Supreme Court has held, for an order to "involve[] a right too important to be denied review," "it is not sufficient that the issue be important to the particular parties. Rather[, the issue] **must involve rights deeply rooted in public policy** going beyond the particular litigation at hand." ***Melvin***, 836 A.2d at 47 (internal quotations and citations omitted) (emphasis added); ***see also Geniviva v. Frisk***, 725 A.2d 1209, 1214 (Pa. 1999) ("[o]nly those claims that involve interests 'deeply rooted in public policy' can be considered 'too important to [be] denied review'") (internal citations omitted).

By way of example, in the following cases, our Supreme Court has held that the issue raised on appeal "involve[d] rights deeply rooted in public policy": a Commonwealth appeal from the denial of "its request that [the appellee] be compelled to take psychiatric medication to restore his competence" was held to satisfy the second prong of the collateral order

doctrine, as the order directly implicated "society's compelling interest in bringing an end to the [criminal proceedings]," ***Commonwealth v. Watson***, 952 A.2d 541, 553-554 (Pa. 2008); an appeal from a trial court's discovery order – in which the trial court directed that anonymous authors of alleged defamatory statements about a public official disclose their identities – was held to satisfy the requirement, as the order "presented a significant possibility of trespass upon . . . the [authors'] constitutional right to anonymous free speech," ***Melvin***, 836 A.2d at 50; an appeal from a trial court's discovery order, permitting the discovery of a prosecutor's pre-trial and trial notes, implicated the work product doctrine and, thus, involved "an important right deeply rooted in public policy," ***Commonwealth v. Dennis***, 859 A.2d 1270, 1278 (Pa. 2004); an appeal from a pre-trial order, directing the production of governmental investigatory files into a dentist, "implicate[d] rights rooted in public policy" because the order allowed the discovery of privileged material, ***Ben v. Schwartz***, 729 A.2d 547, 552 (Pa. 1999); a non-frivolous appeal from the denial of a motion to dismiss on double jeopardy grounds, it was explained, "involve[d a] right deeply rooted in public policy" because the denial potentially undermined the constitutional "right to be free from a second prosecution . . . for the same offense," ***Commonwealth v. Brady***, 508 A.2d 286, 288 (Pa. 1986) (internal quotations and citations omitted).

In the case at bar, the Commonwealth agrees that Mr. Landis is entitled to the reinstatement of his right to a preliminary hearing. ***See***

Commonwealth's Brief at 7. The Commonwealth simply opposes the **forum** within which the preliminary hearing will take place. This issue "implicates no policy interests of sufficient import that immediate appeal was required." ***Geniviva***, 725 A.2d 1214. As such, the trial court's June 11, 2012 order does not satisfy the collateral order doctrine. The current appeal is, therefore, interlocutory and non-appealable. We quash this appeal.

Appeal quashed.