

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM E. MURKENS,	:	
	:	
Appellant	:	No. 1217 WDA 2012

Appeal from the Order entered July 23, 2012,
Court of Common Pleas, Erie County,
Criminal Division at No. CP-25-CR-0001411-2005

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 5, 2013

Appellant, William E. Murkens (“Murkens”), appeals from the trial court’s order denying his motions for discovery and for permission to proceed *in forma pauperis*. We affirm the trial court’s order.

On or about November 17, 2005, a jury found Murkens guilty of two counts of involuntary deviate sexual intercourse, 18 Pa.C.S.A. § 3123(a)(7), and one count each of statutory sexual assault, 18 Pa.C.S.A. § 3122.1, endangering the welfare of children, 18 Pa.C.S.A. § 4304(a), corruption of minors, 18 Pa.C.S.A. § 6301(a)(1), and indecent assault, 18 Pa.C.S.A. § 3126(a)(8). On April 4, 2007, this Court affirmed Murkens’ judgment of sentence, and on April 23, 2009, this Court affirmed the dismissal of Murkens’ petition for relief pursuant to the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-46.

On July 20, 2012, Murkens filed with the trial court a Motion to Compel Discovery Pursuant to Pennsylvania Rules of Criminal Procedure 573(A) (the "Motion"), which sets forth 41 discovery requests. These requests include, *inter alia*, demands for written statements by Murkens, his criminal records, trial transcripts, forensic evidence (*e.g.*, blood and hair samples), police and detective reports, and grand jury testimony. In connection with this Motion, Murkens also filed a Petition to Proceed In Forma Pauperis (the "Petition") with a supporting memorandum of law. By order dated July 23, 2012, the trial court denied both the Motion and the Petition, stating that because Murkens' judgment of sentence is final he is "neither entitled to discovery nor is he entitled to proceed *in forma pauperis*." Order, 7/23/12/ at 1.

On August 2, 2012, Murkens filed a timely notice of appeal, in which he asserts the following four issues for our consideration and determination:

1. Did the trial court deny [Murkens] his right of access to the [c]ourt by denying him a copy of the court documents and trial transcripts.
2. Did the trial court deny [Murkens] his [d]ue [p]rocess rights by denying him a copy of the court documents and court transcripts to proceed on appeal.
3. Did the trial court deny [Murkens] of his equal protection rights by the denial of court documents and trial transcripts.
4. Did the trial court abuse its discretion by denying [Murkens] his right to proceed *in forma pauperis*.

Murkens' Brief at v.

Although set forth as separate issues, all four issues essentially pose the same question – whether the trial court erred in denying the Motion and Petition. Constitutional due process and equal protection require that the Commonwealth provide a criminal defendant with copies of relevant documents, including trial transcripts, to permit the effective prosecution of an appeal. **Griffin v. Illinois**, 351 U.S. 12, 19-20 (1956). Our Supreme Court has long upheld this procedural right and has attributed to the Commonwealth the responsibility of providing a defendant with copies of the necessary proceedings so that appellate rights might be actively pursued. **Commonwealth v. Goldsmith**, 452 Pa. 22, 28-29, 304 A.2d 478, 482 (1973). This right also applies to post-conviction proceedings. **Commonwealth v. Richardson**, 244 A.2d 794, 794 (Pa. Super. 1968).

In **Commonwealth v. Ballem**, 482 A.2d 1322 (Pa. Super. 1984), this Court ruled that when a defendant makes a discovery request, he or she must allege some basis to justify the need for the information. **Id.** at 1323. In **Ballem**, the defendant claimed that he needed discovery to pursue PCRA relief. Because no PCRA petition was pending, however, the trial court denied the discovery request. **Id.** at 1324. This Court affirmed, ruling that since no action was presently pending, the trial court “was in no position to assess appellant’s claims to determine whether they constituted compelling reasons warranting a grant of his petition.” **Id.** This Court has reaffirmed its decision in **Ballem** on at least two occasions. **Commonwealth v.**

Crider, 735 A.2d 730, 733 (Pa. Super. 1999); ***Commonwealth v. Martin***, 705 A.2d 1337, 1338 (Pa. Super. 1998).

No PCRA petition (or other action) is presently pending before the trial court with respect to Murkens' convictions. This Court affirmed his judgment of sentence in 2007 and the dismissal of his PCRA petition in 2009. Thus, the trial court did not err in denying Murkens' Motion. In the absence of any pending matter, there is no proceeding in which Murkens can proceed *in forma pauperis* and thus, the Petition was also properly denied.

Order affirmed.