

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

STEVEN SZAREWICZ,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
WARDEN STEVEN GLUNT AND THE	:	
PENNSYLVANIA ATTORNEY GENERAL,	:	
	:	
Appellees	:	No. 1225 WDA 2013

Appeal from the Order April 26, 2013,
Court of Common Pleas, Clearfield County,
Civil Division at No. 2013-09-MD – AP-8784

BEFORE: PANELLA, DONOHUE and ALLEN, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED MAY 28, 2014

Appellant Steven Szarewicz (“Szarewicz”) appeals *pro se* from the April 26, 2013 order entered in the Court of Common Pleas of Clearfield County. Based on the following, we vacate the order and remand with instructions.

Szarewicz was convicted of first-degree murder in 1983 in Allegheny County and is currently incarcerated in SCI-Houtzdale in Clearfield County. On April 24, 2013, Szarewicz filed in the Court of Common Pleas of Clearfield County a petition for writ of habeas corpus, wherein he asserts that his life sentence should be declared void due to a defective jury charge. Through its April 26, 2013 order, the court explained that such a filing is construed as

an untimely petition under the Post-Conviction Relief Act (“PCRA”)¹, and should be filed at Szarewicz’s criminal docket number in Allegheny County. The order further directed its Prothonotary to return the filing to Szarewicz so that he may file it in Allegheny County if he so desires. Trial Court Opinion, 6/19/13, at p. 2. On May 6, 2013, Szarewicz filed an appeal asserting the Court of Common Pleas of Clearfield County committed an error of law or an abuse of discretion in its refusal to process his petition.^{2,3}

Notably, Szarewicz filed a similar petition for writ of habeas corpus in 2008 in the Court of Common Pleas of Westmoreland County, where he was then incarcerated. Through its May 28, 2008 order, the court denied Szarewicz’s petition due to his failure to serve the parties properly. Szarewicz then filed an appeal, and a panel of this Court found that because Szarewicz alleged in his petition that he is serving an illegal sentence, the petition should have been filed with the clerk of courts in Allegheny County. **See Pa.R.Crim.P. 108(A)** (a petition for writ of habeas corpus challenging the legality of petitioner’s detention or confinement in a criminal matter shall be filed with the clerk of courts of the judicial district in which the order directing the petitioner’s detention or confinement was entered).

¹ 42 Pa.C.S. §§ 9541, *et seq.*

² Szarewicz initially filed his appeal in the Commonwealth Court, which transferred the matter to this Court through its July 3, 2013 order.

³ The Commonwealth did not file a brief.

Consequently, the panel concluded that the trial court should have transferred his petition to Allegheny County prior to dismissing it on procedural grounds. **See** 42 Pa.C.S. § 5103(a) (the court shall not dismiss an erroneously filed matter for lack of jurisdiction, but shall transfer that case to the proper tribunal). With that, the panel vacated the May 28, 2008 order, remanded to Westmoreland County to transfer the petition to Allegheny County, and relinquished jurisdiction. **See Commonwealth ex rel. Steven Szarewicz v. Warden Melvin Locket and the Pennsylvania Attorney General**, 813 WDA 2009 (Pa. Super. March 2, 2010) (unpublished memorandum).

Following a June 29, 2012 *per curiam* order by this Court directing the Court of Common Pleas of Allegheny County to process Szarewicz's habeas corpus petition, the court considered the petition transferred from Westmoreland County within the context of the PCRA and denied relief on December 18, 2012. Szarewicz filed a notice of appeal, and a panel of this Court ultimately affirmed the December 18, 2012 order. **See Commonwealth of Pennsylvania v. Steven Szarewicz**, 399 WDA 2013 (Pa. Super. March 7, 2014) (unpublished memorandum).

Here, Szarewicz claims in the instant petition that in addition to challenging the legality of sentence, he is challenging the conditions of his confinement as cruel and unusual "because he is forced to live out the punishment of a convicted criminal long past the maximum sentence date."

Brief of Appellant, at p. 12. Szarewicz claims that the jury instruction given resulted in a conviction for first-degree murder instead of third-degree murder, for which he would have completed the maximum sentence in 2001, since a maximum sentence for a felony one at the time was 20 years. **Id.** at 16-17.

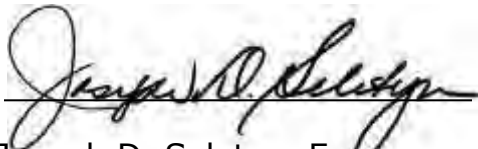
In **Commonwealth v. Brown**, 71 A.3d 1009 (Pa. Super. 2013), appeal denied, 77 A.3d 635 (Pa. 2013), this Court explained that a claim that a sentence constitutes cruel and unusual punishment raises a question of the legality of the sentence. **Brown**, 71 A.3d at 1016. Because Szarewicz's sentence was imposed by the Court of Common Pleas of Allegheny County, the Court of Common Pleas of Clearfield County rightly found that it lacked jurisdiction and that Allegheny County was the proper venue for his petition. **See Pa.R.Crim.P. 108(A); Brown v. Dep't of Corr.**, 601 A.2d 1345, 1347 (Pa. Cmwlth. 1992) (writ of habeas corpus will lie to challenge legality of sentence rather than a mere challenge to an administrative calculation).

While Section 5103(a) of the Judicial Code provides that the court shall transfer the case to the proper tribunal and not dismiss an erroneously filed matter for lack of jurisdiction, the Court of Common Pleas of Clearfield County explained in its 1925(a) Opinion that it did not transfer the matter to Allegheny County because, at the time, it appeared the previously transferred case from Westmoreland County was still pending. Trial Court

Opinion, 6/19/13, at p. 2. As mentioned above, the record indicates the Court of Common Pleas of Allegheny County denied Szarewicz's petition that was transferred from Westmoreland County on December 18, 2012, approximately four months before Clearfield County entered its April 26, 2013 order. As noted, this Court affirmed the December 18, 2012 order on March 7, 2014. Since the PCRA petition is no longer pending, we remand this case to the Court of Common Pleas of Clearfield County and direct it to transfer the habeas corpus petition to Allegheny County pursuant to 42 Pa.C.S. § 5103(a).

Order vacated. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/28/2014