NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. SAMUEL LETTERLOUGH Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1785 MDA 2013

Appeal from the Order Entered on August 19, 2013
In the Court of Common Pleas of Dauphin County
Criminal Division at No.: CP-22-CR-0000226-1992

BEFORE: PANELLA, J., WECHT, J., and STRASSBURGER, J.*

MEMORANDUM BY WECHT, J.: **FILED JULY 09, 2014**

Samuel Letterlough appeals the August 19, 2013 order denying his request for transcripts. We affirm.

In a prior memorandum in this matter, we set forth the earlier procedural history of this case as follows:

> On October 19, 1992, a jury convicted [Letterlough] of second[-]degree murder and robbery.[[1]] On December 12, 1994, the trial court sentenced appellant to a mandatory sentence of life imprisonment on the second-degree murder conviction. No further sentence was imposed on the robbery conviction. On March 13, 1996, this [C]ourt affirmed [Letterlough's] judgment of sentence, and our [S]upreme [C]ourt denied [Letterlough's] petition for allowance of appeal on October 3, 1996. ***Commonwealth v. Letterlough***, 678 A.2d 829

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. §§ 3701, 2502(b), respectively.

> (Pa. Super. 1996) (unpublished memorandum), *appeal denied*, 683 A.2d 878 (Pa. 1996) (*per curiam*). [Letterlough] did not file a petition for a writ of *certiorari* with the Supreme Court of the United States.
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> On June 21, 2007, [Letterlough] filed his first *pro se* [PCRA petition]. On June 25, 2007, the PCRA court appointed counsel. On July 23, 2007, [Letterlough's] counsel filed a motion to withdraw pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988); ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988) (*en banc*); and ***Commonwealth v. Friend***, 896 A.2d 607 (Pa. Super. 2006). On August 1, 2007, the PCRA court gave notice pursuant to Pa.R.Crim.P. 907 of its intention to dismiss [Letterlough's] PCRA petition without a hearing and, after review, granted counsel's motion to withdraw. On August 21, 2007, the PCRA court dismissed [Letterlough's] PCRA petition as untimely. This appeal followed.

Commonwealth v. Letterlough, 1533 MDA 2007, slip op. at 1-2 (Pa. Super. April 7, 2008) (unpublished memorandum) (citations and typography modified). In our April 7, 2008 memorandum, we affirmed the PCRA court's order dismissing Letterlough's PCRA petition. Our Supreme Court denied Letterlough's petition for allowance of appeal of our April 7, 2008 decision on September 10, 2008. ***Commonwealth v. Letterlough***, 956 A.2d 433 (Pa. 2008) (*per curiam*).

On June 28, 2011, Letterlough filed a petition for a writ of *habeas corpus* and a motion for an immediate hearing in the trial court. On July 7, 2011, the trial court denied the petition and motion. On July 14, 2011, Letterlough filed a notice of appeal and a request for his trial transcripts in furtherance of his appeal. The trial court granted Letterlough's request for transcripts on July 20, 2011. On appeal, this Court, treating Letterlough's petition as his second PCRA petition, rejected Letterlough's appeal due to its

untimeliness. ***Commonwealth v. Letterlough***, 1244 MDA 2011 (Pa. Super. Mar. 27, 2012) (unpublished memorandum).

On February 11, 2013, Letterlough filed in the trial court another motion requesting his trial transcripts. The trial court denied the motion on February 20, 2013. Letterlough filed no appeal of this order. On July 23, 2013, Letterlough filed yet another request for transcripts, which the trial court denied on August 9, 2013, in an order incorporating its reasoning in support of its parallel February 20, 2013 order. In that earlier order, the trial court explained that "there are no filings or pleadings before the [c]ourt to evaluate whether the claim has merit. We direct [Letterbough] to file such pleadings within **thirty (30) days** of receipt of this ORDER." Order, 2/20/2013, at 1 (emphasis in original). Letterlough never filed any such pleading. This appeal followed.

The trial court docket indicates that the notice of appeal was not docketed until October 2, 2013, well outside the jurisdictional thirty-day time limit within which Letterlough was entitled to file his appeal. ***See*** Pa.R.A.P. 903(a). This Court long has held that failure to file an appeal within the applicable time limit deprives this Court of jurisdiction, and therefore compels quashal of the appeal without review of the merits. ***Commonwealth v. Moir***, 766 A.2d 1253 (Pa. Super. 2000). Thus, we must first address whether any considerations rectify the facial untimeliness of Letterlough's appeal.

Due to the facial untimeliness of Letterlough's petition, on October 28, 2013, this Court issued a rule to show cause as to why this appeal should not be quashed. On November 6, 2013, Letterlough filed a response, wherein he asserted that he had deposited his notice of appeal with prison authorities on September 4, 2013, well within thirty days after the August 9, 2013 order that he seeks to appeal. In support of this assertion, he attached to his response cash slips signed and dated September 4, 2013, by prison officials at State Correctional Institution—Coal Township. The slips also have a hand-written note to the effect that the documents were deposited with the United States Postal Service one day later, on September 5, 2013. On November 20, 2013, this Court issued an order indicating that, upon review of Letterlough's response, it would take no further action, and discharging the rule.

Letterlough seeks the benefit of the "prisoner mailbox rule," which we addressed in ***Commonwealth v. Perez***, 799 A.2d 848 (Pa. Super. 2002):

> [O]ur Supreme Court has recognized:
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> > The *pro se* prisoner's state of incarceration prohibits him from directly filing an appeal with the appellate court and prohibits any monitoring of the filing process. Therefore . . . a *pro se* prisoner's appeal shall be deemed to be filed on the date that he delivers the appeal to prison authorities and/or places his notice of appeal in the institutional mailbox.
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> ***Smith v. Penna. Bd. of Probation & Parole***, 683 A.2d 278, 281 (Pa. 1996). The Supreme Court formally adopted what is known as the "prisoner mailbox rule" in ***Commonwealth v. Jones***, 700 A.2d 423 (Pa. 1997). Pursuant to that rule, "we are inclined to accept any reasonably verifiable evidence of the date

> that the prisoner deposits the appeal with the prison authorities." ***Id.*** at 426.

Perez, 799 A.2d at 851. As noted, Letterlough has furnished evidence in the form of cash slips to support his assertion that he deposited his notice of appeal with prison authorities well within the thirty-day time limit.[2] Accordingly, we find that his appeal was timely filed, and that we have subject matter jurisdiction to review the instant appeal.[3]

Letterlough raises the following issue for our consideration:

> Did the court of common pleas violate the law of the case doctrine under Pennsylvania's coordinate[] jurisdiction rule?

Brief for Letterlough at 4.

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[2] Citing the comment in our November order that Letterlough "should be prepared to address the issue in his brief," the Commonwealth maintains that Letterlough's appeal is untimely because this Court allegedly "directed" him to address the matter in his brief, which Letterlough did not do. Brief for Commonwealth at 6. The Commonwealth omits to mention Letterlough's response and the evidence submitted with it, misconstrues the language this Court used in our November order, and makes no mention of the prisoner mailbox rule or Letterlough's apt invocation of it. Consequently, the Commonwealth's presentation of the issue requires no consideration, inasmuch as it does not address the evidence in support of Letterlough's invocation of the prisoner mailbox rule.

[3] Upon receipt of Letterlough's notice of appeal, the trial court declined to direct Letterlough to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Without the benefit of such a statement, the trial court issued a Rule 1925(a) opinion indicating that it believed the notice of appeal to be untimely. Trial Court Opinion, 11/26/2013, at 1. For the above-stated reasons, the trial court was incorrect. Nonetheless, we find the record adequate to compel our disposition without further delay.

Letterlough's argument rests upon the proposition that the trial court cannot decline to grant him a benefit in 2013 that it already granted him in 2011. That is to say, **because** the trial court granted his motion for transcripts in its July 20, 2011 order, it **must** grant similar motions whenever presented in the future. The potential for tremendous mischief that would arise were this the case is self-evident.

Notably, when the trial court granted his request for transcripts in 2011, the request had been filed in tandem with Letterlough's notice of appeal of the trial court's denial of Letterlough's petition for a writ of *habeas corpus*. Thus, the transcripts were sought and granted in support of a pending appeal. In this case, conversely, there is no pending action, just the stand-alone request for transcripts.

In ***Commonwealth v. Martin***, 705 A.2d 1337 (Pa. Super. 1998), under circumstances similar to those presented in the instant case, we affirmed the trial court's denial of such a request for the following reasons:

> The resolution of this appeal is governed by this Court's holding in ***Commonwealth v. Ballem***, 482 A.2d 1322 (Pa. Super. 1984). Like the appellant in that case, the instant appellant asserts that the requested documents are necessary in order for him to pursue relief in post-conviction proceedings. As such, the reasoning that was affirmed in ***Ballem*** applies directly to this matter. That is, despite the validity of the asserted necessity for a Post Conviction Relief Act motion,
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>> no such action is currently pending. Consequently, the lower court, confronted only with the instant petition, was in no position to assess appellant's claims to determine whether they constituted compelling reasons warranting a grant of his petition. In such a case, and until a proceeding to question the record is commenced, we find

> no abuse of the lower court's discretion in denying appellant's request.

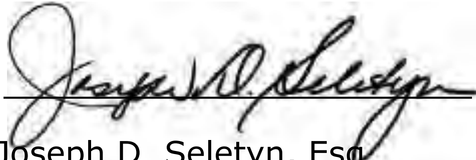
> ***Id.*** at 1324.

Martin, 705 A.2d at 1338 (citations modified; footnotes omitted); ***see Commonwealth v. Crider***, 735 A.2d 730, 733 (Pa. Super. 1999) ("[A] trial court, confronted only with a petition for production of documents where no action is pending, is in no position to assess a petitioner's claims to determine whether they constitute compelling reasons warranting a grant of the petitioner's petition.").

There is no pending action in the instant matter. Furthermore, Letterlough provides no argument directly addressing our holding in ***Martin*** and its predecessor cases. And lastly, Letterlough's argument that the trial court was compelled by either the coordinate jurisdiction rule or the law of the case doctrine to provide him transcripts that it already had provided him two years earlier in furtherance of his appeal of the trial court's denial of a *writ of habeas corpus* is supported by no relevant authority. Were that argument to prevail, there is no end to the mischief it might engender in future litigation. Accordingly, we conclude that ***Martin*** controls, and that Letterlough is not entitled to relief.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/9/2014