

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

BRIAN PARNELL,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
LOUIS FOLINO,	:	
	:	
Appellee	:	No. 206 WDA 2014

Appeal from the Order entered on January 13, 2014  
in the Court of Common Pleas of Greene County,  
Civil Division, No. 927 A.D. 2013

BEFORE: PANELLA, JENKINS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JULY 18, 2014**

Brian Parnell (“Parnell”) appeals, *pro se*, from the Order denying his Praeceptum for Writ of *Habeas Corpus* for lack of jurisdiction, and transferring the case to the Chester County Court of Common Pleas. We affirm.

In July 2002, Parnell was convicted of second-degree murder and burglary. This Court affirmed Parnell’s judgment of sentence in July 2003. ***See Commonwealth v. Parnell***, 832 A.2d 541 (Pa. Super. 2003) (unpublished memorandum). Subsequently, this Court affirmed the denial of three separate Petitions filed under the Post Conviction Relief Act.<sup>1</sup>

The trial court set forth the remaining procedural history as follows:

[O]n December 5, 2013, [Parnell] filed with [the trial court] a [*pro se*] Praeceptum to Proceed *in Forma Pauperis* and a Praeceptum for Writ of *Habeas Corpus Ad Subjiciendum*, challenging

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<sup>1</sup> **See** 42 Pa.C.S.A. §§ 9541-9546.

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the legality of his commitment and confinement at [the State

Correctional Institution at Greene ("SCI-Greene").<sup>2</sup> Parnell argued that his confinement at SCI-Greene was illegal because the court from which his judgment of sentence originated, the Chester County Court of Common Pleas, allegedly never entered a written sentencing order in his case.<sup>3</sup> On December 6, 2013, [the trial court], by letter, informed [Parnell] that because [he] was challenging the legality of his confinement, and there [allegedly was] no order issued from [the Chester County Court of Common Pleas] directing his detention or confinement, that pursuant to Pa.R.Crim.P. 108(A),<sup>4</sup> he should direct his [Praecipe] with the Court that had issued such [] Order.

[Parnell] responded to [the trial court's] December 6, 2013 letter with a letter filed on December 16, 2013[, which the trial court treated] ... as a Motion for Reconsideration. Finally, [Parnell] filed a Praecipe for Entry of Judgment of Default on January 9, 2014.

Trial Court Opinion, 1/13/14, at 1-2 (unnumbered, footnotes added).

On January 13, 2014, the trial court entered an Order denying Parnell's Praecipe for Writ of *Habeas Corpus* and Praecipe for Default

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<sup>2</sup> Because Parnell's Praecipe challenged the legality of his commitment and detention, it properly sounded in *habeas corpus*. **See *Brown v. Pa. Dep't of Corr.***, 81 A.3d 814, 815 (Pa. 2013) (citing ***Warren v. DOC***, 616 A.2d 140, 142 (Pa. Cmwlth. 1992) (stating that "[a]n application for a writ of *habeas corpus* requests the applicant's release from prison.")).

<sup>3</sup> Although we express no opinion regarding the merits of Parnell's claim, we observe that, when this Court affirmed Parnell's judgment of sentence, it made no mention of the absence of a sentencing order. **See *Parnell***, 832 A.2d 541 (unpublished memorandum at 2) (discussing the sentence of life in prison imposed by the trial court on July 15, 2002).

<sup>4</sup> Rule 108(A) provides that

[a] petition for writ of *habeas corpus* challenging the legality of the 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.

Pa.R.Crim.P. 108(A).

Judgment. The Greene County Court of Common Pleas ruled that it lacked jurisdiction to hear this case because the proper venue for Parnell's Praecipe was the court that had imposed his judgment of sentence, *i.e.*, the Chester County Court of Common Pleas. Accordingly, the trial court ordered that the case be transferred to the Chester County Court of Common Pleas for disposition. Parnell timely filed a *pro se* Notice of Appeal.

We set forth below only Parnell's first issue presented on appeal, as this issue is dispositive of our resolution of this case:<sup>5</sup>

- I. Whether the Common Pleas Court of Greene County erred in transferring venue from Greene County, where the occurrence took place, to Chester County, where neither party works or is domiciled, and whether the Pennsylvania Rules of Criminal Procedure appl[y] to, and dictate[] the course of civil proceedings?

Brief for Appellant at 1.

"Our standard of review is well-settled: a trial court's denial or grant of a writ of *habeas corpus* petition will be reversed on appeal only for a manifest abuse of discretion." ***Commonwealth v. Miller***, 787 A.2d 1036, 1038 (Pa. Super. 2001).

Parnell argues that the trial court committed legal error in ruling that it lacked jurisdiction, and by transferring the case to the Chester County Court of Common Pleas. Brief for Appellant at 5-8. Parnell maintains that a writ of *habeas corpus* is a civil remedy, and asserts that he properly brought this

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<sup>5</sup> Parnell's four remaining issues can be found on pages 1-2 of his appellate brief.

action in the Greene County Court of Common Pleas because he is confined in Greene County. **Id.** at 4-5, 8. We disagree.

In its Opinion, the trial court addressed Parnell's claims, and the court's jurisdiction to hear the case, stating as follows:

As [Parnell] correctly indicates, a writ of *habeas corpus* is a civil remedy that lies solely for commitments under criminal process and lies to correct void or illegal sentences or an illegal detention, or where the record shows a trial or sentence or plea so fundamentally unfair as to amount to a denial of due process or other constitutional rights, or where for other reasons the interests of justice imperatively required it. **Chadwick v. Caulfield**, 834 A.2d 563[, 566] (Pa. Super. 2003).

[Parnell] asserts that Pa.R.Crim.P. 108(A)[(see n.4, **supra**)] does not lawfully apply to his extraordinary set of circumstances for the following reasons: 1) [t]he failure of the prison, SCI-Greene, to produce a written sentencing order related to the judgment of sentence entered against him; [and] 2) [t]he Rules of Criminal Procedure do not apply to *habeas corpus*, a civil remedy. We are not persuaded by any of [Parnell's] assertions.

Jurisdiction for matters sounding in *habeas corpus* lie[s] in the court of record from which the order of detention came[.] 42 Pa.C.S. § 6502(b) states: "The venue of matters brought under this chapter [*habeas corpus*] shall be prescribed by general rule." The only general rule [that] speaks to venue in matters of *habeas corpus*[] is found in Pennsylvania's Rules of Criminal Procedure. [**See**] Pa.R.Crim.P. 108(A). There is no applicable rule of civil procedure [that] controls venue and jurisdiction of *habeas corpus* claims. ...

\* \* \*

We also believe that the official comment to Pa.R.Crim.P. 108(A) further disproves [Parnell's] contention that the criminal rule does not apply to venue and jurisdiction in this matter. The comment states: "This rule **implements** Section 6502(b) [controlling venue of matters of *habeas corpus*] of the Judicial Code as it applies to the venue for petitions for writs of *habeas*

*corpus* in criminal matters.” [Pa.R.Crim.P. 108(A), cmt.] (emphasis added).

This Court, having not issued an order directing [Parnell’s] detention or confinement, has no jurisdiction to issue a writ of *habeas corpus* in this matter. ... Only a judge of the judicial district of conviction and sentencing has jurisdiction to issue a writ of *habeas corpus*. [**See Brown**, 81 A.3d at 815].

[Parnell] contends that the failure of SCI-Greene to produce a written sentencing order directing [his] detention renders Pa.R.Crim.P[.] 108(A) inapplicable to his [Praeipce]. We disagree. In **Brown**, [*supra*,] the inmate appealed the Commonwealth Court’s decision to dismiss [his] petition[,], alleging that his confinement was illegal due to an alleged failure of the prison to produce a written sentencing order, for lack of jurisdiction. [**Id.** at 814]. The Supreme Court of Pennsylvania found that[,], to the extent the Commonwealth Court dismissed [the] inmate’s petition sounding in *habeas corpus* for lack of jurisdiction, it was correct[, stating that “]matters sounding in *habeas corpus* lie in the jurisdiction and venue of the court of record from which the order of detention came.” [**Id.** at 815]. The Supreme Court vacated the order of the Commonwealth Court and remanded the issue back to the Philadelphia County Court of Common Pleas, where the inmate’s judgment of sentence originated. **Id.** The issue presently before [the trial c]ourt is identical and [the trial c]ourt will act accordingly.

Trial Court Opinion, 1/13/14, at 2-4 (unnumbered, emphasis in original).

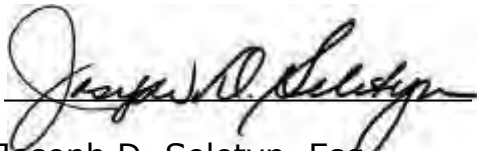
Our review discloses that the trial court’s sound analysis is supported by the law, and we affirm on this basis in rejecting Parnell’s claim. **See id.**; **see also** 42 Pa.C.S.A. § 5103(a) (providing, in relevant part, that “[a] matter which is within the exclusive jurisdiction of a court ... of this Commonwealth[,], but which is commenced in any other tribunal of this Commonwealth[,], shall be transferred by the other tribunal to the proper

court ...[, ] where it shall be treated as if originally filed in the transferee court ....").<sup>6</sup>

Based upon the foregoing, we discern no error by the trial court and affirm its Order transferring Parnell's case to the Chester County Court of Common Pleas.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/18/2014

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<sup>6</sup> We direct the prothonotary or clerk of the Greene County Court of Common Pleas to ensure the transfer of the record, and provide a certified copy of the docket entries, to the prothonotary or clerk of the Chester County Court of Common Pleas. **See Brown**, 81 A.3d at 815; **see also** Pa.R.C.P. 213(f). Additionally, we observe that Parnell's December 5, 2013 Praecipe for Writ of *Habeas Corpus* is not contained in the certified record. The Greene County clerk/prothonotary shall ensure transmittal of this document to Chester County.