

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	
v.	
PAUL SCHAFFER,	No. 333 WDA 2013
Appellant	

Appeal from the Order Entered June 22, 2012  
In the Court of Common Pleas of Jefferson County  
Criminal Division at No(s): CP-33-CR-0000569-2000

BEFORE: BENDER, P.J.E., WECHT, J., and PLATT, J.\*

MEMORANDUM BY BENDER, P.J.E.:

**FILED JULY 15, 2014**

Appellant, Paul Schaffer, proceeding *pro se*, purports to appeal from the order dated June 22, 2012, denying his "Application for Mandating Clerk of Courts, and/or Court Stenographer, to Furnish Court Records and Transcribed Notes of Testimony, In Forma Pauperis" ("Application for Transcripts"). After careful review, we affirm.

Appellant is currently serving an aggregate sentence of 26-52 years' imprisonment, imposed following his conviction for one count each of rape, attempted rape, attempted involuntary deviate sexual intercourse, statutory sexual assault, indecent assault, corruption of a minor, and endangering the welfare of a child. These offenses arose out of Appellant's sexual abuse of a

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\* Retired Senior Judge assigned to the Superior Court.

minor, S.K. He was sentenced June 5, 2002, at which time he was also determined to be a Sexually Violent Predator (SVP). He filed a direct appeal in which he claimed 1) that the trial court issued a coercive jury instruction; 2) that his sentence was excessive; and 3) that Megan's Law was unconstitutional. This Court affirmed Appellant's judgment of sentence in a published opinion dated February 2, 2006. **Commonwealth v. P.L.S.**, 894 A.2d 120 (Pa. Super. 2006). Our Supreme Court subsequently denied his petition for allowance of appeal on August 31, 2006. **Commonwealth v. Schaffer**, 906 A.2d 542 (Pa. 2006).

Appellant then filed a timely PCRA<sup>1</sup> petition, his first, on November 20, 2007. The PCRA court denied the petition by order dated November 6, 2008. Appellant appealed, and this Court affirmed the PCRA court's order on October 26, 2009.<sup>2</sup> **Commonwealth v. Schaffer**, 988 A.2d 730 (Pa. Super. 2009) (unpublished memorandum). Appellant was then denied reargument on January 6, 2010. Our Supreme Court denied his petition for

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<sup>1</sup> Post Conviction Relief Act, 42 Pa.C.S. § 9541 *et seq.*

<sup>2</sup> In that appeal, Appellant argued that the PCRA court erred when it denied him relief with regard to two ineffective assistance of counsel (IAC) claims he had raised in his PCRA petition. First, he argued that trial counsel had provided IAC by failing to investigate, present, and argue evidence that supported counsel's purported trial strategy of demonstrating that the complaining witness was motivated to testify falsely. Second, he claimed that trial counsel ineffectively represented him during the SVP evaluation process.

allowance of appeal on May 19, 2010. ***Commonwealth v. Schaffer***, 996 A.2d 492 (Pa. 2010).

Appellant later unsuccessfully sought review in the federal courts. His Petition for a Writ of Habeas Corpus was denied by the United States District Court for the Western District of Pennsylvania. ***Schaffer v. Cameron***, 3:10-CV-294, 2012 WL 1828073 (W.D. Pa. May 18, 2012). His petition for Writ of Certiorari to the United States Supreme Court was denied on April 29, 2013. ***Schaffer v. Cameron***, 133 S. Ct. 2033 (2013) (table).

On June 21, 2012, Appellant filed his Application for Transcripts. The trial court denied the application by order dated June 22, 2012; the order included the court's reasoning for denying Appellant's application. Order of Court, 6/22/12, at 1-2.

Subsequently, on July 23, 2012, Appellant filed with this Court an "Application for Leave to File Original Process in the Superior Court of Pennsylvania." In an order dated July 31, 2012, this Court transferred Schaffer's application to the Court of Common Pleas of Jefferson County for processing as a notice of appeal because this Court deemed Appellant's filing as an attempt to challenge the trial court's June 22, 2012 order. **See** Pa.R.A.P. 905(a)(4) ("If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from,

and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.”).

The trial court did not order a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Instead, the trial court filed a Rule 1925(a) statement, asserting its June 22, 2012 order should be affirmed based upon the reasoning set forth in that order. Rule 1925(a) Statement, 5/16/13, at 1. Appellant now presents the following issues for our review:

I. [W]hether trial counsel provided ineffective assistance by failing to fully and completely investigate ... [the] doctor’s report for the 1st/2nd opinion that Jefferson County Children of Youth did on [S.K.]?

II. [W]hether trial counsel provided ineffective assistance by failing to fully and completely investigate, present evidence and argue that the complaining witness was biased and motivated to testify falsely by her mother's intent to terminate [M]r. Schaffer's visitation rights?

III. [W]hether trial counsel provided ineffective assistance by failing to attend the [Sexual Offender Assessment Board (SOAB)] interviews, by failing to assert the SOAB Psychologist’s conflict of interest as grounds for disqualification, by failing to seek sup[p]ression of defendant’s statements in the SOAB interviews based upon ***Miranda v. Arizona***, or even by failing to impeach SOAB testimony on the grounds of the conflict and the failure to warn?

IV. [W]hether counsel’s decision resulted in [a] decision that was based on [an] unreasonable determination of the facts in light of evidence presented in the State court proceeding?

V. [W]hether [the] sentencing [c]ourt abused its discretion in imposing an aggr[a]vated sentence on defendant of 26 years to 52 years?

VI. [W]hether trial [j]udge abused his discretion by telling the jury to return to deliberations after [the] jury sent [a] note stating “How long do we have to deliberate before considered

hung jury, because after 3 [hours] of deliberations” and told Judge it was because lack of evidence[?]

VII. [W]hether or not [the] sentencing [j]udge abused his discretion when sentencing defendant to an aggr[a]vated sentence on three victims rather than one charged victim, [and whether the] sentencing Judge abused his discretion by saying “he is doing so because of two other victims, whose statute of limitations had run out[?]”]

VIII. [H]ow can I efficiently fight my case when the court withdraws [its] opinion from circulation, or does not publish opinions on my case?

Appellant’s Brief at 2.

We cannot reach the merits of Appellant’s claims. It is immediately apparent to this Court that none of the above claims address the order underlying this appeal, nor the reasoning contained therein. And because none of these claims were raised in the lower court, they have all been waived. **See** Pa.R.A.P. 302(a) (“Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.”).

Moreover, Appellant did not raise in his brief - and has therefore waived - any claim that the trial court erred in denying his Application for Transcripts. Nevertheless, we recognize that Appellant may have filed the Application for Transcripts in anticipation of filing a second PCRA petition. Had Appellant preserved such a claim, we would still affirm the order of the lower court in accordance with **Commonwealth v. Ballem**, 482 A.2d 1322 (Pa. Super. 1984).

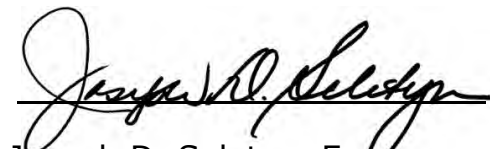
In **Ballem**, this Court considered an order “denying [the] appellant's petition for notes of testimony for all prior proceedings” that was filed

several decades after Ballem's judgment of sentence became final. **Id.** at 1322. Ballem's petition for transcripts was filed with the intent of pursuing relief under the PCRA. Nevertheless, the **Ballem** Court affirmed the trial courts denial of Ballem's request because there was no PCRA petition pending before the lower court.

In the present case, it appears from the nature of Appellant's claims that he filed his Application for Transcripts in anticipation of filing a second PCRA. However, there was no pending PCRA petition for which the transcripts would be required, as was also the case in **Ballem**. Accordingly, the trial court could not have erred nor abused its discretion when it denied the application in its June 22, 2012 order. Thus, had Appellant properly preserved a claim of error related to the order from which he appealed, **Ballem** is controlling and no relief would be due.

Order **affirmed**.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/15/2014