

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: COLEMAN, SHERMAN

Appellant

v.

SCI ALBION

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 430 WDA 2014

Appeal from the Order Entered February 24, 2014
In the Court of Common Pleas of Erie County
Criminal Division at No(s): CP-25-MD-0000025-2014

BEFORE: BENDER, P.J.E., LAZARUS, J., and OTT, J.

MEMORANDUM BY LAZARUS, J.:

FILED AUGUST 14, 2014

Sherman Coleman appeals, *pro se*, from the order entered in the Court of Common Pleas of Erie County denying his petition for review of the Commonwealth's disapproval of his private criminal complaint filed against the Superintendent of SCI-Albion.¹ After careful review, we reverse and remand.

In November 2013, Coleman filed a private criminal complaint alleging that the Superintendent of SCI-Albion, Nancy Giroux, committed the crime

¹ Even though Coleman filed his complaint against a Department of Corrections' employee, because this is an appeal from the disapproval of a private criminal complaint, jurisdiction lies with the Superior Court. ***Commonwealth v. Smith***, 4 A.3d 227, 229 n.2 (Pa. Cmwlth. 2010).

of “official oppression² in violation of 18 Pa.C[.]S[.] § 5301, et seq., by . . . illegally detain[ing him] in this State Correctional Institution in violation of the Act of 1974[.]” Specifically, Coleman claimed that because the record officer at SCI-Albion had no copy of his sentencing order, the state prison did not have legal authority to confine him. Coleman’s Private Criminal Complaint, 11/27/13, at 2. After review, the District Attorney of Erie County disapproved Coleman’s criminal complaint for “lack of prosecutorial merit.”

On February 3, 2014, Coleman filed a petition for review, pursuant to Pa.R.Crim.P. 506, which states:

Rule 506. Approval of Private Complaints

(A) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

² Pursuant to section 5301 of the Crimes Code, a person is guilty of the crime of official oppression, if he or she:

[A]cting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:

(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

18 Pa.C.S. § 5301.

(B) If the attorney for the Commonwealth:

(1) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.

Pa.R.Crim.P. 506 (emphasis added). The Commonwealth responded to Coleman's petition for review, stating the following reasons for its decision to disapprove his complaint:

The Commonwealth's denial *was a policy determination*, and does not represent an abuse of discretion, nor was it made in bad faith, the result of fraud, or unconstitutional.

At trial, the Commonwealth would have to prove, beyond a reasonable doubt:

- 1) that Ms. Giroux, as Superintendent, has subjected [Coleman] to unlawful detention;
- 2) that Ms. Giroux, in so subjecting [Coleman], did so in her capacity as Superintendent; and
- 3) that Ms. Giroux so detained [Coleman] knowing said confinement was illegal.

The Commonwealth does not believe it could successfully prosecute Ms. Giroux, as it does not believe it could prove, unanimously, beyond a reasonable doubt, either elements (1) or (3) of the crime of Official Oppression.

Commonwealth's Response to Petition for Review from Denial of Private Criminal Complaint, 2/21/14, at 2 (emphasis added).

On February 24, 2014, the trial court denied Coleman's petition for review, reiterating that the District Attorney's decision was based upon lack

of prosecutorial merit, as set forth in the Commonwealth's response, and that after the court's review, it was clear that the D.A. did not abuse his discretion. Coleman now appeals, claiming that:

The trial court abused its discretion in denying his petition for review and affirming the district attorney's denial of his private criminal complaint against Nancy Giroux at SCI-Albion, that set forth a strong prima facie showing that Giroux is subjecting him to official oppression, involuntary servitude, peonage, and penal servitude, as she is unlawfully restraining him of his liberty in violation of his (5th), (8th), (13th), and (14th) amendment rights to both the state and federal constitutions, because [he] has not ever been sentenced by a court of law through a legal written, signed, and sealed sentencing order and judgment.

Our Court has consistently held that a determination that a private criminal complaint "lacks prosecutorial merit" is a policy determination. ***In re Private Complaint of Adams***, 764 A.2d 577 (Pa. Super. 2000). When a district attorney's denial of a private criminal complaint is based wholly on policy considerations, then the trial court must defer to the prosecutor's discretion absent a gross abuse of that discretion. ***In re Private Crim. Complaint of Wilson***, 879 A.2d 199 (Pa. Super. 2005). Thereafter, the appellate court will review the trial court's decision for an abuse of discretion, in keeping with settled principles of appellate review of discretionary matters. ***Commonwealth v. Michaliga***, 947 A.2d 786, 791 (Pa. Super. 2008).

A district attorney's decision to not prosecute a criminal complaint for policy reasons carries a presumption of good faith and soundness. ***Id.*** The complainant, here Coleman, must create a record that demonstrates the

contrary. **Id.** More specifically, Coleman must show in his Rule 506 petition for review that the district attorney's decision amounted to bad faith, fraud or unconstitutionality. **In re Private Criminal Complaint of Rafferty**, 969 A.2d 578, 581-82 (Pa. Super. 2009). He must show that the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore, not in the public interest. **Michaliga**, 947 A.2d at 791-92.

Section 9764 of the Sentencing Code states, in part, that

Upon commitment of an inmate to the custody of the Department of Corrections, the sheriff or transporting official shall provide to the institution's records officer or duty officer, in addition to a copy of the court commitment form DC-300B generated from the Common Pleas Criminal Court Case Management System of the unified judicial system . . . [a] copy of the sentencing order and any detainers filed against the inmate which the county has notice.

42 Pa.C.S. § 9764(a)(8) (emphasis added); **see also Gibson v. Wererowicz**, 2013 U.S. Dist. LEXIS 97657 at *3 n.6 (E.D. Pa. March 5, 2013) (section 9764(a)(8) regulates the "exchange of prisoner information between the state and county prison systems.").

Recently, our Court found reasoning from a non-precedential Commonwealth Court decision, **Travis v. Giroux**, 83 A.3d 525 (Pa. Cmwlth. 2013), both probative and instructive on the interpretation of section 9764 as it relates to the DOC's authority to detain an individual without a sentencing order. In **Joseph v. Glunt**, 2014 PA Super 107 (Pa. Super. filed May 23, 2014), our Court reiterated:

None of the provisions of section 9764 indicate an affirmative obligation on the part of the DOC to maintain and produce the documents enumerated in subsection 9764(a) upon the request of the incarcerated person. Moreover, section 9764 neither expressly vests, nor implies the vestiture, in a prisoner of any remedy for deviation from the procedures described within.

Id. at *13. In *Joseph*, the DOC similarly did not possess a sentencing order upon the petitioner's commitment. Petitioner made the same claim advanced by Coleman under section 9764. However, because the trial court had reviewed the record and discovered either a transcript of the petitioner's sentencing proceeding or a separate valid sentencing order existed, our Court concluded that petitioner's failure to cite any authority, demonstrating that the undisputed record of his judgment of sentence maintained by the sentencing court constituted insufficient authority for his detention, defeated his claim on appeal. *Id.* at *4.

Instantly, the record contains the following response from a grievance officer at SCI-Albion in regard to Coleman's request for his formal sentencing order:

A DC-300B was received from the sentencing court when you arrived. Even if there is no written formal order of sentencing, you can be held by the Department [of Corrections] on the authority of this form prepared by the Office of the Clerk of Courts in the sentencing county. Thus, the Department of Corrections will not release you based on the reasons you assert in your grievance, which is hereby denied. Your request for immediate release is denied.

Grievance Decision by Valarie C. Kusiak, 10/9/2013, at 1-D (emphasis added). A DC-300B is a "Court Commitment Form" that supports a judgment of sentence and is completed by the designated person acting

under the jurisdiction and authority of the Court of Common Pleas Case Management System of the unified judicial system.

In his petition for review, Coleman acknowledges that a judgment of sentence was rendered against him on September 13, 1988, by the Honorable John W. O'Brien in Allegheny County. Petition for Review, 2/3/14, at 1. However, he claims that "the sentencing court never completed a written judgment of sentence order [entering] it onto the records of the court to stand as proof and verity [sic] of the conviction, sentence, sentencing conditions, the applicable fees and costs, what statute authorized the sentencing judge to impose the sentence, and any transfer of (custody from county to state custody)." *Id.* at 3, 7-8. In essence, Coleman alleges that no sentencing order was ever completed, forwarded to the clerk of courts and made part of the official record. *Id.* at 8. Finally, Coleman disagrees with the DOC's assertion that it has the authority to confine him based solely upon the DC-300B form, where the form is nothing more than a warrant of commitment that *supports* the sentencing order. We are inclined to agree with his position.

Instantly, there is nothing in the record indicating that a valid sentencing order was entered on Coleman's criminal case below. Without a valid sentencing order entered on the docket, Coleman's confinement at SCI-Albion could well be a violation of section 9764. *Wooden, supra* at *16 ("courts confronting this issue in the past have deemed a record of the valid imposition of sentence as sufficient authority to maintain a prisoner's

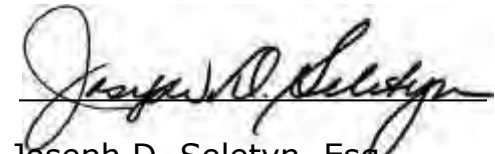
detention notwithstanding the absence of a written sentencing order under [section] 9764(a)(8).”). Moreover, the difficulty in finding such an order in the current record is compounded by the fact that Coleman was sentenced in 1988 in Allegheny County and the record before us is confined to the private criminal complaint proceedings initiated in Erie County in November 2013. Without proof that a valid sentencing order in Coleman’s underlying criminal case was entered on the docket in Allegheny County, the trial court abused its discretion in denying his petition for review. **Michaliga, supra.**³

Accordingly, we reverse the order denying Coleman’s petition for review and remand this matter to the trial court to hold a hearing to determine whether, in fact, a valid sentencing order was docketed in Coleman’s criminal case in Allegheny County, which would justify the district attorney’s disapproval of his criminal complaint against the Superintendent of Erie County.

Order reversed. Case remanded for proceedings consistent with this decision. Jurisdiction relinquished.

³ Even though Coleman acknowledges that a September 13, 1988, judgment of sentence was rendered against him in Allegheny County, we distinguish the facts of this case where we have absolutely *no* record of Coleman’s criminal matter, including his convictions and resulting sentence. **Cf. Wooden, supra** (trial court had both criminal docket and transcript of sentencing hearing to confirm imposition and legitimacy of prisoner’s sentence); **Travis, supra** (section 9764(a)(8) claim meritless where certified record confirmed prisoner’s sentence).

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: 8/14/2014