

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
DANIEL L. SPUCK		
Appellant		No. 1702 WDA 2015

Appeal from the PCRA Order September 30, 2015
In the Court of Common Pleas of Clearfield County
Criminal Division at No(s): CP-17-CR-0000396-1995

COMMONWEALTH OF PENNSYLVANIA		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
DANIEL L. SPUCK		
Appellant		No. 1703 WDA 2015

Appeal from the PCRA Order September 1, 2015
In the Court of Common Pleas of Clearfield County
Criminal Division at No(s): CP-17-CR-0000396-1995

BEFORE: GANTMAN, P.J., SHOGAN, J., and LAZARUS, J.

JUDGMENT ORDER BY LAZARUS, J.:

FILED JULY 21, 2016

Daniel L. Spuck appeals, *pro se*, from the orders entered in the Court of Common Pleas of Clearfield County, dismissing his "Motion to Vacate Judgment of Sentence/Motion to Set Aside Mandatory Minimum Sentence" and "Defendant's Permission to Amend His Amended PCRA" as untimely

petitions filed under the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546 ("PCRA"). Although for a different reason than stated by the PCRA court, we affirm.

In 1996, Spuck was convicted of third-degree murder and related crimes following the stabbing death of Michael Allen Cramer and Spuck's ex-wife. This Court affirmed his judgment of sentence in 1998 and our Supreme Court denied allowance of appeal. Since that time, Spuck "has sought collateral review on umpteen occasions." ***Commonwealth v. Spuck***, Nos. 692 & 693 WDA 2015 (Pa. Super. filed 12/14/15) (unpublished memorandum).

Relevant to the disposition of this appeal, on February 2, 2015, Spuck filed a Motion for Post Conviction Collateral Relief. On April 8, 2015, Spuck filed two documents, styled as "Pro Se Motion for Contempt Upon the Clearfield County District Attorney" and "Motion Requesting the Testing of Blood and DNA," which were properly construed by the PCRA court as having been filed pursuant to the PCRA. By orders dated March 25, 2015 and April 8, 2015, respectively, those petitions were all dismissed. Spuck filed a timely appeal of both orders.

While the March 25, 2015 and April 8, 2015 orders were on appeal before this Court, on July 27, 2015, Spuck filed a "Motion to Vacate Judgment of Sentence/Motion to Set Aside Mandatory Minimum Sentence," which the PCRA court properly treated as a PCRA petition. The court dismissed that petition by order dated September 2, 2015. On September

11, 2015, Spuck filed a document entitled "Defendant's Permission to Amend his Amended PCRA," which the PCRA court dismissed that same date. The current appeal is from the September 2, 2015 and September 11, 2015 orders.

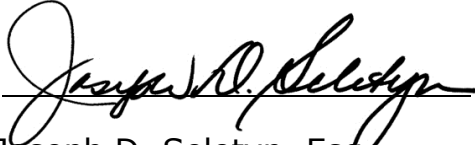
"[W]hen an appellant's PCRA appeal is pending before a court, a subsequent PCRA petition cannot be filed until the resolution of review of the pending PCRA petition by the highest state court in which review is sought, or upon the expiration of the time for seeking such review." **Commonwealth v. Lark**, 746 A.2d 585, 588 (Pa. 2000). **See also Commonwealth v. Ali**, 10 A.3d 282, 320 (Pa. 2010) (citing **Lark** for the proposition that "as [a] matter of jurisdiction, [a] PCRA court cannot entertain new PCRA claims or [a] new PCRA petition when [a] prior petition is still under review on appeal").

Spuck filed the PCRA petitions that are the subject of the instant appeal on July 27, 2015 and September 11, 2015, while the March 25, 2015 and April 8, 2015 orders of the PCRA court remained pending on appeal. Under **Lark**, the filings were impermissible. Accordingly, the PCRA court did not err in dismissing them.¹

Orders affirmed.

¹ Although Spuck's July 27, 2015 petition was dismissed by the PCRA court as untimely, and not as impermissible under **Lark**, we may affirm a decision of the PCRA court on any basis. **Commonwealth v. Callahan**, 101 A.3d 118, 124 (Pa. Super. 2014).

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line drawn through the middle of the text.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/21/2016