

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

HERMAN DAVENPORT,

Appellant

: No. 1336 EDA 2018

Appeal from the Order March 28, 2018
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0020267-1970

BEFORE: KUNSELMAN, J., MURRAY, J., and PELLEGRINI*, J

MEMORANDUM BY PELLEGRINI, J.:

FILED MAY 1, 2019

Herman Davenport (Davenport) appeals from the March 28, 2018 order of the Court of Common Pleas of Montgomery County (trial court) vacating its prior order granting Davenport’s motion for trial transcripts. After review, we affirm.

We take the pertinent history of this case from our independent review of the certified record. On October 8, 1970, a jury convicted Davenport of murder in the first degree, 18 Pa.C.S. § 2502(a), and the trial court sentenced him to life imprisonment. Over forty years later, on April 19, 2013, Davenport filed a request for transcripts because “it [had] come to his attention the possibility of evidence not available during [his] trial.” (Motion Request to Authorize Transcripts, 4/19/13, at 1). The trial court granted the motion on March 23, 2013, and directed the Clerk of Courts to produce copies of any and

* Retired Senior Judge assigned to the Superior Court.

all transcripts to Davenport. Approximately three months' later, when Davenport contacted the Clerk of Courts to inquire about the transcripts' production, the Clerk of Courts advised him that it no longer had the transcripts but that he could contact the Court Reporter's Office. In 2016, when Davenport again contacted the Clerk of Courts, it reiterated that the transcripts no longer were in its possession and advised Davenport to contact the Court Reporter's Office.¹

Thereafter, Davenport moved to have the trial court order the Clerk of Courts to produce the transcripts pursuant to the 2013 order to enable him to prepare a petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. On March 28, 2018, after the trial court reviewed the docket and the letters sent to Davenport by the Clerk of Courts, it issued an order denying Davenport's request for release of the transcripts on the basis that "it [was] not possible to grant the relief he [sought]" because the transcripts no longer existed as well as vacating the May 23, 2013 order requiring the production of those non-existent transcripts. (Trial Court

¹ The Court Reporter's Office advised the trial court "that their office also does not have any tapes or transcripts pertaining to [Davenport's] case from 1970." (Trial Court Opinion, 5/23/18, at 2 n.2).

Opinion, 5/23/18, at 3; **see** Order, 5/23/18) Davenport timely appealed.² He and the trial court complied with Rule 1925. **See** Pa.R.A.P. 1925.

Davenport argues that the trial court erred in vacating its prior order and denying his request for trial transcripts because they might have supported a claim of a **Brady**³ violation in a potential PCRA petition and enable him to perfect an appeal. (**See** Davenport's Brief, at 1; Rule 1925(b) Statement).

The following legal principles guide our analysis of this matter. It is well settled that "a court is not required to comply with a defendant's request for transcripts in order to pursue relief in a PCRA proceeding where no such action is pending." **Commonwealth v. Crider**, 735 A.2d 730, 733 (Pa. Super. 1999) (citations omitted); **see also Commonwealth v. Martin**, 705 A.2d 1337, 1338 (Pa. Super. 1998) (finding trial court properly exercised discretion in denying motion for transcripts where no action pending). Further, a court will not consider moot issues. **See Commonwealth v. Barr**, 79 A.3d 668, 677 n.15 (Pa. Super. 2013) ("An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect[.]") (citation omitted).

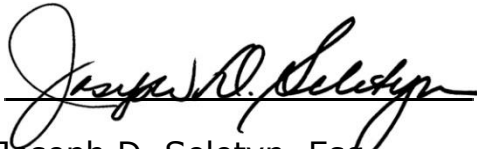
² Although the notice of appeal is docketed May 3, 2018, the postmark is dated April 27, 2018. Therefore, pursuant to the mailbox rule, Davenport's appeal was timely. **See Commonwealth v. Jones**, 700 A.2d 423, 426 (Pa. 1997).

³ **Brady v. Maryland**, 373 U.S. 83 (1963).

In this case, Davenport requested the production of trial transcripts approximately forty years after his direct appeal rights expired and he has no PCRA action pending. Therefore, he was not entitled to the relief he sought. **See Crider, supra** at 733; **Martin, supra** at 1338. Moreover, the issue is moot because, even if Davenport was entitled to the transcripts, they no longer exist, so the court could not enter an order for their production with any legal force or effect. **See Barr, supra** at 677 n.15.⁴

Order affirmed.

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: 5/1/19

⁴ As to Davenport's claim that the court erred in vacating the 2013 order, we acknowledge that, generally, a court has only thirty days from an order's entry to amend it unless it is doing so "to correct mistakes of the clerk or other officer of the court, inadvertencies of counsel, or [to] supply defects or omissions in the record." **In re K.R.B.**, 851 A.2d 914, 918 (Pa. Super. 2004); **see also** 42 Pa.C.S. § 5505. Here, we conclude that the trial court properly vacated the 2013 order directing the Clerk of Courts to produce the transcripts well after the thirty-day period in light of the current record, which no longer includes transcripts from the approximately forty-year-old trial, so the 2013 order had no force or effect.