

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
HAROLD FRANKLIN FORD,	:	
	:	
Appellant	:	No. 2397 EDA 2012

Appeal from the Order entered on July 31, 2012
in the Court of Common Pleas of Chester County,
Criminal Division, No. CP-15-CR-0003457-2002

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 15, 2013

Harold Franklin Ford ("Ford") appeals, *pro se*, from the Order dismissing his "*Pro Se* Petition to Strike Judgment." We affirm.

After being found guilty of robbery and conspiracy, Ford was sentenced to 25 to 50 years in prison on June 30, 2003. This Court affirmed the judgment of sentence on July 12, 2004, and the Supreme Court of Pennsylvania denied allowance of appeal on April 19, 2005. **See Commonwealth v. Ford**, 859 A.2d 829 (Pa. Super. 2004) (unpublished memorandum), **appeal denied**, 872 A.2d 1198 (Pa. 2005). Thereafter, Ford filed numerous Petitions pursuant to the Post Conviction Relief Act ("PCRA").¹ **See Commonwealth v. Ford**, 37 A.3d 1239 (Pa. Super. 2011) (unpublished memorandum at 2 (detailing Ford's various PCRA Petitions)).

¹ **See** 42 Pa.C.S.A. §§ 9541-9546.

On December 27, 2011, Ford filed a "Petition for Writ of State *Habeas Corpus*." This Petition was treated as a PCRA Petition by the PCRA court. Thereafter, the PCRA court issued a Notice of intent to dismiss the Petition due to its untimeliness. After Ford filed a response to the Notice, the PCRA court dismissed the Petition on June 26, 2012. Ford filed a timely Notice of appeal on July 5, 2012, which was docketed at 1988 EDA 2012.²

On July 19, 2012, while the appeal at 1988 EDA 2012 was pending, Ford filed a "Pro Se Petition to Strike Judgment." This Petition was treated as a PCRA Petition. The PCRA court dismissed Ford's PCRA Petition because of a lack of jurisdiction due to the pending appeal of the previously filed PCRA Petition. Ford filed a timely Notice of appeal.

On September 26, 2012, this Court entered a *per curiam* Order directing Ford to establish why the appeal should not be quashed as premature in light of the appeal at 1988 EDA 2012. Ford filed a response to the Order. Thereafter, this Court entered a *per curiam* Order referring the matter to this panel.

In his response to this Court's September 26, 2012 Order, Ford argues that the PCRA court erred in classifying his "Pro Se Petition to Strike Judgment" as a PCRA Petition. Motion to Show Cause, 10/12/12, at 1. Ford asserts that the Petition should have been classified as a *habeas corpus*

² We note that the PCRA court properly found that the claims set forth in "Petition for Writ of State *Habeas Corpus*" fell within the confines of the PCRA and should be classified as a PCRA Petition. **See Commonwealth v. Ford**, 1988 EDA 2012, at 2-3.

Petition and thus was a separate action from the PCRA Petition appealed at 1988 EDA 2012. **Id.** Ford claims that this Court can address the issues raised in the Petition in the case at bar. **Id.** at 1, 3.

In his “*Pro Se* Petition to Strike Judgment,” Ford contends that he was denied due process and the right to equal protection of law when the sentencing court used an incomplete record regarding his prior convictions in imposing a sentence under 42 Pa.C.S.A. § 9714, **Sentences for second and subsequent offenses**.³ Contrary to Ford’s claim, this contention falls squarely within the confines of the PCRA and the PCRA court properly considered the Petition as filed under the PCRA. **See** 42 Pa.C.S.A. § 9543(a)(2).

Our Supreme Court has held that “when 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** Pa.R.A.P. 1701(a) (stating that “after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.”). The **Lark** Court further held that while review of the prior PCRA petition is pending, the trial court does

³ We note that this Court previously concluded that Ford was properly sentenced under section 9714. **See Commonwealth v. Ford**, 947 A.2d 1251, 1253-55 (Pa. Super. 2008).

not have jurisdiction to adjudicate any issues raised in the subsequent PCRA petition. **Lark**, 746 A.2d at 588.

Based upon the reasoning in **Lark**, in the case *sub judice*, the PCRA court was divested of jurisdiction while the appeal from Ford's PCRA Petition at 1988 EDA 2012 was pending before this Court. **See id.** Accordingly, the PCRA court properly dismissed the Petition for lack of jurisdiction.

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/15/2013