

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

BARBARA GINN AS NEXT FRIEND AND
POWER OF ATTORNEY,
IN RE: ALLEN GINN, DETAINEE,

Appellant

v.

MIKE WENEROWICZ,
SUPERINTENDANT,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2542 EDA 2012

Appeal from the Order of July 30, 2012,
in the Court of Common Pleas of Philadelphia County,
Civil Division at No. 476, July Term, 2012

BEFORE: OLSON, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: March 12, 2013

Appellant appeals from the order dismissing a *habeas corpus* petition she filed.¹ We affirm the order.

* Retired Senior Judge assigned to the Superior Court.

¹ Appellant's son, Allen Ginn, was sentenced to life imprisonment for second-degree murder, and his judgment of sentence was affirmed on direct appeal. *Commonwealth v. Ginn*, 727 A.2d 128 (Pa. 1998); *Commonwealth v. Ginn*, 706 A.2d 1252 (Pa. Super. 1997). With respect to the instant *habeas* petition, Appellant purported to act as Allen Ginn's next friend. It appears the trial court did not address the propriety of Appellant doing so and, given our resolution of this case, we need not be concerned with that question.

Appellant's first issue is whether the lower court erred by not allowing her to file an answer to the response that Appellee filed in reply to Appellant's *habeas* petition. Appellant does not show us where in the lower court she preserved this issue. This issue is waived. ***See Commonwealth v. Rush***, 959 A.2d 945, 949-50 (Pa. Super. 2008); Pa.R.A.P. 302(a), 2117(c), 2119(e).

Appellant's remaining claims rest on her contention that, during the trial and/or direct appeal of Allen Ginn's murder case, the presiding trial court and/or this Court lacked jurisdiction. Allen Ginn's petition for allowance of appeal following his conviction and direct appeal was denied in 1998. Thereafter, his criminal case reached the point at which he could have instituted collateral proceedings. ***See*** 42 Pa.C.S.A. §§ 9543, 9545(b)(3). When a criminal case reaches the point at which collateral proceedings may be instituted, the sole vehicle for challenging the jurisdiction of the court(s) that presided over the criminal case is a petition under the Post Conviction Relief Act ("PCRA"). ***Id.*** §§ 9542, 9543(a)(2)(viii). At that time, a *habeas corpus* petition is not the proper mechanism for such a challenge. ***Id.*** § 9542.

Whether, at this juncture, a PCRA petition on Allen Ginn's behalf could be timely, ***see id.*** § 9545(b) (discussing PCRA time requirements), is a matter we need not decide because Appellant did not file a PCRA petition. We are quite aware that, at times, courts may treat documents as PCRA petitions even if those documents are named otherwise. However, courts

are not always obligated to do so. **See *Commonwealth v. Glunt***, 2012 W.L. 6139914, 1 (Pa. Super. filed December 11, 2012). The lower court did not do so. We will likewise not view Appellant's filing as a PCRA petition.

Because Appellant's petition was not a proper means for raising jurisdictional complaints with respect to Allen Ginn's case, there was no basis for the lower court to grant relief. Therefore, we find no reason to disturb the lower court's denial of the petition. As such, we affirm the court's order.^{2,3}

Order affirmed.

Judge Olson concurs in the result.

² The lower court listed reasons for its order different from those we have cited. We affirm on the grounds we have stated herein. **See *Commonwealth v. West***, 937 A.2d 516, 531 (Pa. Super. 2007) (indicating this Court may affirm on grounds different from those of the lower court).

³ Appellee's brief argues for an award of attorney's fees on the grounds that Appellant's petition and appeal were/are frivolous, vexatious and in bad faith. We deny Appellee's request.