

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHRISTOPHER EDWARD HARKINS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 379 EDA 2012

Appeal from the PCRA Order entered December 30, 2011
In the Court of Common Pleas of Pike County
Criminal Division at No(s): CP-52-CR-0000073-2007

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHRISTOPHER EDWARD HARKINS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 380 EDA 2012

Appeal from the PCRA Order entered December 30, 2011
In the Court of Common Pleas of Pike County
Criminal Division at No(s): CP-52-CR-0000290-2008

BEFORE: DONOHUE, OLSON and FITZGERALD,* JJ.

CONCURRING STATEMENT BY FITZGERALD, J.: Filed: March 18, 2013

I join in all parts of the lead memorandum. However, I write separately, and most respectfully, to observe that the majority's statement—

*Former Justice assigned to the Superior Court.

“The review of an order granting or denying a recusal motion lies within the exclusive jurisdiction of our Supreme Court; this Court lacks authority to consider the propriety of such determinations”¹—is an overly broad reading of the decision of the Pennsylvania Supreme Court in ***Reilly by Reilly v. SEPTA***, 489 A.2d 1291 (Pa. 1985).

In my view, ***Reilly*** held that the Pennsylvania Supreme Court possesses exclusive jurisdiction to establish and enforce **the Rules of Judicial Conduct**. ***See id.*** at 1298. Rather than establishing exclusive jurisdiction to review motions for recusal, the ***Reilly*** Court set forth the following standard for review:

It is incumbent upon the proponent of a disqualification motion to allege facts tending to show bias, interest or other disqualifying events, and it is the duty of the judge to decide whether he feels he can hear and dispose of the case fairly and without prejudice because we recognize that our judges are honorable, fair and competent. Once this decision is made, it is final and the cause must proceed. The propriety of this decision is grounded in abuse of discretion and is preserved as any other assignment of error, should the objecting party find it necessary to appeal following the conclusion of the cause.

If the cause is appealed, the record is before **the appellate court** which can determine whether a fair and impartial trial were had. If so, the alleged disqualifying factors of the trial judge become moot.

Id. at 1300 (emphasis in original omitted; emphasis added); ***see also Commonwealth v. King***, 990 A.2d 1172 (Pa. Super. 2010) (affirming trial

¹ Memorandum, at 8 (citing ***Reilly***, 489 A.2d at 1298).

court's decision to recuse); ***Commonwealth v. Rhodes***, 990 A.2d 732 (Pa. Super. 2009) (reversing trial court's denial of motion to recuse).

Although I would not construe ***Reilly*** as broadly as suggested in the lead memorandum, I agree that Appellant's challenge to the denial of the motion to recuse is meritless and that no appellate relief is due.