

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: PRIVATE CRIMINAL COMPLAINT : IN THE SUPERIOR COURT OF
OF JEROME COFFEY, : PENNSYLVANIA

APPEAL OF: JEROME COFFEY, :
Appellant : No. 464 WDA 2012

Appeal from the Order entered on January 20, 2012
in the Court of Common Pleas of Forest County,
Criminal Division, No. MD 46 of 2011

BEFORE: STEVENS, P.J., MUSMANNO and ALLEN, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: February 22, 2013

Jerome Coffey ("Coffey"), an inmate at the State Correctional Institution-Forest ("SCI: Forest"), appeals, *pro se*, from the Order denying his Petition for review of the Forest County District Attorney's ("the District Attorney") disapproval of Coffey's private criminal Complaint. We affirm.

The trial court set forth the history of this appeal as follows:

[On November 14, 2011, Coffey filed with the trial court] a request for review of the [] District Attorney's disapproval of [Coffey's] private criminal [C]omplaint against SCI: Forest Major of Unit Management Paul A. Ennis ("Major Ennis") for tampering with public records or information under 18 Pa.C.S.A.

[§] 4911(a)(1)-(2).¹ [Previously, o]n March 16, 2011, [Coffey] filed a[n institutional] grievance [with the authorities at SCI: Forest], and Major Ennis was assigned to review the grievance. In his Initial Review Response[,] dated March 24, 2011, Major Ennis deemed the grievance frivolous and denied it. [Coffey] alleges that Major Ennis made false entries and discrepancies in the Initial Review Response. Specifically, [Coffey] alleges that Major Ennis made false entries regarding [Coffey] requesting to be released to general population [], having cellmates in [the] restricted housing unit [], and [that Coffey had received] his last misconduct in 2000.

On or about August 11, 2011, [Coffey] filed a private criminal [C]omplaint with the [] District Attorney. On September 28, 2011, the [] District Attorney disapproved the [C]omplaint, stating [her conclusion] that there was no evidence [to establish the elements of the crime charged, tampering with public records or information under 18 Pa.C.S.A. § 4911]. On November 14, 2011, [Coffey] submitted his [C]omplaint for review by [the trial c]ourt pursuant to Pennsylvania Rule of Criminal Procedure 506(B)(2).

Trial Court Opinion, 1/20/12, at 1 (unnumbered; footnote added).

In conducting its *de novo* review of Coffey's private criminal Complaint,² the trial court ordered the authorities at SCI: Forest to provide the court with the documentation and evidence reviewed by the District

¹ Section 4911 provides, in relevant part, that a person commits the offense of tampering with public records or information if he or she "(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;" or "(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection[.]" 18 Pa.C.S.A. § 4911(a)(1), (a)(2).

² *See In re Ullman*, 995 A.2d 1207, 1213 (Pa. Super. 2010) (stating that where, as here, "the district attorney disapproves a private criminal complaint solely on the basis of legal conclusions, the trial court undertakes *de novo* review of the matter." (citation omitted)).

Attorney in her investigation of Coffey's Complaint. After thoroughly reviewing these documents, on January 20, 2012, the trial court entered an Order upholding the District Attorney's disapproval of Coffey's Complaint, finding that Coffey had failed to establish a *prima facie* claim under section 4911. In response, Coffey timely filed a *pro se* Notice of appeal.

On appeal, Coffey raises the following question for our review: "Whether the Trial Court abused its discretion in denying [Coffey's] Private Criminal Complaint based on the District Attorney's shoddy investigation[?]" Brief for Appellant at 2.

Our examination of a trial court's review of the District Attorney's decision to disapprove a private criminal complaint implicates the following:

[After the trial court undertakes a *de novo* review of a district attorney's disapproval of a private criminal complaint and issues the court's decision], the appellate court will review the trial court's decision for an error of law. As with all questions of law, the appellate standard of review is *de novo* and the appellate scope of review is plenary.

* * *

A private criminal complaint must at the outset set forth a *prima facie* case of criminal conduct. Nevertheless, even a well-crafted private criminal complaint cannot be the end of the inquiry for the prosecutor. The district attorney must investigate the allegations of the complaint to permit a proper decision whether to approve or disapprove the complaint. Such investigation is not necessary where the allegations of criminal conduct in the complaint are unsupported by factual averments. Both the district attorney and the trial court have a responsibility to prevent the misuse of judicial and prosecutorial resources in the pursuit of futile prosecutions.

In re Ullman, 995 A.2d at 1213 (citations, brackets, and quotation marks omitted).

In his sparse argument section, Coffey argues that the trial court erred in denying his Petition for review of the District Attorney's disapproval of Coffey's private criminal Complaint, since Coffey purportedly "presented overwhelming evidence to the District Attorney of [Major Ennis's] crime of tampering with public records." Brief for Appellant at 3. Coffey further asserts, without citing to the record, that "[t]he [t]rial [c]ourt had more than enough evidence and opportunity to authenticate the false records that [the] SCI: Forest officials presented to the [trial c]ourt." *Id.* at 4.

In its Opinion, the trial court addressed Coffey's claim as follows:

To establish a *prima facie* case pursuant to 18 Pa.C.S.A. § 4911(a), four elements must be proven, and the Pennsylvania Suggested Standard Criminal Jury Instructions provide a framework to review those elements. [**See**] Pa. SSJI (Crim), § 15.4911A (2005). [Coffey] was required to allege sufficient facts to establish that: (1) Major Ennis made an entry in a record or document; (2) the entry was false; (3) Major Ennis knew that the entry was false; and (4) Major Ennis knew that the record or document belonged to the government, was received or kept by the government for information or record, or was required by law to be kept by others for information of the government. **See id.** There is no question that Major Ennis made entries in a record or document. However, [Coffey] cannot show that the entries made by Major Ennis were false[,], nor can [Coffey] show that Major Ennis knew that the entries were false. Specifically, [Coffey] claims that Major Ennis falsely stated that [Coffey had] requested to be placed into the general population at SCI: Forest. However, the record does not show that Major Ennis ever made an entry in the Initial Review Response stating that [Coffey had] made such a request. [Coffey further] claims that Major Ennis falsely stated in the Initial Review Response that [Coffey] had cellmates during his incarceration. However, based upon the information provided to the [trial c]ourt, [Coffey]

clearly had twenty-six cellmates at State Correctional Institute: Greene and had two cellmates at SCI: Forest. Finally, [Coffey] claims that Major Ennis falsely stated the date of [Coffey's] last misconduct as August 5, 2000. [Coffey] did commit a misconduct on March 16, 2011, but [Coffey's] appeal of this misconduct was not final until one day after Major Ennis filed his Initial Review Response. Therefore, [Coffey] cannot prove that Major Ennis made a false entry when the misconduct was still pending. Accordingly, [Coffey] has not established a *prima facie* case of criminal conduct by Major Ennis. Based upon [Coffey's] failure to meet this threshold requirement of a *prima facie* case, the District Attorney's disapproval of [Coffey's] private criminal [C]omplaint was upheld by [the trial c]ourt.

Trial Court Opinion, 4/11/12, at 2-3. Our review confirms that the trial court's findings are supported by the record, and its legal conclusions are sound. Accordingly, we affirm on the basis of the trial court's reasoning and conclude that the court did not err in denying Coffey's Petition for review of the District Attorney's disapproval of Coffey's private criminal Complaint. ***See id.; see also In re Ullman***, 995 A.2d at 1217 (wherein this Court affirmed the dismissal of the appellant's private criminal complaint because the record supported the district attorney's and trial court's determinations that the appellant's complaint failed to articulate sufficient facts to establish a *prima facie* case of the crime charged).

Order affirmed.