

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

PAUL THOMAS BAIR III,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 482 WDA 2013

Appeal from the Order entered on January 15, 2013,
in the Court of Common Pleas of Westmoreland County,
Criminal Division, at No(s): CP-65-MD-0000998-2012

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY ALLEN, J.:

FILED DECEMBER 03, 2013

Paul Thomas Bair III ("Appellant") appeals *pro se* from the trial court order denying his petition to file a private criminal complaint for perjury against the witness/victim who testified against him in criminal proceedings. Appellant asserts that his private criminal complaint was improperly disapproved because Appellant provided evidence to support the complaint. We disagree.

Following a jury trial in April of 2012, Appellant was convicted of criminal trespass and simple assault¹ relative to the victim, Tracey Lee Singer. On July 2, 2012, the trial court sentenced Appellant to 18-84 months for the criminal trespass conviction, and a concurrent 12-24 months

¹ 18 Pa.C.S.A. §§ 3503(a)(1) and 2701(a)(1).

for the simple assault conviction. Approximately three months later, on October 18, 2012, Appellant filed a private criminal complaint with the Westmoreland County District Attorney. Appellant alleged that the victim committed perjury during Appellant's jury trial. The District Attorney denied the private criminal complaint on October 23, 2012. Pursuant to Pa.R.Crim.P. 506(B)(2), Appellant petitioned the trial court for review of the denial. The trial court convened a hearing on January 15, 2013, after which it denied Appellant's petition.

Our review of the record indicates that during the hearing, Appellant testified that "the gist of my argument is, Ms. Singer, during my trial, she gave false statements as to what her injuries were." N.T., 1/15/13, at 4.

The trial court responded:

Listen to me. All the matters of credibility have already been decided by the jury. I cannot reverse that. I cannot do anything with it. The Superior Court can't. The Supreme Court can't. Once the jury decides issues of credibility, they are forever decided. That's what it is. The only thing that can change that is that you are alleging she committed perjury. If you allege that she commits perjury, you need witnesses to show that the jury falsely concluded that she was credible. And that's what I've asked you. Do you have any witnesses that you can present—

Id. at 5-6. Appellant then countered that documentary evidence of Ms. Singer's perjury was contained in the transcript from his trial. *Id.* at 6. The trial court continued to explain:

It's something the jury's decided. They've decided that. It's just like if you were found not guilty and then the Commonwealth comes in and says, well, [Appellant] lied at trial,

we want to retry him. The answer to that is, no. You can't do it because the matters of credibility have already been determined. It's beyond them. They can't do it. You can't do it. Unless you have – there's an exception. If you have a witness who, for instance, says after the trial she told me I got on the witness stand and lied, or if you have documentary evidence which shows that she lied, then that's permissible. But you can't use the transcript unless—you can't use the transcript because the jury's decided issues of credibility.

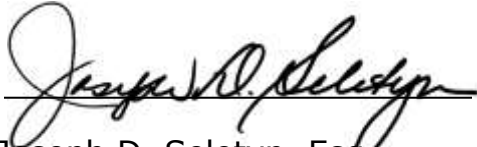
At 7-8.

After the trial court denied Appellant's petition to file a private criminal complaint, Appellant filed a motion for reargument of petition for review, which the trial court likewise denied. Appellant filed this appeal. Both the trial court and Appellant have complied with Pa.R.A.P. 1925.

Our standard when reviewing a trial court's affirmance of the denial of a private criminal complaint is limited to determining whether the trial court abused its discretion or committed an error of law. ***Commonwealth v. Cooper***, 710 A.2d 76 (Pa. Super. 1998). Upon review, we find no abuse of discretion or error of law. The Honorable Alfred B. Bell, sitting as the trial court, has ably addressed and analyzed the denial of Appellant's request for a private criminal complaint in his Pa.R.A.P. 1925(a) opinion. We adopt and incorporate Judge Bell's June 13, 2013 opinion as our own, and attach a copy in the event of further proceedings.

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: 12/3/2013