

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JOSEPH B. WOODENS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 967 MDA 2012

Appeal from the Order of March 29, 2012,
in the Court of Common Pleas of Dauphin County,
Criminal Division at No. CP-22-CR-0001269-2008

BEFORE: PANELLA, SHOGAN and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED MAY 03, 2013

This is a *pro se* appeal from the order dismissing Appellant's petition filed pursuant to the Post Conviction Relief Act ("PCRA"). Appellant raises three issues for our review: (1) whether the PCRA court erred in failing to accept as timely filed Appellant's *pro se* response to the court's notice of intent to dismiss the PCRA petition; (2) whether the PCRA court erred in failing to consider the substance of the *pro se* response; and (3) whether the PCRA court's recusal is warranted upon remand. Because we find no merit to Appellant's first issue, we need not address the remaining two issues.

Our standard of review of the denial of PCRA relief is limited to examining whether the court's rulings are supported by the evidence of record and free of legal error. ***Commonwealth v. Anderson***, 995 A.2d

*Retired Senior Judge assigned to the Superior Court.

1184, 1189 (Pa. Super. 2010). Further, it is an appellant's burden to persuade this Court that the PCRA court erred and that relief is due. ***Commonwealth v. Bennett***, 19 A.3d 541, 543 (Pa. Super. 2011).

As to Appellant's first issue, the following facts are relevant. On March 6, 2012, the PCRA court issued its notice of intent to dismiss the PCRA petition, giving Appellant 20 days within which to respond.¹ It is undisputed that no response from Appellant was filed within the relevant 20-day period. The PCRA court dismissed the petition on March 29, 2012, noting in its order Appellant's failure to respond to the notice of intent to dismiss.

On April 9, 2012, Appellant filed a *pro se* Motion for Reconsideration, asserting therein that he had mailed, from prison, a response to the notice of intent to dismiss on March 26, 2012. The attached documents indicated that Appellant had mailed the response to the PCRA judge's chambers and to the District Attorney's office. The PCRA court dismissed the Motion for Reconsideration, noting that the prisoner mailbox rule did not apply because Appellant failed to take the proper steps to get his response to the Clerk of Courts.

On appeal, Appellant continues to argue that his response should be deemed timely filed pursuant to the prisoner mailbox rule. We disagree.

¹ This order also permitted appointed PCRA counsel to withdraw pursuant to the procedure outlined in ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988), and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988).

The prisoner mailbox rule permits a finding that a *pro se* document is filed on the date it is placed in the hands of prison authorities for mailing. ***Commonwealth v. Crawford***, 17 A.3d 1279, 1281 (Pa. Super. 2011). However, in order for the rule to apply, the document must be mailed to a proper filing office. ***Id.*** at 1282. Appellant does not dispute that he failed to mail his response to a filing office; however, he argues that Pa.R.Crim.P. 907, which provides the procedure for both the notice of intent to dismiss and the response, does not specifically provide that the response must be filed with the Clerk of Courts. The rule, which provides that, following notice of the intention to dismiss the PCRA petition, “[t]he defendant may respond to the proposed dismissal within 20 days of the date of the notice,” does not set forth a method of responding.

However, Appellant has failed to point to any legal authority that would allow him to benefit from the prisoner mailbox rule under these circumstances. Thus, his argument fails to persuade us that the PCRA court erred and that Appellant is entitled to relief under his first issue. Because his second and third issues are dependent upon relief under the first, we find that he is entitled to no appellate relief and we affirm the order dismissing his petition.

Order affirmed. Appellant’s Application for Correction and/or Modification of Record is denied.

J-S11040-13

Judgment Entered.

Mary A. Graybill
Deputy Prothonotary

Date: 5/3/2013