[J-53-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 9 MAP 2013
	:	
Appellee	:	Appeal from the Order of the Superior Court dated 8/28/12 at No. 463 MDA 2012 affirming the order of the
v.	:	Lackawanna County Court of Common Pleas, Criminal Division, dated 1/19/12 at No. CP-35-CR-0001917-2009
ANTHONY ROSE,	:	
	:	
Appellant	:	SUBMITTED: July 30, 2013

DISSENTING STATEMENT

MR. JUSTICE SAYLOR **FILED: December 17, 2013**

I respectfully differ with the majority's per curiam decision to vacate the Superior Court's order and remand for further proceedings based on the suspicion that, three years ago, there might have been a timely-filed direct appeal which was overlooked by the local filing office. Since there is no notice of appeal bearing a timely date stamp, the remand directed by the majority appears to be based on the prisoner mailbox rule and a factual premise that a document captioned "Appeal of Sentence" found in the original record may have been tendered to prison authorities on a date typewritten on the document itself (presumably by the prisoner, i.e., Appellant).

Initially, upon a review of the original record, it is noteworthy that the "Appeal of Sentence" document is stapled to, and creased with, another document entitled

"Agreement for Dismissal of Charges" (although there was no such agreement at least involving the Commonwealth). The front cover page is also dated December 8 in typeface, but it bears the filing office's time-stamp of December 15, 2010. Further, Appellant filed an undated pro se petition for post-conviction relief, bearing a time stamp of December 9, 2010, which expressly affirms that he did not file a direct appeal. The upshot is that Appellant apparently filed a confusing array of pro se documents, two of which seem to have been presented to the filing office as a package.

I know of no authority requiring filing offices to sort through litigants' filings to determine whether they may have inappropriately combined several different documents. Accordingly, to the extent the majority's directive to the common pleas courts to supervise filing offices implies a criticism of the particular office's conduct in the present circumstances, I do not support such criticism.

Moreover, to the degree there is a suggestion in the record that Appellant may have wished at one time to pursue a direct appeal, I would emphasize that there is no evidence that he ever filed a timely one. In this regard, under our decisional law, to support application of the mailbox rule, a prisoner bears the burden of proving delivery of the notice to prison authorities within the prescribed time period for its filing. See Commonwealth v. Jones, 549 Pa. 58, 64, 700 A.2d 423, 426 (1997). It is therefore significant, in the first instance, that Appellant has advanced no argument whatsoever that he tendered a timely appeal to the appropriate authorities; nor has he furnished any proof regarding this essential action.[1] Rather, Appellant appears to be intent on

[1] I recognize that, in light of constraints inherent in the institutional environment, this Court has indicated that any "reasonably verifiable evidence" of the date on which a prisoner deposits the appeal with the prison authorities may be credited. Id. Along these lines, we have specified that cash slips, affidavits, or evidence of operating procedures may suffice. See id. I do not believe, however, that we have ever before (continued…)

pursuing his post-conviction-review efforts, per which this Court allowed his present appeal.

Certainly, there are ambiguities concerning the "Appeal of Sentence," with which the majority concerns itself here. Nevertheless, I question whether this Court should now act sua sponte – approximately three years into Appellant's maximum-four-year-sentence – to thwart Appellant's directed effort to secure full and fair post-conviction review. I am particularly circumspect, given the length of time it has taken for Appellant's challenge to percolate through each level of the judicial system to finally reach our court of last resort. My reluctance is also in light of this Court's restructuring of the direct-appeal landscape to defer ineffectiveness claims to PCRA review, see Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726 (2002), which is precisely the forum in which Appellant seems to wish to litigate his ineffectiveness assertions.

Finally, I note that the majority's decision to vacate the order of the Superior Court may cause further delay and unnecessary complications in bringing this protracted litigation to a final resolution. For example, should the PCRA court confirm that Appellant did not lodge a timely direct appeal, or if Appellant expresses a desire to waive any remaining direct-appeal rights, the status quo is that the PCRA court's order denying post-conviction relief remains in full force and effect, while there is no extant decision from the intermediate appellate court. In such circumstances, it is unclear what mechanism Appellant should employ to attempt to reinstate an order of the Superior Court which was unfavorable to him and regain the discretionary review of this Court denied to him with the present relinquishment of jurisdiction.

(…continued)
suggested that prisoners' potentially self-serving inscriptions on appeal documents are, in and of themselves, sufficient. Indeed, to do so, obviously, would invite abuse.

Mr. Chief Justice Castille and Madame Justice Todd join this dissenting statement.