

**[J-175-2001]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

WALTER WINKLESPECHT,	:	No. 57 MM 2001
	:	
Petitioner,	:	Application for Writ of Habeas Corpus
	:	
v.	:	
	:	
	:	SUBMITTED: November 20, 2001
PENNSYLVANIA BOARD OF	:	
PROBATION AND PAROLE,	:	
	:	
Respondent.	:	
	:	
	:	
	:	

**CONCURRING OPINION**

**MR. JUSTICE CASTILLE**

**DECIDED: DECEMBER 31, 2002**

For the reasons stated in my concurring opinion in Coady v. Vaughn, 770 A.2d 287 (Pa. 2001) (Castille, J., concurring), which was joined by Madame Justice Newman, I am inclined to believe that non-frivolous constitutional challenges to the denial of parole are cognizable under Pennsylvania's habeas corpus statute, 42 Pa.C.S. § 6501 *et seq.* See also Commonwealth v. Haag, 809 A.2d 271 (Pa. 2002) (Castille, J., concurring). Although this Court has nonexclusive original jurisdiction of all cases sounding in habeas corpus, see 42 Pa.C.S. § 721(1), I believe that the better practice is for such petitions to be filed with the sentencing court pursuant to Pa.R.Crim.P. 108(A) ("A petition for writ of habeas corpus challenging the legality of the petitioner's detention or confinement in a criminal matter shall

be filed with the clerk of courts of the judicial district in which the order directing the petitioner's detention or confinement was entered.").

I fully agree, however, with the lead opinion's conclusion that the constitutional *ex post facto* claim raised here -- a claim this Court has seen raised with increasing frequency on our allocatur and miscellaneous dockets -- is entirely meritless. Subject to the foregoing qualifications concerning the cognizability of and venue for such claims, I join the lead opinion.

Madame Justice Newman joins this concurring opinion.