

[J-36-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 49 EAP 2005
	:	
Appellant	:	Appeal from the order of the Court of
	:	Common Pleas of Philadelphia County
	:	(Jones, P.J.), entered October 20, 2005 at
v.	:	CP#8907-4359 1/1.
	:	
	:	
THAVIRAK SAM,	:	
	:	ARGUED: October 16, 2006
Appellee	:	RESUBMITTED: January 11, 2008
	:	REARGUED: April 15, 2008

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: July 22, 2008

I join the majority opinion. I write separately because I am not convinced the PCRA court properly heard appellee's PCRA petition. Attorney Dunham filed this PCRA petition, but as the majority notes, appellee did not retain Dunham and no court appointed him as appellee's counsel. Majority Slip Op., at 2. There is no indication Dunham was considered appellee's next friend. In fact, the PCRA court denied Attorney Epstein's request to be appellee's next friend. Thus, as the majority notes, Dunham appears to have filed the PCRA petition without appellee's "authorization." Id., at 36; see also Commonwealth v. White, 734 A.2d 374, 376 (Pa. 1999) (to have standing, next friend must (1) provide adequate explanation, such as lack of access to courts, mental incapacity, or other disability, as to why defendant is incompetent to

appear on his own behalf; and (2) establish he has significant relationship to defendant and dedication to defendant's best interests).

There is a fundamental conceit in ignoring that which a lawyer must do before proceeding on someone's behalf. Unilateral filings on behalf of clients one has never met, clients who know nothing of the matter, may at times be permissible, but there are preliminary steps required to establish standing which were not met here. Those who disapprove of capital punishment too often ignore these steps, and courts too often fail to hold such counsel to their oath of respecting and obeying the laws and procedures, no matter the zealotry of their disagreement with those laws.

The Commonwealth touches on this point and argues in relation to its motion to compel psychiatric medication, "the [PCRA] court should have compelled the defense — as a prerequisite to litigating without the authorization of the purported client — to prove that defendant cannot, in fact, be restored to competence so that he could make his own decisions." Commonwealth's Brief, at 22. I believe this to be correct. However, the upshot ought to be that the PCRA court could not have heard the petition in the first instance; as this is not argued, I join the majority opinion.