[J-76-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 79 MAP 2001
	:	
Appellant	:	
	:	Appeal from the order of the Superior
	:	Court entered on September 8, 2000 at
v.	:	No. 1614 MDA 1999, vacating in part,
	:	affirming in part, and remanding, the
	:	judgment of sentence imposed by the
RONDU A. BETHEA,	:	Franklin County Court of Common Pleas,
	:	criminal division entered on September 8,
Appellee	:	1999 at No. 1222-1998 and No. 753-1999.
	:	
	:	761 A.2d 1181 (Pa. Super. 2000)
	:	
	:	ARGUED: May 14, 2002

CONCURRING OPINION

MADAME JUSTICE NEWMAN **Decided: July 22, 2003**

I respectfully concur. Specifically, I agree with the explanation of the procedural framework for raising claims of counsel ineffectiveness in light of our recent decision in Commonwealth v. Grant, 813 A.2d 726 (Pa. 2002), that the Majority sets forth in footnote 2. I also concur with the way the Majority distinguishes the concepts of "subject matter jurisdiction" and "venue." Yet, despite my agreement on these issues, I remain committed to the reasoning previously articulated in my dissent in Commonwealth v. McPhail, 692 A.2d 139 (Pa. 1997), which was joined by Justice Castille. Accordingly, in my opinion, the Court of Common Pleas of Franklin County did not have subject matter jurisdiction to hear and decide the drug-related criminal charges against Rondu Bethea (Appellee), because

the underlying criminal conduct that became the source of these charges did not take place within Franklin County.

Presently, just as in McPhail, the Majority continues to disregard the deep-rooted common law principle that the locus of the crime determines the court of common pleas where the charges relating to the crime must be brought. 692 A.2d at 151. Consequently, the Majority persists on diluting the jurisdictional restrictions placed on the courts of common pleas of this Commonwealth by allowing the Court of Common Pleas of Franklin County in the present case to adjudicate Appellee's drug-related charges, as well as entirely unconnected violations of the Motor Vehicle Code, 75 Pa.C.S. § 101 et seq.

As I stated previously,

> [t]he law is clear that the locus of a crime is always at issue, for the court has no jurisdiction of the offense unless it occurred within the county of trial, or unless, by some statute, it need not. . . . **For a county to take jurisdiction over a criminal case, some overt act involved in that crime must have occurred within that county**. In order to base jurisdiction on an overt act, the act must have been essential to the crime, an act which is merely incidental to the crime is not sufficient.
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> [E]mbedded in the common law is the proposition that subject matter jurisdiction of criminal courts extends only to offenses committed within the county of trial. The historic foundation for the rule is that by the ancient law, all offenses were said to be done against the peace of the county.

McPhail, 692 A.2d at 151 (Newman, J. dissenting) (internal citations omitted, emphasis supplied).

The factual disparities between the present case and McPhail further amplify the flaw in the analysis adopted by the Majority. McPhail involved a consolidation of criminal charges, originating in several counties, that were, nonetheless, part of a single criminal episode (multiple incidences of drug selling). 692 A.2d at 141. Yet, in the present case, the two charges have absolutely nothing in common.[1] They arise out of entirely different types of conduct that took place on two different occasions in two different counties. Thus, there is no relationship between Appellee's criminal conduct and the county where he is being tried, as nothing links Franklin County (and, consequently, the Court of Common Pleas of Franklin County) to Appellee's drug charges. In fact, there is no evidence that Appellee did anything in Franklin County to warrant prosecution on drug-related charges in that county. Even so, the rationale of the Majority allows the Court of Common Pleas of Franklin County to adjudicate Appellee's guilt.[2] As I pointed out in McPhail, this analysis is intrinsically flawed, because it disregards the well-established "locus of the crime" principle and facilitates prosecutorial forum shopping.

Ultimately, unlike McPhail, the present issue is raised as a claim of counsel ineffectiveness and, as the Majority points out, Appellee has failed to establish that he was prejudiced by the conduct of his counsel. Accordingly, I am constrained to agree with the ultimate resolution of the Majority opinion, because this Court has consistently held that

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[1] In Cumberland County, Appellee was arrested for selling twelve grams of crack cocaine to a confidential informant. Seven months later, Appellee was arrested in Franklin County for driving a car with a suspended license.

[2] While the present facts concern two bordering counties, by the same logic, the Majority would allow the Court of Common Pleas of Delaware County to adjudicate unrelated cases from Erie County, so long as the defendant committed **any** criminal mischief in both places, irrespective of the nature, location, or timing of the criminal conduct that is the basis for those charges.

failure to establish prejudice is independently fatal for claims of counsel ineffectiveness. See Commonwealth v. Pierce, 786 A.2d 203, 221 (Pa. 2001) (stating that "[a]bsent demonstration of prejudice, [a defendant] cannot prevail on a claim for ineffective assistance of counsel and no further inquiry into the claim is warranted"); Commonwealth v. Fletcher, 750 A.2d 261 (Pa.), cert. denied, 531 U.S. 1035 (2000).

Mr. Justice Castille joins this concurring opinion.