IN THE SUPREME COURT OF THE UNITED STATES

SEAN M. DONAHUE

v.

COMMONWEALTH OF PENNSYLVANIA

SUPREME COURT OF PENNSYLVANIA DOCKET: 47 MAL 2019

SUPERIOR COURT OF PENNSYLVANIA DOCKET: 1417 MDA 2018

COMMON PLEAS COURT OF DAUPHIN COUNTY PENNSYLVANIA DOCKET: CP-22-CR-3716-2015

REQUEST FOR EXTENSION OF TIME OF 60 DAYS TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA REGARDING PA STATE SUPREME COURT CASE 47 MAL 2019 (PA SUPERIOR COURT CASE 1417 MDA 2019)

TO THE HONORABLE JUSTICE ALITO:

The *pro se* Petitioner, Sean M. Donahue RESPECTFULLY REQUESTS aN EXTENSION OF TIME OF 60 DAYS to JANUARY 8, 2020 to Petition to the Supreme Court of the United States for a *writ of certiorari* regarding PA state Supreme Court case 47 MAL 2019 (PA Superior Court case 1417 MDA 2019), which

is an appeal that originated from a Pennsylvania trial court order issued by the county trial court of Dauphin County, Pennsylvania at Docket No. CP-22-CR-3716-2015 of the Court of Common Pleas of Dauphin County. (APPENDICES A, B & C)

Petitioner is actively involved in numerous cases in both federal and state courts, which have occupied much of his time. Petitioner has recently had many filings due in several active cases before the Superior Court of Pennsylvania and has more filings due in the coming days and weeks at 1179 MDA 2019, 1582 MDA 2019, 1607 MDA 2019, 1608 MDA 2019, 1640 MDA 2019 thru 1647 MDA 2019. The Petitioner has also had a filing due in the US Third Circuit at 17-2810 and has one due at 17-3841. The Petitioner also has a petitions due in the Supreme Court of the United States at 19-5808 and November 8, 2019 deadlines for Petitions for Certiorari at two separate PA state cases 45 MAL 2019 (1329 MDA 2019) and 47 MAL 2019 (1417 MDA 2019).

The Petitioner will then also have a *pro se* response to an Anders Brief due at 364 MDA 2019 in the PA Superior Court. The time burden of that particular case is compounded by the Superior Court of Pennsylvania seeking ways to administratively quash the case to evade having to hear the merits of a difficult issue that raises fundamental flaws in their own previously established precedents. The time burden is further compounded by trial court appointed attorneys who just don't want to pursue politically sensitive and controversial issues, such as gun rights, on appeal. *(See attached letter from state trial judge* APPENDIX D*)*

In all his state cases, the Petitioner has been unduly burdened by court appointed counsel (and previously paid counsel) who have been fearful of calling out the courts on blatant flaws in their reasoning, as well as blatant errors, regarding which counsel have often told the Petitioner (and the trial courts) that there is no supporting case law that addresses the circumstances. Yet, with research, the Petitioner often finds lots of well developed case law that makes many of his complaints slam dunk arguments. The state court impede the Petitioner's ability to advance those arguments by ruling that they arise from interlocutory orders which cannot be appealed, regardless of their merit. This practice evades finality when it suits the courts desire to evade ruling on important issues of legitimate merit. It prevents issues complained of from ever rising on their merits, even when the courts recognizes the existence or likely existence of those merits. This problem appears to be a systemic problem in the Pennsylvania appellate system that enables the advancement of injustice.

In the instant case for which the Petitioner seeks certiorari, the Superior Court of Pennsylvania, on December 7, 2018, quashed an appeal.[1] (APPENDIX C) The Pennsylvania Supreme Court denied an appeal of that order on July 9, 2019 and further denied reconsideration on August 8, 2019.[2] (APPENDIX B) The Petitioner argues that the issues he raised in his initial appeal of the trial court order are valid issues. He challenges the Pennsylvania harassment statute under

[1] Commonwealth of Pennsylvania v. Sean M. Donahue, Docket No. 1417 MDA 2018 in the Superior Court of Pennsylvania

[2] Commonwealth of Pennsylvania v. Sean M. Donahue, Docket No. 47 MAL 2011 in the Supreme Court of Pennsylvania

which he was charged (18 PA Cons Stat § 2709 (2014), APPENDIX E.1, E.2, E.3) and the Pennsylvania Post Conviction Relief Act (PCRA) (APPENDIX F) as being constitutionally infirm.

The trial court order and trial court opinion addressed Petitioner's requests to strike all or portions of both statutes with a denial. (APPENDIX A.1, A.2) Petitioner also made requests for workable remedies around the circumstantial infirmity of the two statutes that were also denied in the same trial court order but were made readily available to the former Pennsylvania Attorney General, Kathleen Kane (by a different judge and court), so that she could pursue relief from her criminal conviction.[3]

The wording of the Pennsylvania harassment statute under which the Petitioner was charged is identical to the wording of the former New York state harassment statute, which was struck as being constitutionally infirm. (APPENDIX E.1, E.2, & APPENDIX H.1, H.2) The striking of the New York statute occurred at the urging of several US Second Circuit judges who themselves had ruled in different cases that the New York harassment statute was constitutionally infirm. *(People v Golb, 23 N.Y.3d 455, PART III, Court of Appeals of New York 2014,* APPENDIX H.2; *COMM V BELL Com. v. Bell, 516 A.2d 1172 (Pa. 1986),* the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b) (APPENDIX E.4, E.5) and *Scales v. United States, 367 U.S. 203 (1961)* The identical wording in

[3] Comm v. Kane, Docket Number: CP-46-CR-0006239-2015, Montgomery County Pennsylvania; Comm v. Kane, Docket Number: CP-46-MD-0002457-2015, Montgomery County Pennsylvania; Comm v. Kane, Docket Number: CP-46-CR-0008423-2015, Montgomery County Pennsylvania

a harassment statute cannot be violative to the US Constitution in New York but not violative to the US Constitution in Pennsylvania. State sovereignty does not allow for 50 different interpretations and applications of the US Constitution.

The Pennsylvania PCRA contains language that subsumes all historical and ancient forms of post conviction relief [4] but imposes short time limit constraints that render those writs inaccessible.[5] Those limiting constraints include sentencing bars that do not allow for post conviction appeal after one has completely served a sentence. Therefore, facts that would otherwise force a dismissal or reversal of conviction go willfully ignored by the courts. The courts hide behind statutory technicalities to evade their difficult and controversial constitutional duties in a state where judges are elected and retained by the voters.

The PA PCRA bars to appeals do not aid in implementing ancient writs but instead eliminate their availability. The ancient writs evolved to satisfy a need to resolve injustice. The many filing constraints imposed by Pennsylvania PCRA codifies the tolerance of the very injustices that the ancient writs evolved to provide a remedy for. *COMM V BELL Com. v. Bell, 516 A.2d 1172 (Pa. 1986),* the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b) (APPENDIX E.4, E.5) and *Scales v. United States, 367 U.S. 203 (1961),* when taken in harmony with *Commonwealth v. Holmes, 79 A.3d 562 (Pa. 2013) & Commonwealth v. Delgros 183 A.3d 352 (Pa. 2018),* REQUIRE that the Court strike PCRA sentencing bars,

[4] 42 Pa. C.S. §9542
[5] 42 Pa. C.S. §9543(a) et. seq.; 42 Pa. C.S. §9545 (a); 42 Pa. C.S. §9545 (b) et. seq.

time bars and the PCRA's subsuming of all forms of post conviction appeal. The above cited case law CANNOT coexist. Each opinion contradicts the other.

At the federal level, a parallel circumstance arises with the unavailability of access to relief through *habeas corpus* after one's sentence has been served. This is sadly true even if one can prove a wrongful prosecution. In such circumstances, petitioners are often guided to pursue federal pardon from the President of the United States. However, in Pennsylvania, it is the political policy of the state Pardon Board that pardon's are not granted for wrongful convictions and that complaints of wrongful conviction must be pursued through the courts. (APPENDIX I) Yet, the path of the courts is unavailable because the courts use administrative rules to not reach the merits of such appeals for fear that they may have to rule in favor of the convicted, which risks acknowledging flaws in their own administration (or misadministration) of justice.

In the case in question, the Petitioner requested that his appellate counsel pursue unitary review of direct appeal and PCRA issues. Although he did not use the term "unitary review", he explicitly instructed his attorney as to what issues he wanted raised during direct appeal but his attorney called them PCRA issues and refused to raise them together with direct appeal issues. This Court has stated that when a counsel completely abandons a defendant on a matter for which he was entitled representation, relief lies in *coram nobis. (United States v. Morgan, 346 U.S. 502, 505, 98 L. Ed. 248, 253 (1954))* Pennsylvania, the Third Circuit and this Court have said that the ineffectiveness of counsel on a matter is effectively the

same as a denial of counsel on that matter and relief should be granted. (*Commonwealth v. Sheehan, 446 Pa. 35, (1971); Ross v. David Varano; PA State Attorney General PA State Attorney General, Appellant, No. 12–2083, 712 F.3d 784 (2013); Strickland v. Washington, 466 U.S. 668 (1984); United States v. Cronic, 466 U.S. 648 (1984); Commonwealth v. Pierce, 515 Pa. 153, 527 A.2d 973, 975 (1987); Peyton v. Rowe, 391 U.S. 54 (1968); Maleng v. Cook, 490 U.S. 488 (1989); All Writs Act of 1789; Hager v. United States, 993 F.2d 4, 5 (1st Cir. 1993); Nicks v. United States, 955 F.2d 161, 167 (2d Cir. 1992); United States v. Osser, 864 F.2d 1056, 1059–60 (3d Cir. 1988); United States v. Drobny, 955 F.2d 990, 996 (5th Cir. 1992); Steward v. United States, 446 F.2d 42, 43–44 (8th Cir. 1971)).*

The Petitioner later discovered that a wealth of case law exists on the subject of unitary review and that his circumstance indisputably qualified for unitary review. (*Commonwealth v. Holmes, 79 A.3d 562 (Pa. 2013) & Commonwealth v. Delgros 183 A.3d 352 (Pa. 2018))* The Petitioner also requested Appeal Bail and/or a stay of his sentence, which would have provided a temporary fix that would have availed a PCRA appeal.

Had the Petitioner been granted unitary review or not administratively impeded in the case in question, the lead argument he instructed his court appointed counsel to make would have guaranteed the reversal of the Petitioner's harassment conviction at Dauphin County, Pennsylvania Docket No. CP-22-CR-3716-2015 and would also have guaranteed an acquittal from the trial bench. *United States v. Julio Hernandez, 176 F.3d 719, (3rd Cir. 1999), 3rd Cir*

Docket No. 98-5266; Hernandez supra Sloviter, Circuit Judge, Dissenting; United States v. Menichino, 497 F.2d 935, 945 (5th Cir. 1974); Francis v. Franklin, 471 U.S. 307, 322 (1985); Coffin v. United States, 156 U.S. 432 (1895); Guam v. Ignacio, 852 F.2d 459 (9th Cir. 1987); McKenzie v. Montana, 443 U.S. 903 (1979); McKenzie v. Montana, 433 U.S. 905 (1977); Sandstrom v. Montana, 442 U.S. 510 (1979); United States v. Olano, 507 U. S. 725 (1993) It is for this reason that the Pennsylvania courts have maneuvered to evade any appeal in which they would have to address the merits.

The lead issue the Petitioner would raise is that the trial judge removed the presumption of innocence prior to opening arguments and that newly discovered evidence reveals that the judge's doing so was conscious, malicious and intentional. Because both the prosecution and the defense counsel failed to object to the removal of the presumption of innocence, *stare decisis* requires the trial court's adherence to the precedent established by this court in *Coffin supra p457,* which requires an increase by default in the prosecutor's burden of proof from proof "beyond a reasonable doubt" *(United States v. Haymond, 588 U. S. ____ (2019))* to proof "beyond doubt".

Because the trial court *sua sponte* removed the presumption of innocence before opening arguments in a case in which the Petitioner pleaded "not guilty", the court had no choice but to also *sua sponte* raise the standard of proof to "beyond doubt". Because no prosecutor could ever succeed in proving a case "beyond doubt", the court had no choice other than to *sua sponte* grant an acquittal. Beyond that,

the trial court also *sua sponte* found the case to rise from a labor dispute and the plain language of the Pennsylvania harassment statute that existed at the time charges were filed rendered the Plaintiff non prosecutable for any charge of harassment that arose from a labor dispute. (APPENDIX E.1 thru E.5)

WHEREFORE the Petitioner needs more time to write his Petition for Writ of Certiorari regarding PA state cases 45 MAL 2019 (1329 MDA 2019) and 47 MAL 2019 (1417 MDA 2019), the Petitioner RESPECTFULLY REQUESTS an extension of time of 60 days to January 8, 2020 or to March 1, 2020, if the Court will allow. If the Court does not grant the request to extend time, then the Petitioner asks that the filing date of this motion be preserved and that this motion be considered the Petition for Writ of Certiorari, with the Petitioner being allowed to supplement this filing with the appropriate table of contents, table of authorities and table of appendices.

The forgoing document is true in fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

OCT 29 2019
Date

Sean M. Donahue
Sean M. Donahue

Received 9/1/2018 6:21:38 PM Superior Court Middle District

Filed 9/1/2018 6:21:00 PM Superior Court Middle District
1417 MDA 2018

COMMONWEALTH OF PENNSYLVANIA	**: IN THE COURT OF COMMON PLEAS,**
	: DAUPHIN COUNTY, PENNSYLVANIA
	:
v.	**: NO. 3716 CR 2015**
	:
SEAN DONAHUE	**: CRIMINAL MATTER**

ORDER OF COURT

AND NOW, this 24th day of April, 2018, upon consideration of Petitioner's Motion for Nominal Appeal Bail, Request for Production of Full Transcripts of Trial and All Pre-Trial Hearings and Request for Complete Records on Jury filed on or about April 3, 2018, his Amended from Motion Submitted on April 3, 2018, and his Application for Relief it is HEREBY ORDERED as follows:

1) The Motion for Nominal Appeal Bail or Stay of the Sentence is DENIED.

2) The Request for Production of Full Transcripts of Trial and All Pretrial Hearings is DENIED. Petitioner must follow the Request for Transcripts procedure. See Pa.St.J.Admin. Rule 4007 and D.C.J.A. 4007.

3) The request for Complete Records on Jury is DENIED.

4) The request for Stay of Sentence to Preserve PCRA is DENIED.

5) The Motion for the Instatement/Reinstatement of STATE Coram Nobis Procedure or Similar Procedure to Allow for the Post Conviction Correction of State Court Errors when State Post Conviction Relief is NOT Available is DENIED.

6) The Motion to Quash the portion of Pennsylvania PCRA requiring Petitioners to still be serving a sentence is DENIED.

7) The Motion to Quash the portion of Pennsylvania PCRA requiring petitions to be filed within one year of entry of final judgment is DENIED.

APPENDIX A.1 Order from which appeal is taken

8) The Motion to Quash the portion of Pennsylvania PCRA preventing courts from entertaining a PCRA request in anticipation of the filing of a petition is DENIED.

9) The Application for Relief is DENIED.

BY THE COURT:

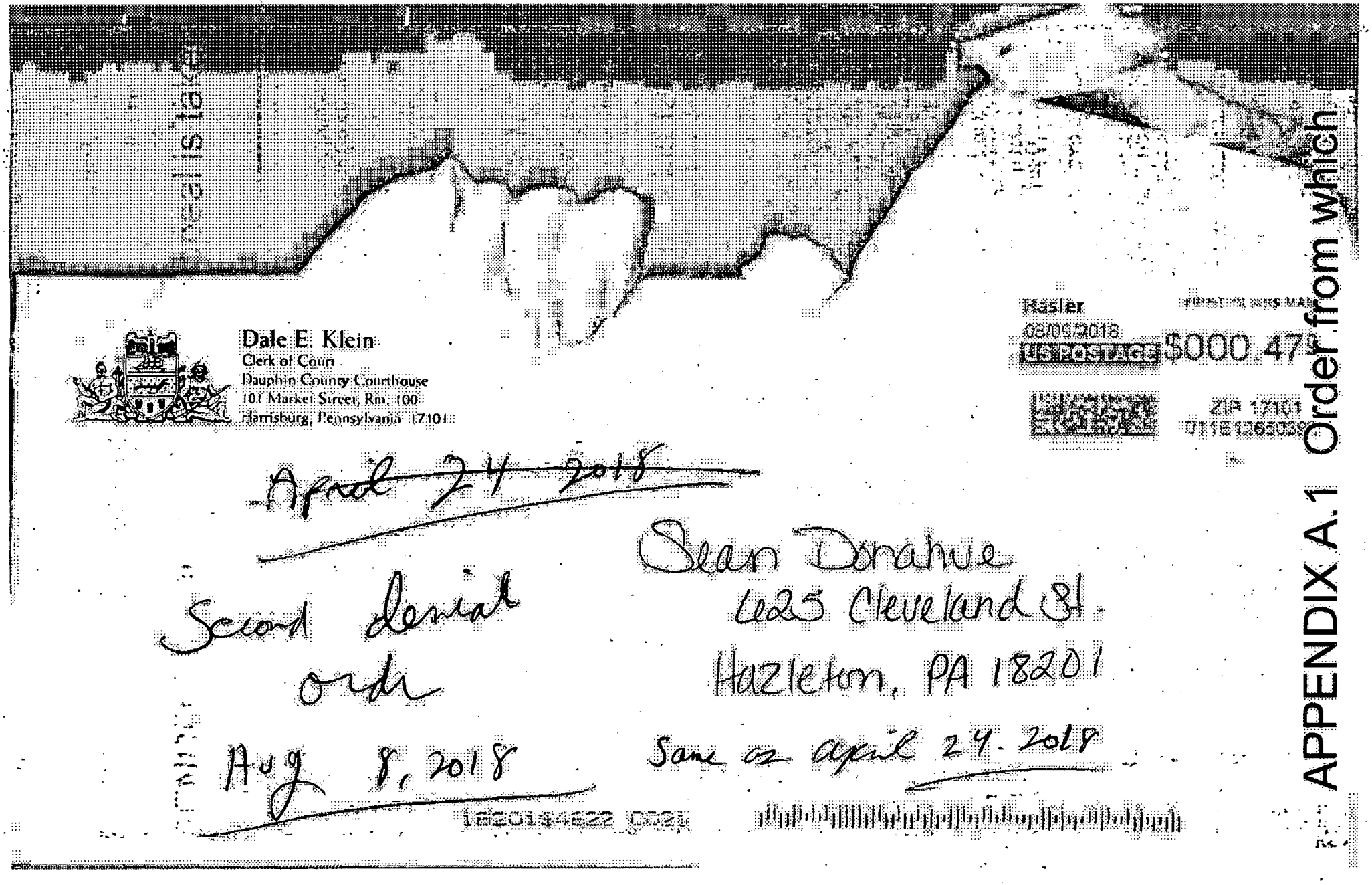
Deborah E. Curcillo

Deborah E. Curcillo, J.

Distribution:
Hon. Deborah E. Curcillo
Katie Adam, Esq., Dauphin County District Attorney's Office
Sean Donahue, 625 Cleveland St., Hazleton, PA 18201

2018 APR -3 AM 10:48

APPENDIX A.1 Order from which appeal is taken



Dale E. Klein
Clerk of Court
Dauphin County Courthouse
101 Market Street, Rm. 100
Harrisburg, Pennsylvania 17101

Kasler
03/05/2018
US POSTAGE $000.47
ZIP 17101
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April 24 2018

Second denial order

Aug 8, 2018

Sean Donahue
625 Cleveland St.
Hazleton, PA 18201

Same as April 24, 2018

APPENDIX A.1 Order from which

COMMONWEALTH OF PENNSYLVANIA	:	**IN THE COURT OF COMMON PLEAS**
	:	**DAUPHIN COUNTY, PENNSYLVANIA**
	:	
	:	**NO. 1417 MDA 2018**
v.	:	**3716 CR 2015**
	:	
SEAN M. DONAHUE	:	

TRIAL COURT STATEMENT IN LIEU OF OPINION
PURSUANT TO PA.R.A.P. 1925

AND NOW, this 19th day of November, 2018, having received the Notice of Appeal and Concise Statement of Errors from our order dated August 8, 2018, and having filed a Memorandum Opinion on the 4th day of September, 2018 and 15th day of October, 2018, this Court incorporates by reference our Memorandum Opinions, which detail the facts in this matter, which provides our reasons for concluding that the Appellant is not entitled to relief, and is the basis of our August 8, 2018 final order which denied the following requests of the Appellant: (1) nominal bail or stay of his sentence, (2) a request for production of full transcripts of all trial and all pretrial hearings, (3) a request for complete records on the jury, (4) a request for stay of his sentence to preserve the Post-Conviction Relief Act (PCRA), (5) a motion for the instatement/reinstatement of coram nobis procedure or similar procedure to allow for the post-conviction correction of state court errors when state post-conviction relief is not available, (6) a motion to quash a portion of the Post-Conviction Relief Act requiring Petitioners to still be serving a sentence and, (7) a motion to quash a portion of the Post-Conviction Relief Act preventing courts from entertaining a PCRA request in anticipation of the filing of a petition. Therefore, we will submit nothing further regarding this matter unless directed by the Superior Court of Pennsylvania.

Respectfully submitted:

which
Deborah E. Curcillo

Deborah E. Curcillo, Judge

Dated: 11/19/18

Distribution: 11/20/18
The Superior Court of Pennsylvania via mail
Hon. Deborah E. Curcillo ED
Ryan Lysaght, Esq., Dauphin County District Attorney's Office ED
James Karl, Dauphin County Public Defender's Office ED
Sean Donahue, 625 Cleveland St., Hazleton, PA 18201 via mail

...fully submitted:

COMMONWEALTH OF PENNSYLVANIA	:	**IN THE COURT OF COMMON PLEAS**
	:	**DAUPHIN COUNTY, PENNSYLVANIA**
	:	
v.	:	
	:	**1168 MDA 2018**
SEAN DONAHUE	:	**3716 CR 2015**
	:	

TRIAL COURT MEMORANDUM OPINION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(A)

Appellant, Sean Donahue ("Appellant" or "Mr. Donahue") appeals from this Court's Order dated April 18, 2018 which denied the Appellant permission to attend a potential job interview at the Pennsylvania Department of Labor and Industry. This opinion is written pursuant to Pa.R.A.P. 1925(a).

Procedural History

On April 2, 2018 Appellant filed a Motion requesting permission to attend a potential job interview. Thereafter on April 18, 2018, this Court issued an order denying the motion. On May 5, 2018, this Court received a timely Notice of Appeal filed with the Superior Court of Pennsylvania. This Court ordered Appellant on July 20, 2018, to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied with said Order on July 23, 2018.

Factual Background

On January 12, 2015, Appellant was charged with one count of first degree misdemeanor (terroristic threats)[1] and two counts of third degree misdemeanor (harassment)[2] for allegedly emailing threats to various Commonwealth employees and the media.

[1] 18 Pa.C.S.A. § 2706
[2] 18 Pa.C.S.A. § 2709(a)(4)

In July 2015, bail was set following the preliminary hearing. Shortly thereafter, a Petition for Habeas Corpus and a Petition for Release Pursuant to Rule 600 or, in the alternative, Petition for Bail Reduction were filed. They were both denied, with the denial of the Bail Reduction being reviewed by the Superior Court who denied the request.[3]

On April 18, 2016, a jury trial commenced. At trial, the jury was hung as to the terroristic threats charge, but found guilty on the two harassment charges. The district attorney immediately chose to nolle pros the terroristic threats charge.

The Commonwealth limited itself to using only 4 emails in its case in chief. Those four emails were each sent to roughly 50 individuals. Lisa Sauder and Mary Jane McMillan were both courtesy copy recipients of the emails. Mary Jane McMillan was in the "to" filed on one email.

The first email reads, in part:

> I now advise you that if you follow through and even entertain the slightest bit of a notion that you and the rest of the Commission have the jurisdiction necessary to pass judgment over my use of federal and state courts, I will pursue punishment of you, the remaining Commission members and the senior employees of the Commission for your even attempting to control access to the courts. By doing so, you will face the very same court actions that PA L&I now claims its employees faced and fear that they still face from me.
>
> That is a threat and I make that threat with the full confidence of Democracy and no fear whatsoever of the federal and state courts. Print this explicit unapologetic threat out and take it to your nearest FBI office or US Attorneys Office. You may take it to your local state Attorney Generals office and Magistrate as well, for I will show no respect for state level immunity for you in this matter.

The second email reads in part:

> Congratulations. You've one. The amount of money I spent on paper copies trying to fight your agency in the courts over the past decade has been more than enough to by a quality assault rifle and an ample supply of ammunition or explosive materials, all of which your staff, your employees and your affiliates accused me of

[3] See 63 MDA 2015

doing and all of which they repeatedly told police they feared. It was all bullshit and you knew it...And you won't even have the balls to walk into a courtroom and file a private criminal charge because you can't push the Court around like you can the civil service commission. You won't have to explain to a judge how you rectify my having spent so much money on civil court actions instead of just buying a $200 gun and $20 box of ammunition and killing your employees, like they accuse me of having been accusing me of having a propensity towards for about a decade...be grateful that your memory of me is associates with reams of paper and email complaints so that you don't have to remember me every time you walk past the hunting section of a department store, like your employees have accused me of for so long, when they should have been focused on getting me a job making enough money to repay those student loans that are going to be paid off by your law firm's income tax instead of my paycheck because I don't have a paycheck.

The third email read exactly as the second, with a nearly identical recipient list, in a different order.

The fourth email reads in part:

If L&I and the Civil Service Commission do not start obeying the law that grant me veterans preference for numerous employment related benefits, I am going to find a LEGAL way to pound the shit out of your government agencies and I am going to that method, whatever it is in whatever context makes it LEGAL, to pound your employees into submission until they stop denying me my benefits.

I hope all of you suffer terrible tragedies as you leave office, and I hope you suffer to a much greater degree than you arw actively causing in my life very day. I hope that all of you who are involved in manipulating the civil service laws to prevent me from being employed die in a terrible tragedy of your own doing. I hope each of you feels the regular daily pain that you have intentionally caused in my life for years and still cause today. As you move aggressively to cement that misery into my life before you leave office in January, think of Ferguson, think of the anger and frustration that government oppression is causing in our society...

I can't accomplish anything with a weapon. I need a unit. I need a militia of equally as frustrated Pennsylvanians and Americans who are fed up with being ignored by government...

Lisa Sauder testified that while she had communicated via email with Appellant over a period of years, the tone changed and she became alarmed. (Notes of Testimony, Jury Trial[4], p. 21). While Ms. Sauder's job required that she interact with people with grievances, she had never, in 26 years at her job, received emails like these before, referencing guns, and she was afraid. (N.T. 34-35). She felt the email was extremely angry and expressed a potential to do harm. (N.T. 45).

Mary Jane McMillan was also alarmed after receiving the emails. (N.T. 72). She had never received emails with that sort of language and was concerned enough to notify her supervisor's boss about them. (N.T. 72-73). She actually went above her supervisor's head because she was so concerned; normally she would have told her supervisor first. (N.T. 73).

Corporal Richard Schur was given the emails by state employees and he was assigned to investigate. He located Appellant and he ultimately charged Appellant in this case.

Appellant's Statement of Matters Complained of on Appeal

- The April 18, 2018 order is ineffective because the Appellant's sentence has "maxed out".
- The April 18, 2018 order is ineffective because the Court of Common Pleas of Luzerne County issued an order granting permission to attend a potential job interview on April 9, 2018.
- State agencies, specifically the Pennsylvania Department of Labor & Industry, cannot be victims of harassment; only individuals.
- The harassment statute was applied to the appellant in a manner that was overly broad and unconstitutional. Additionally, appellant asserts that he was subjected to unjust bias.

[4] Hereinafter "N.T."

- The appellant asserts that he was entrapped into sending the threatening emails to the Pennsylvania Department of Labor and Industry.
- Pennsylvania's criminal harassment statute[5] is unconstitutional because a New York statute with identical language was deemed to be unconstitutional by an Appellate Court in New York.[6]
- Appellant was tried under Pennsylvania's criminal harassment statute §2709(a)(3)[7] instead of §2709(a)(4), a crime for which the Appellant had not been formally charged.

Discussion

The April 18, 2018 order is effective despite Appellant's assertion that it is not. As a condition of the Appellant's sentencing, that was held immediately after the conclusion of his trial by jury, he was ordered by this Court to have no communication by any means with the individuals employed by the Department of Labor and Industry listed on the information. (N.T. 107). It is for this reason that this Court denied the Appellant's motion to attend the potential job interview. Additionally, it is for this reason that the April 18, 2018 order is still in effect.

Next, we address the Appellant's argument that the April 18, 2018 order is ineffective because of a conflicting order arising out of Luzerne County. "Judges of coordinate jurisdictions sitting in the same court and in the same case should not overrule the decisions of each other." *Okkerse v. Howe*, 521 Pa. 509 (1989). "The law of the case doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should

[5] 18 Pa. Cons. Stat. Ann. § 2709.
[6] People v. Golb, 23 N.Y.3d 455 (2014) N.Y. Penal Law § 240.30 (Consol.)
[7] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter." *City of Phila. v. Pa. PUC*, 720 A.2d 845 (Pa. Commw. Ct. 1998).

In the case at hand, neither the April 18, 2018 order from this Court nor the April 9, 2018 order from the Luzerne County Court of Common Pleas arose from the same case; charges from both counties arose from different incidents. Additionally, neither the Judge of this Court nor the Luzerne County Court are judges of coordinate jurisdictions. Both courts quite obviously are located in different counties and handle different cases. Thus, we believe that the Appellant is incorrect in his assertion that the April 18, 2018 order would be rendered ineffective simply because the Luzerne County Court of Common Pleas granted an identical motion.

Next, we will address the Appellant's third error complained of. In this case "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures." 18 Pa.C.S.A. § 2709(a)(4).

"Person" is defined as including:

> A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

1 Pa. C.S.A. § 1991.

The victims of the harassment in this case as alleged by the Appellant are employees of a government entity. It is clear from the definition of "person" that harassment against a "person" can include a government entity. Very clearly, the Department of Labor and Industry is a government agency. Thus, the appellant's contention that harassment cannot be committed against a government agency is incorrect based on the plain language of the statute.

Next, we address Appellant's assertion that the harassment statute was applied to him in an overly broad manner. "Evidence will be deemed sufficient to support the verdict when it

establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." *Commonwealth v. Smith*, 2004 PA Super 77, ¶ 24, 853 A.2d 1020, 1028 (2004)

In this case, Appellant wrote three distinct emails each of which could independently fulfill the elements of harassment as charged and defined in the jury instructions. In this case "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures." 18 Pa.C.S.A. § 2709(a)(4).

Appellant communicated with the victims via email. Over the course of three days, Appellant sent four emails to numerous people. In those emails, Appellant utilized capital letters, which are often commonly read as shouting. He wished "terrible tragedies" upon the recipients, and he referenced guns, armed uprisings, and indicated he was threatening the recipients with legal action.

In *Commonwealth v. Walls*, 144 A.3d 926 (Pa. Super. 2016) the Court found that there was sufficient evidence for a conviction of harassment under 18 Pa.C.S.A. 2709(a)(4) where the defendant approached the victim, spoke with her at length, caused her to back up and request that he leave her alone and then yelled that she caused his grandmother's death and she should be next. The victim suffered no physical contact or harm. That defendant was then escorted from

the store. The Court reasoned that unless you are attempting to harass or annoy an individual, there is no reason to do such a thing.

Similarly, in this case, there is no reason to send four relatively lengthy emails, which must have taken some time to compose, over such a short time period, if one does not intend to harass or annoy the recipients.

In *Walls*, the defendant indicated that the victim *should be* next. He did not indicate an imminent prospect of causing her harm. He wished future harm to happen to her and did not threaten to cause that harm himself.

Appellant in this case, wished future tragedies and harm upon the recipients of the emails. He even took it a step further in discussing how he should have just bought a rifle and ammunition, rather than waste time with the system. He promises the recipients punishment, nominally via the court, however, he then turns to indicate he promises he is making a threat and has no fear of the courts. He says the recipients should be grateful their memory of him is associated with boxes of papers not the hunting section of the store. These statements are inflammatory and clearly intended to alarm the recipients.

Much like the Court in *Walls*, we believe this type of behavior is exactly the type of behavior that the harassment statute is meant to prohibit.

In regards to the Appellant's entrapment argument, this Court cites the Pennsylvania Rules of Criminal Procedure and Appellate Procedure. Under §720(B)(1)(c) of the Rules of Criminal Procedure, "Issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion on those issues". Additionally, under the Pennsylvania Rules of Appellate Procedure 302(a), "Issues not raised in the lower

court are waived and cannot be raised for the first time on appeal". Pa. R. Crim. P. 720(B)(1)(c). Pa. R.A.P. 302(a)

In this case, at no point during trial did the Appellant ever raise the issue of entrapment in regards to the emails he sent to the victims. Therefore, the issue of entrapment was not preserved for appeal, and thus cannot be raised now. (N.T. 1-109).

Next, we will address the Appellant's contention of the constitutionality of Pennsylvania's and New York's criminal harassment statutes. Under the Tenth Amendment of The United States Constitution, it provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". USCS Const. Amend. 10.

In the case at hand, the Appellant asserts that because New York's criminal harassment statute was found to be unconstitutional; Pennsylvania's harassment statute should as well due to the similarities between the language used in both. While the language of the Pennsylvania and New York criminal harassment statutes are similar, states are free to create their own laws and regulations under the Tenth Amendment of the Constitution. Individual states are not required to follow in each other's footsteps, but are instead free to determine the laws followed within its jurisdiction. Therefore, the fact that New York has found its harassment statute to be unconstitutional bears no weight on the constitutionality of Pennsylvania's criminal harassment statute.

Finally, we address the Appellant's argument that he was tried for harassment under § 2709(a)(3)[8] instead of § 2709(a)(4). In making his argument the Appellant cites to many parts of the transcript that reference the phrase "course of conduct". The Appellant asserts that because

[8] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

this particular phrase was used throughout the trial, that he was tried for § 2709(a)(3)[9] instead of §2709(a)(4). In response, we would argue first that there was nothing presented by this Court nor either party that would suggest he was being tried under this alternate part of the harassment statute. Simply using the words "course of conduct" is not enough for the Appellant to make such a leap. The parts of the record to which the Appellant cites, is a conversation that was held outside of the jury's presence between this Judge and counsel regarding a potential double jeopardy issue. It was made clear to this Judge that there were not any double jeopardy issues because the charges arising out of Luzerne County were the result of emails being sent to a Luzerne County District Attorney and not from emails being sent to employees of the Department of Labor and Industry.

The Appellant's other citation to the record was to statements made by the Commonwealth during closing arguments; if the appellant took issue with the phrase "course of conduct" he should have objected to it, in order to preserve the issue on appeal. Pa. R. Crim. P. 720(B)(1)(c). Pa. R.A.P. 302(a)

Additionally, if there is any further confusion as to the offenses Appellant was charged with, the Appellant's docketing statement clearly shows that the Appellant was charged with two offenses under § 2709(a)(4) and not § 2709(a)(3).

For these reasons, we ask the Superior Court to uphold and affirm our judgment of sentence entered by this Court in denying the motion to attend the potential job interview.

[9] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

Respectfully submitted:

1168 MDA

Deborah E. Curcillo

Deborah E. Curcillo, Judge

Dated: 9-4-18

Distribution:
The Superior Court of Pennsylvania
Hon. Deborah E. Curcillo
Katie Adams, Esq., Dauphin County District Attorney's Office
James Karl, Dauphin County Public Defender's Office
Sean Donahue, 625 Cleveland St., Hazleton, PA 18201

Respectfully submitted

APPENDIX A.3 Trial Court Opinion 1168 MDA 2018

COMMONWEALTH OF PENNSYLVANIA	:	**IN THE COURT OF COMMON PLEAS**
	:	**DAUPHIN COUNTY, PENNSYLVANIA**
	:	
v.	:	
	:	**1329 MDA 2018**
SEAN DONAHUE	:	**3716 CR 2015**
	:	

TRIAL COURT MEMORANDUM OPINION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(A)

Appellant, Sean Donahue ("Appellant" or "Mr. Donahue") appeals from this Court's Order dated April 24, 2018, which denied the following requests of the Appellant: (1) nominal bail or stay of his sentence, (2) a request for production of full transcripts of all trial and all pretrial hearings, (3) a request for complete records on the jury, (4) a request for stay of his sentence to preserve the Post-Conviction Relief Act[1](PCRA), (5) a motion for the instatement/reinstatement of coram nobis procedure or similar procedure to allow for the post-conviction correction of state court errors when state post-conviction relief is not available, (6) a motion to quash a portion of the Post-Conviction Relief Act requiring Petitioners to still be serving a sentence and, (7) a motion to quash a portion of the Post-Conviction Relief Act preventing courts from entertaining a PCRA request in anticipation of the filing of a petition. This opinion is written pursuant to Pa.R.A.P. 1925(a).

Procedural History

On April 23, 2018 Appellant filed a Motion requesting the eight forms of relief listed above. Thereafter on April 24, 2018, this Court issued an order denying the motion. On August 22, 2018, this Court received a Notice of Appeal filed with the Superior Court of Pennsylvania.

[1] 42 Pa. Cons. Stat. Ann. § 9543

This Court ordered Appellant on August 29, 2018, to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied with said Order on September 10, 2018.

Factual Background

On January 12, 2015, Appellant was charged with one count of first degree misdemeanor (terroristic threats)[2] and two counts of third degree misdemeanor (harassment)[3] for allegedly emailing threats to various Commonwealth employees and the media.

In July 2015, bail was set following the preliminary hearing. Shortly thereafter, a Petition for Habeas Corpus and a Petition for Release Pursuant to Rule 600 or, in the alternative, Petition for Bail Reduction were filed. They were both denied, with the denial of the Bail Reduction being reviewed by the Superior Court who denied the request.[4]

On April 18, 2016, a jury trial commenced. At trial, the jury was hung as to the terroristic threats charge, but found guilty on the two harassment charges. The district attorney immediately chose to nolle pros the terroristic threats charge.

The Commonwealth limited itself to using only 4 emails in its case in chief. Those four emails were each sent to roughly 50 individuals. Lisa Sauder and Mary Jane McMillan were both courtesy copy recipients of the emails. Mary Jane McMillan was in the "to" filed on one email.

The first email reads, in part:

> I now advise you that if you follow through and even entertain the slightest bit of a notion that you and the rest of the Commission have the jurisdiction necessary to pass judgment over my use of federal and state courts, I will pursue punishment of you, the remaining Commission members and the senior employees of the Commission for your even attempting to control access to the courts. By doing so, you will face the very same court actions that

[2] 18 Pa.C.S.A. § 2706
[3] 18 Pa.C.S.A. § 2709(a)(4)
[4] See 63 MDA 2015

PA L&I now claims its employees faced and fear that they still face from me.

That is a threat and I make that threat with the full confidence of Democracy and no fear whatsoever of the federal and state courts. Print this explicit unapologetic threat out and take it to your nearest FBI office or US Attorneys Office. You may take it to your local state Attorney Generals office and Magistrate as well, for I will show no respect for state level immunity for you in this matter.

The second email reads in part:

Congratulations. You've one. The amount of money I spent on paper copies trying to fight your agency in the courts over the past decade has been more than enough to by a quality assault rifle and an ample supply of ammunition or explosive materials, all of which your staff, your employees and your affiliates accused me of doing and all of which they repeatedly told police they feared. It was all bullshit and you knew it...And you won't even have the balls to walk into a courtroom and file a private criminal charge because you can't push the Court around like you can the civil service commission. You won't have to explain to a judge how you rectify my having spent so much money on civil court actions instead of just buying a $200 gun and $20 box of ammunition and killing your employees, like they accuse me of having been accusing me of having a propensity towards for about a decade...be grateful that your memory of me is associates with reams of paper and email complaints so that you don't have to remember me every time you walk past the hunting section of a department store, like your employees have accused me of for so long, when they should have been focused on getting me a job making enough money to repay those student loans that are going to be paid off by your law firm's income tax instead of my paycheck because I don't have a paycheck.

The third email read exactly as the second, with a nearly identical recipient list, in a different order.

The fourth email reads in part:

If L&I and the Civil Service Commission do not start obeying the law that grant me veterans preference for numerous employment related benefits, I am going to find a LEGAL way to pound the shit out of your government agencies and I am going to that method, whatever it is in whatever context makes it LEGAL, to pound your employees into submission until they stop denying me my benefits.

> I hope all of you suffer terrible tragedies as you leave office and I hope you suffer to a much greater degree than you arw actively causing in my life very day. I hope that all of you who are involved in manipulating the civil service laws to prevent me from being employed die in a terrible tragedy of your own doing. I hope each of you feels the regular daily pain that you have intentionally caused in my life for years and still cause today. As you move aggressively to cement that misery into my life before you leave office in January, think of Ferguson, think of the anger and frustration that government oppression is causing in our society...
>
> I can't accomplish anything with a weapon. I need a unit. I need a militia of equally as frustrated Pennsylvanians and Americans who are fed up with being ignored by government...

Lisa Sauder testified that while she had communicated via email with Appellant over a period of years, the tone changed and she became alarmed. (Notes of Testimony, Jury Trial[5], p. 21). While Ms. Sauder's job required that she interact with people with grievances, she had never, in 26 years at her job, received emails like these before, referencing guns, and she was afraid. (N.T. 34-35). She felt the email was extremely angry and expressed a potential to do harm. (N.T. 45).

Mary Jane McMillan was also alarmed after receiving the emails. (N.T. 72). She had never received emails with that sort of language and was concerned enough to notify her supervisor's boss about them. (N.T. 72-73). She actually went above her supervisor's head because she was so concerned; normally she would have told her supervisor first. (N.T. 73).

Corporal Richard Schur was given the emails by state employees and he was assigned to investigate. He located Appellant and he ultimately charged Appellant in this case.

Appellant's Statement of Matters Complained of on Appeal

- The Appellant's request for nominal bail should have been granted.
- The Appellant's request for all jury information should have been granted.
- The elements of the Pennsylvania Post-Conviction Relief Act are overly broad.

[5] Hereinafter "N.T."

- The Appellant's counsel at trial was ineffective.
- The evidence presented at trial was tampered with by the Prosecutor because the same evidence was not presented during pre-trial procedures that was presented at trial.
- Various witnesses at trial, including police officers and employees of state agencies, lied on the stand and withheld information from the jury.
- The Prosecutor failed to introduce exculpatory evidence that would have undermined the testimony of various witnesses.
- This Court issued contradictory rulings to one of the Appellant's dockets in Luzerne County, where the docket was dismissed on a Writ of Habeas Corpus. Thus, this Court's rulings are ineffective.
- The Appellant was subjected to double jeopardy because the Appellant's cases arising out of Dauphin and Luzerne Counties were both the basis of claims asserted by the same state officials.
- The Appellant's request for instatement or reinstatement of coram nobis procedure should have been granted.
- The Appellant's motions to quash a portion of Pennsylvania's Post-Conviction Relief Act, which requires appellant's to still be serving a sentence to file, should have been granted.

Discussion

In addressing the Appellant's first issue complained of on appeal, nominal bail was properly denied. Pursuant to Rule 524 of the Pennsylvania Rules of Criminal Procedure[6] nominal bail is defined as:

[6] Pa. R. Crim. P. 524(C)(4)

> "Release conditioned upon the defendant's depositing a nominal amount of cash which the bail authority determines is sufficient security for the defendant's release, such as $ 1.00, and the agreement of a designated person, organization, or bail agency to act as surety for the defendant".

The Court in *Commonwealth v. Jones*, discussed the dual purposes of awarding bail which is: "(1) the protection of the accused's speedy trial rights, and (2) the protection of society". In this particular case, one of our greatest concerns was public safety. The Appellant is charged with various threats against society, specifically, Commonwealth employees, and references to obtaining firearms and bullets. This is repeated conduct as the Appellant has been arrested and charged with a similar crime in the past, though we acknowledge he has not been convicted. A mental health evaluation completed by the Appellant indicated that he is aware of what he has done, thus no mental health treatment could be provided which would help assuage our fears of future violence. Thus, this Court believes that nominal bail was properly denied for fear that Appellant would be a danger to the public.

We disagree with the Appellant's contention that his request for all of the juror member's personal information was reasonable and should have been granted. "In Pennsylvania, there is no list of jurors' names and addresses that becomes part of the public judicial record and jurors' names and addresses are not subject to a common law right of access".[7]

This Court clearly acted within its authority by denying the Appellant's request, as evidenced by the language in *Commonwealth v. Long*.[8] Additionally, if that is not enough to satisfy the Appellant, this Court again will cite to the importance of public safety as part of its reasoning for its denial of the Appellant's request for juror information. In this particular case, the Appellant was on trial for sending terroristic threats to employees of a government agency.

[7] *Commonwealth v. Long*, 922 A.2d 892 (Pa. 2007)
[8] 922 A.2d 892 (Pa. 2007)

Thus, this Court found it to be unreasonable to permit a request for such information, especially when the Appellant was initially charged with making threats against other individuals to begin with. Instead, this Court decided to protect those jury members who served an important function in the judicial process. Thus, this Court believes it was correct in denying the Appellant's request for juror information.

In addressing the Appellant's claim that the elements required under the Post-Conviction Relief Act are overbroad, this Court cites to the holding in *Commonwealth v. Dickson.*[9]

> In interpreting a statute, courts must ascertain and effectuate the intention of the Pennsylvania General Assembly. When statutory language is clear and free from all ambiguity, it generally furnishes the best indication of legislative intent; courts must not disregard the statutory language under the pretext of pursuing its spirit. Accordingly, a reviewing court should resort to other considerations to determine legislative intent only when the words of the statute are not explicit. Finally, while minding the other principles of statutory construction, courts must construe all penal provisions strictly in favor of defendants' liberty interests.

In this particular case, the Appellant is requesting that this Court make a determination that the portion of the Post-Conviction Relief Act requiring an individual to be currently serving a sentence of imprisonment, as overly broad. It is clear from the holding in *Dickson* that courts should refrain from trying to interpret the language of the statute when its language is free and clear from all ambiguity. For reference, the Post-Conviction Relief Act[10] provides the following:

> To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:
>
> (1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:
>
> (i) *currently serving a sentence of imprisonment, probation or parole for the crime* [emphasis added];
>
> (ii) awaiting execution of a sentence of death for the crime; or
>
> (iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

[9] 918 A.2d 95 (Pa. 2007)

[10] 42 Pa. Cons. Stat. Ann. § 9543(1)(i)

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

This Court chooses to refrain from interpreting the language of the Post-Conviction Relief Act in the manner requested by the Appellant. This is because this Court finds the statute to be very clear in its language and the need for interpretation lacking. It is very apparent by the language used in the Act that to assert claims under this Act, an individual must be currently serving a sentence of either imprisonment, parole, or probation. This Court will not disturb the plain meaning of the statute to satisfy the Appellant's desire to assert a claim pursuant to the Post-Conviction Relief Act when he no longer is eligible for this form of relief. Thus, we believe that that this Court's ruling denying the Appellant's motion to quash a part of the Post-Conviction Relief Act was proper.

Next, we will address the Appellant's assertion that his defense counsel was ineffective during his criminal trial. The Appellant, in his Concise Statement of Errors Complained of on Appeal, asserted ineffective assistance of counsel in issues thirteen, fourteen, eighteen, nineteen, twenty-one through thirty, and thirty-one through thirty-seven. This Court will not address these issues regarding ineffective assistance of counsel because the Appellant should have asserted these complaints through the proper channel; the Post-Conviction Relief Act. In *United States v. Cocivera*[11] the Court held that:

> The Third Circuit has long followed the practice of declining to consider a defendant's claim of ineffective assistance of counsel on direct appeal because the issue is ordinarily more appropriate for collateral attack. This affords the opportunity to develop a factual basis for the claim that counsel's performance did not meet the standard for effective assistance of counsel. It also gives the trial court the opportunity to hear counsel's explanation for the conduct at issue. Frequently, the direct appeal is handled by the same counsel who handled the trial, and it is patent that that counsel cannot forcefully argue ineffective assistance of trial counsel. However, in some cases there may be a sufficient record on appeal to decide the issue and avoid the considerable effort of requiring the defendant to institute a collateral proceeding in order to raise the ineffective assistance of counsel claim.

This Court is under the belief that the Appellant's ineffective assistance of counsel claims would be more properly handled if asserted through the Post-Conviction Relief Act. As stated above, the Appellant raised the issue of ineffectiveness numerous times in his Concise Statement of Errors on Appeal. It would be more appropriate to handle these issues in a collateral proceeding considering the multitude of claims the Appellant has made in regard to the ineffectiveness of his counsel. Additionally, in the instant case, there is a lack of factual basis in the trial transcript to support the Appellant's numerous claims of ineffectiveness.

[11] 104 F.3d 566 (3d Cir. 1996)

In regards to the Appellant's arguments that (1) the evidence at trial was tampered with, (2) various witnesses at trial lied on the stand and withheld relevant information, and (3) the Prosecutor failed to introduce exculpatory evidence; this Court finds all to be meritless. The Appellant has presented no evidence other than his own personal opinion to support such claims. This Court will not address such claims, because there is simply nothing in the record to suggest that any of these claims are true. The Prosecutor assigned to the Appellant's case even noted that all evidence presented on behalf of the Commonwealth was given to the Appellant's counsel prior to his criminal trial. (N.T. 22, 27, 35, 37) In addition to this, not once did the Appellant's counsel object to evidence that was presented by the Commonwealth. (N.T. 22, 28, 36, 44) There is nothing in the trial transcript or any information within this Court's knowledge that witnesses lied on the stand. If that was the belief of the Appellant, he should have communicated that to his attorney during the duration of his criminal trial, so that his trial counsel would be able to effectively cross examine said witnesses and eventually impeach their testimony. For the Appellant's argument regarding the prosecutor's failure to present exculpatory evidence, again there is nothing within this Court's knowledge that suggests any exculpatory evidence existed to support the Appellant. It was very clearly established that the emails sent to the Department of Labor and Industry employees were penned by the Appellant and there was no other evidence to suggest otherwise. (N.T. 22) Ultimately, this Court finds all of the Appellant's arguments regarding these claims to be meritless.

Next, we address the Appellant's assertion that because a Court in Luzerne County dismissed criminal charges against the Appellant, that this Judge is required to as well. "Judges of coordinate jurisdictions sitting in the same court and in the same case should not overrule the decisions of each other." *Okkerse v. Howe*, 521 Pa. 509 (1989). "The law of the case doctrine

refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter." *City of Phila. v. Pa. PUC*, 720 A.2d 845 (Pa. Commw. Ct. 1998).

In the case at hand, neither the ruling from this Court nor the dismissal of charges ordered by a Luzerne County Court of Common Pleas arose from the same case. The charges against the Appellant in Luzerne County arose from threatening emails sent to the Luzerne County District Attorney. (N.T. 10-13) Charges from this County arose out of threatening emails sent by the Appellant to employees of the Department of Labor and Industry. *Id.* Additionally, neither the Judge of this Court nor the Luzerne County Court are judges of coordinate jurisdictions. Both courts, quite obviously, are located in different counties and handle different cases. Thus, we believe that the Appellant is incorrect in his assertion that this Court's ruling denying his various requests would be rendered ineffective simply because the Luzerne County Court of Common Pleas dismissed the charges against the Appellant.

Next, we address the Appellant's claim that he was subjected to double jeopardy. The Fifth Amendment of the United States Constitution states in relevant part that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; *nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb* [emphasis added]; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This Judge had a conversation with both trial attorney's regarding this matter on the record. (N.T. 10-13) As stated above, it was made clear that the Appellant's charges arising out of Luzerne County were the result of the Appellant sending threatening emails to the District

Attorney in Luzerne County. Whereas the Dauphin County charges arose out of threatening emails sent to employees of the Department of Labor and Industry. Thus, we submit that there was no double jeopardy issue present because both charges arose from different crimes committed by the Appellant.

This Court properly denied the Appellant's request to instate or reinstate coram nobis. "The purpose of the writ of coram nobis is to bring before the court rendering the judgment matters of fact which if known at the time the judgment was rendered would have prevented its rendition. It lies to correct errors in fact only, and will not lie to correct errors in law, nor will it lie to permit the review of a judgment for after discovered evidence".[12]

In the Appellant's case, there were no new factual discoveries made that would have warranted a change in the Appellant's case. Simply put, the facts of the Appellant's case have remained unchanged since the judgment in his case has been rendered. Thus, this Court believes that it properly denied the Appellants request for coram nobis.

Finally, we will address the Appellant's argument that this Court should have granted his motion to quash a requirement of the Post-Conviction Relief Act. The portion of the Act that the Appellant asked this Court to quash was the requirement that an individual must still be serving their sentence in order to file a PCRA. However, this Court will rely on its previous argument in addressing this claim. Again, because this Court sees no vague language used in the text of the Post-Conviction Relief Act, it will not disturb the plain and unambiguous language of the Post-Conviction Relief Act. As mentioned above the Court in *Commonwealth v. Dickson*[13] said the following in its discussion of interpretation of statutes by a court:

[12] *Commonwealth v. Harris*, 41 A.2d 688 (Pa. 1945)

[13] 918 A.2d 95 (Pa. 2007)

> In interpreting a statute, courts must ascertain and effectuate the intention of the Pennsylvania General Assembly. When statutory language is clear and free from all ambiguity, it generally furnishes the best indication of legislative intent; courts must not disregard the statutory language under the pretext of pursuing its spirit. Accordingly, a reviewing court should resort to other considerations to determine legislative intent only when the words of the statute are not explicit. Finally, while minding the other principles of statutory construction, courts must construe all penal provisions strictly in favor of defendants' liberty interests.

As this Court mentioned above, it will not disturb the plain meaning of an Act that appears on its face to be very clear in its meaning.

For these reasons, we ask the Superior Court to uphold and affirm our judgment of sentence entered by this Court on April 24, 2018 denying the Appellant's various requests.

Respectfully submitted:

Deborah E. Curcillo, Judge

Dated: 10-15-18

Distribution:
The Superior Court of Pennsylvania
Hon. Deborah E. Curcillo
Katie Adams, Esq., Dauphin County District Attorney's Office
Ryan Lysaght, Esq., Dauphin County District Attorney's Office
James Karl, Dauphin County Public Defender's Office
Sean Donahue, 625 Cleveland St., Hazleton, PA 18201

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 47 MAL 2019
Respondent	:	Application for Reconsideration
v.	:	
SEAN M. DONAHUE,	:	
Petitioner	:	

ORDER

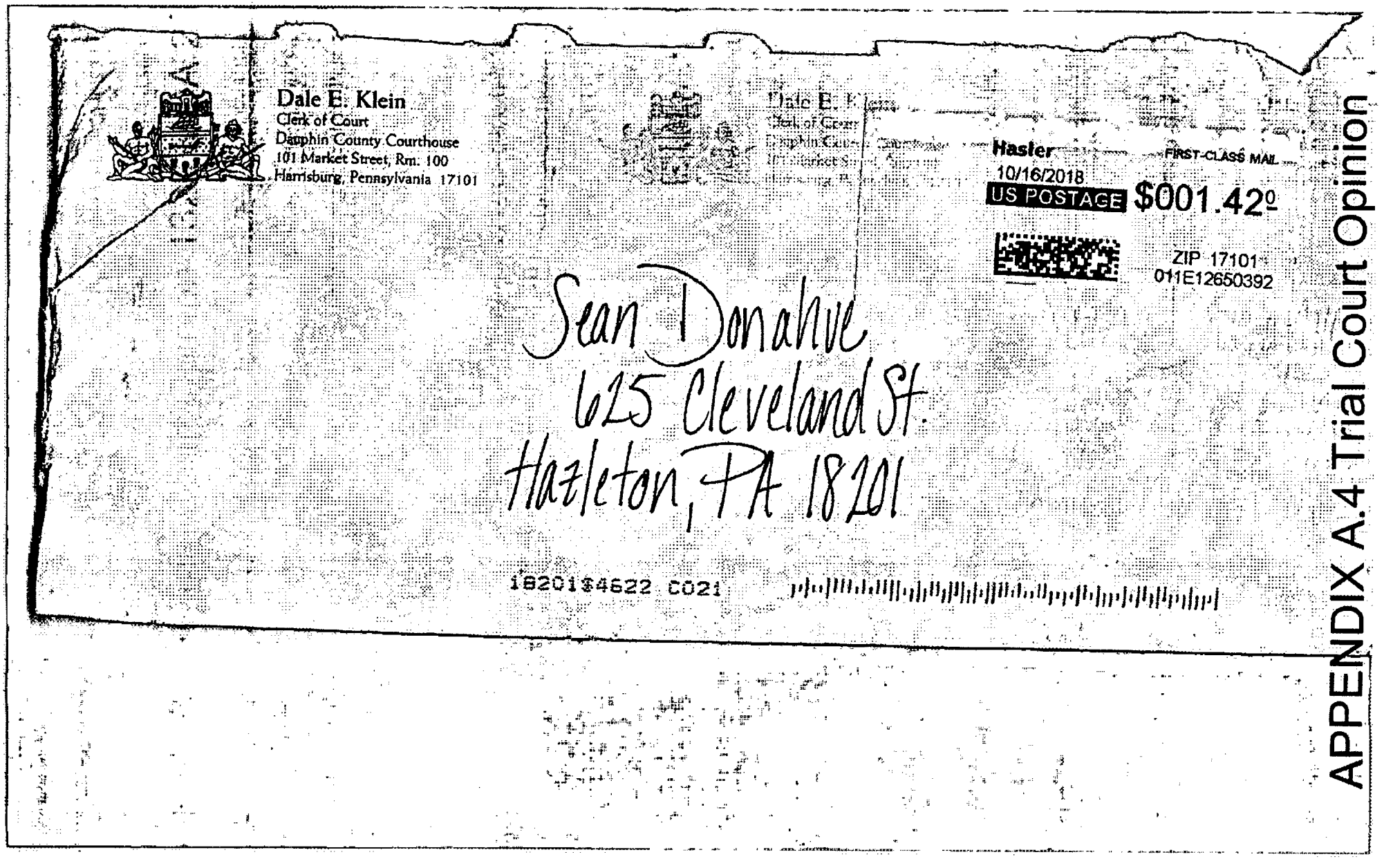
PER CURIAM

AND NOW, this 8th day of August, 2019, the Application for Reconsideration is denied.

A True Copy Heather Schroeder
As Of 08/08/2019

Attest:
Appellate Court Clerk
Supreme Court of Pennsylvania

APPENDIX B.1 Certified Copy - Order Denying



Dale E. Klein
Clerk of Court
Dauphin County Courthouse
101 Market Street, Rm. 100
Harrisburg, Pennsylvania 17101

Haster
10/16/2018
US POSTAGE $001.42⁰
FIRST-CLASS MAIL
ZIP 17101
011E12650392

Sean J Donahue
625 Cleveland St.
Hazleton, PA 18201

18201$4622 C021

APPENDIX A.4 Trial Court Opinion

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Respondent	No. 47 MAL 2019
v.	Petition for Allowance of Appeal from the Order of the Superior Court
SEAN M. DONAHUE, Petitioner	

ORDER

PER CURIAM

AND NOW, this 9th day of July, 2019, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 07/09/2019

Attest:
Chief Clerk
Supreme Court of Pennsylvania

Filed 12/14/2018

IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

er Denying

COMMONWEALTH OF PENNSYLVANIA	:	No. 1417 MDA 2018
v.	:	
SEAN M. DONAHUE	:	
Appellant	:	

ORDER

Filed

Upon consideration of Appellant's application for reconsideration of this Court's December 7, 2018 order, the application is hereby **DENIED**.

2018
PER CURIAM

or reconsideration of th
ereby **DENIED**.

PER CURIAM

APPENDIX C.1 Order Denying Application for

IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:	No. 1417 MDA 2018
v.	:	
SEAN M. DONAHUE	:	
Appellant	:	

ORDER

On April 24, 2018, the Court of Common Pleas of Dauphin County entered its order that denied Appellant's Motion for Nominal Appeal Bail, Request for Production of Full Transcripts of Trial and All Pre-trial Hearings, Request for Complete Records on Jury, Request for Stay of Sentence to Preserve PCRA, Motion for Instatement/Reinstatement of STATE Coram Nobis Procedure, three Motions to Quash Portions of PCRA, and Application for Relief. Appellant filed a *pro se* "Petition for Review" in this Court at 39 MDM 2018 on May 7, 2018, which this Court directed be docketed in the trial court as a notice of appeal filed on that date. The notice was then docketed in this Court at 1329 MDA 2018.

Review of Appellant's docketing statement and the trial court docket indicates that the trial court's April 24, 2018 order was entered a second time on the trial court docket on August 8, 2018. Appellant filed the instant notice of appeal on August 22, 2018, from the order entered on August 8, 2018. The appeal was docketed at 1417 MDA 2018, as the instant appeal.

An appeal lies only from a final order unless otherwise permitted by rule or statute. ***McCutcheon v. Philadelphia Electric Co.***, 788 A.2d 345 (Pa. 2002); ***Pa.R.A.P. 341(b)(1)*** (final order is any order that disposes of all claims and all parties). In a criminal case, the final order is the judgment of sentence. ***Commonwealth v. Harper***, 890 A.2d 1078 (Pa. Super. 2006).

Through this Court's order of October 5, 2018, Appellant was directed to show cause, within 10 days of the date of this order, why the instant appeal, docketed at 1417 MDA 2018, should not be quashed as taken from an unappealable order and as duplicative of the appeal docketed at 1329 MDA

APPENDIX C.2 Quash Sua Sponte (1)

2018. Appellant filed a response, but did not present legal argument to justify this Court's jurisdiction. Therefore, the above-captioned appeal is hereby **QUASHED**.

PER CURIAM

Additional material from this filing is available in the Clerk's Office.