

No. 21-7152

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY HEATH BARNEY,
PETITIONER

v.

PENNSYLVANIA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE PENNSYLVANIA SUPREME COURT

PETITION FOR REHEARING

Jermy Barney LR0433
Paralegal/Legal Assistant
Pro se Litigate
SCI-Forest
286 Woodland Drive
PO Box 307
Marienville, PA 16239

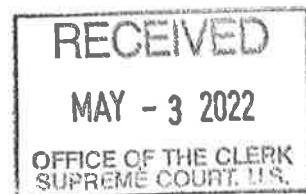


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PETITION FOR REHEARING

COMES NOW Petitioner, Jermey Barney, Pro se Litigate, and prays this Court to Grant Rehearing pursuant to **Rule 44**, and thereafter Grant Jermey a Writ of Certiorari to review the opinion of the Pennsylvania Superior Court, in denying Jermey his 14th Amendment Right to challenge his Final Order/New Judgment after being resentenced. In support of petition, Jermey states the following.

Statement of Facts

Jermey was found guilty on April 28, 2014. Jermey was sentenced to a mandatory minimum sentence of 20 to 40 years incarceration on August 1, 2014. A Final Order/New Judgment was created to authorize Jermey's current confinement. Jermey filed a PCRA on September 23, 2016, claiming his sentence was illegal and unconstitutional, among other claims. The lower Court vacated and voided Jermey's sentence as the mandatory minimum sentencing scheme was declared illegal and unconstitutional.

Jermey was resentenced on March 6, 2018 without the

mandatory minimum sentences. Jermey filed a Direct Appeal attacking the Final Order/New Judgment that was created on March 6 to incarcerate Jermey to a 20 to 40 years incarceration. Jermey challenged his Final Order/New Judgment through the avenue of his conviction and sentence.

The Superior Court denied Jermey's Direct Appeal on October 25, 2020 by stating:

"Appellant may not challenge his underlying conviction, the scope of his appeal is limited to issues relating to his March 6, 2018 resentencing. Accordingly, Appellant's first issue is without merit" See Appendix B, Pg. 6 (emphasis added)

Jermey filed an Allowance of Appeal to the Pennsylvania Supreme Court on January 25, 2020. The Court denied the Allowance of Appeal on July 7, 2021. Then Jermey filed for a Writ of Certiorari on September 15, 2021 and it was denied on April 4, 2022.

Reasons Meriting Rehearing

1. First and foremost, the 14th Amendment gives Jermey and any other Defendant the right to challenge the Final Order/New Judgment that authorizes their current incarceration.

This is just not a Jermey issue, this issue effects every Defendant that has been resentenced.

2. Pennsylvania has created a practice that violates this Courts ruling in Deal v. United States, 505 US 129, 132(1993) ("A judgment of conviction includes both the adjudication of guilt and the sentence").

This Court has repeatedly stated, a conviction and a sentence creates one judgment and that judgment is what authorizes a Defendants incarceration but Pennsylvania has created a practice that separates one judgment into two judgments, a conviction judgment and a sentence judgment.

This practice is in violation of the Constitution and this Courts practices, unless this Courts steps in and corrects this error on the Pennsylvania Courts, Defendants like Jermey will suffer loss. Loss of Life and Liberty, the loss of Constitutional rights and the loss of the rights to petition the Courts for redress.

3. Even the Federal Courts are divided or silent on this issue, this issue effects all Court, whether State or Federal. Under the 14th Amendment and the Supreme Court **Rule 10**, this issue

can be resolved by this Court for both the State and the Federal Courts.

4. This issue has not been addressed by this Court and its this Courts duty to the Citizens of this Nation, including those who are incarcerated, to establish the law of the land and to ensure that all Courts follow the dictates of that law, whether established by this Court or by the Constitution of the United States.

Suggestions In Support of Rehearing

In addressing this issue, Jermey has a Constitutional right to challenge the Final Order/New Judgment that was created to authorize his current confinement after being resentenced, whether through the conviction or sentence.

When you look at this issue in simple terms, the resentencing Final Order/New Judgment replaces the original Final Order/New Judgment. When that occurs, the Final Order/New Judgment that was given at the resentencing hearing receives all the privileges that the first Final Order/New Judgment had, this includes using the conviction avenue on Direct Appeal to

challenge the newly created authorization. The resentencing Final Order/New Judgment is the same as the first Final Order/New Judgment, the two are one and the same.

The problem is, the Courts have looked at the Final Order/New Judgment in the wrong way. The Courts have always seen a Final Order/New Judgment as creating two separate and distinct judgments, a conviction judgment and a sentence judgment and not as *one complete judgment that authorizes a Defendant's incarceration.*

The correct way of looking at a Final Order/New Judgment is *by focusing on the Final Order/New Judgment that was created.* The Final Order/New Judgment has two avenues or pathways a Defendant can use to challenge the Final Order/New Judgment that has authorized their confinement.

Either avenue can invalidate the Final Order/New Judgment, it is the invalidation of the Final Order/New Judgment that releases a Defendant from the authorization of incarceration, whether that is a resentence, new trial or permanent release.

The Courts focus on the avenues to deny a Defendant the

right to invalidate the authorization of incarceration, when the focus should be on the Final Order/New Judgment that grants the authorization to take away an individuals Liberty rights.

As this Court said in Magwood v. Patterson, 561 US 320, 332-333(2010), the focus is on the Defendants "application", not his claims and on the State Courts "judgment", not the sentence of conviction. By looking at this issue in the correct way, can the Constitution be upheld.

The dilemma of not addressing this issue, the State and Federal Courts are going to remain in conflict over this subject. Defendants, like Jermey, are going to continue to suffer loss after winning their appeal to be resentenced but then not being able to continue their appeal to fight for greater relief, like a new trial or complete release through other claims,

Defendants, like in Jermey's case, are going to have to fight separate judgments at the sametime, this is confusing to a Defendant who is pro se and to the Courts who has to deal with keeping track of two separate judgments for appeal purposes, this only clogs up the system and makes it harder for Jermey and

other Defendants to focus on their appeal.

For example, Jermey has his PCRA appeal from August 1, 2014 judgment still pending in the PCRA Court and now Jermey has to fight his sentence judgment from March 6, 2018, which is pending this appeal.

In other cases, a Defendant gets a resentencing when he could have been entitled to a greater relief but the resentencing foreclosed that Defendants opportunity to have their other claims addressed for greater relief, like a new trial or complete dismissal.

Only this Court can make a Difference by changing the wrong outlood on a Final Order/New Judgment to its correct perspective, making it possible for Jermey and other Defendants across the Nation to *invalidate the authorization of the Final Order/New Judgment after being resentenced* by using one or both avenues of the Final Order/New Judgment.

CONCLUSION

For the reasons stated, Jermey seeks this Court to Grant Rehearing of its judgment entered on April 4, 2022 and issue a

Writ of Certiorari to address whether or not Jermey and all other Defendants can use the avenue of conviction on Appeal after being resentenced to invalidate the authorization that currently incarcerates them.

Respectfully Submitted,

Date: April 23, 2022



Jeremy Barney LR0433
Paralegal/Legal Assistant
Pro se Litigate
SCI-Forest
286 Woodland Drive
PO Box 307
Marienville, PA 16239

No. 21-7152

IN THE SUPREME COURT OF THE UNITED STATES

JERMEY HEATH BARNEY,
PETITIONER

v.

PENNSYLVANIA,
RESPONDENT

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, Jermey Barney, and makes certification that this petition for rehearing is presented to this Court in good faith pursuant to **Rule 44**. Jermey further states the following:

1. This Court entered its judgment denying petitioner a Writ of Certiorari on April 4, 2022. Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay.

2. Petitioner believes that his issue is not just about him but about all Defendants across the United States that will be denied Due Process after being resentenced by not being able to fully and completely challenge the Final Order/New Judgment that has authorized their current confinement.

3. Petitioner believes that the United States Supreme Court **Rule 10** applies in this particular case. Petitioner further believes that if one Justice would read this petition, they would see the importance of this issue on a National scale.

4. Petitioner believes that based upon the 14th Amendment and facts of this case, Jermey is entitled to relief which has been denied him.

5. Finally, Petitioner believes that if Pennsylvania Courts are allowed to continue to apply two separate judgments, a multitude of Defendants will be denied their Constitutional rights to Due Process after being resentenced.

I declare under the penalty of perjury that the foregoing is true and correct.

Excuted on this 23 day of April 2022.



Jeremy Barney LR0433
Paralegal/Legal Assistant
Pro se Litigate
SCI-Forest
286 Woodland Drive
PO Box 307
Marienville, PA 16239

CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing was mailed to the following below by USPS on this 23 day of April 2022.

Office of the Clerk
Supreme Court of the United States
Washington DC, 20543-0001

Andrew J. Gonzalez
Office of the District Attorney
50 North Duke Street
PO Box 83480
Lancaster, PA 17608-3480

Jermy Barney LR0433
Paralegal/Legal Assistant

APPENDIX A

Order Denying Certiorari

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 4, 2022

Mr. Jeremy Heath Barney
Prisoner ID #LR0433
SCI Forest
P.O. Box 307
Marienville, PA 16239

Re: Jeremy Heath Barney
v. Pennsylvania
No. 21-7152

Dear Mr. Barney:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

APPENDIX B

Opinion of Pennsylvania Superior Court

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v.
:
:
:
JEREMY HEATH BARNEY
:
Appellant : No. 640 MDA 2018

Appeal from the Judgment of Sentence March 6, 2018
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0005676-2012

BEFORE: DUBOW, J., NICHOLS, J., and MUSMANNO, J.

MEMORANDUM BY DUBOW, J.:

FILED OCTOBER 15, 2020

Appellant, Jeremy Heath Barney, appeals from the Judgment of Sentence imposed on March 6, 2018, following his jury conviction of one count of Rape of a Child, one count of Involuntary Deviate Sexual Intercourse ("IDSI") with a Child, and several related crimes.¹ After careful review, we affirm in part, vacate in part, and remand for proceedings consistent with this Memorandum.

Between January and December 2008, on more than one occasion, Appellant raped and otherwise sexually abused the victim, his paramour's five-year-old son. Police arrested Appellant after the victim revealed the abuse to his daycare providers.

¹ A jury convicted Appellant of Rape of a Child, IDSI with a Child, two counts of Indecent Assault, Criminal Solicitation, Unlawful Contact with a Minor, and Corruption of Minors. 18 Pa. C.S. §§ 3121(c), 3123(b), 3126(a)(7), 902(a), 6318(a)(1), and 6301(a)(1), respectively.

Following trial in April 2014, a jury convicted Appellant of the charges set forth above. On August 1, 2014, the trial court sentenced Appellant to an aggregate term of twenty to forty years of incarceration. The sentence included a mandatory minimum sentence for Appellant's IDSI with a Child conviction. Following Appellant's timely appeal, this Court affirmed his Judgment of Sentence. **Commonwealth v. Barney**, 120 A.3d 1064 (Pa. Super. 2015) (unpublished memorandum), *appeal denied*, 124 A.3d 308 (Pa. 2015).

In June 2016, our Supreme Court determined that the application of a mandatory minimum sentence for IDSI with a Child was unconstitutional. **Commonwealth v. Wolfe**, 140 A.3d 651, 660-63 (Pa. 2016). In September 2016, Appellant *pro se* filed a Petition pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546.² The trial court thereafter vacated Appellant's original sentence and resentenced Appellant to an aggregate term of twenty to forty years of incarceration. Regarding Appellant's conviction for IDSI with a Child, the court relied upon the sentencing guidelines and imposed a standard range sentence of ten to twenty years of incarceration.

² Appellant's Petition does not appear in the certified record, but the Lancaster County Docket confirms its filing. On October 20, 2016, the court appointed counsel and granted leave to file an amended Petition. The record does not disclose whether counsel filed an amended Petition, nor is there an Order disposing of Appellant's *pro se* Petition. Nevertheless, on August 8, 2017, the court issued an Order, scheduling a resentencing hearing for Appellant pursuant to **Wolfe**, *supra*.

Appellant timely filed a Post-Sentence Motion, which the trial court denied on April 4, 2018. Appellant timely appealed and filed a court-ordered Pa.R.A.P. 1925(b) Statement. The court issued a responsive Opinion.

On November 30, 2018, appointed counsel filed an Application for Remand, requesting a **Grazier** Hearing.³ According to counsel, Appellant wished to proceed *pro se* in order to raise issues "previously litigated in the original direct appeal, waived by not inclusion in the original direct appeal, as well as issues which are only cognizable in a timely filed PCRA [and] which can be filed subsequent to the disposition of this [current] appeal." Application for Remand, 11/30/18, at ¶3.

On December 21, 2018, we granted counsel's Application for Remand. Upon remand, the trial court conducted a **Grazier** hearing and determined that Appellant had waived the right to counsel. Thus, Appellant proceeded *pro se* with his appeal.

On January 29, 2019, Appellant *pro se* filed an Application for Relief, requesting remand so he could file an amended Pa.R.A.P. 1925(b) Statement in order to preserve an argument that **Magwood v. Patterson**, 561 U.S. 320 (2010), authorized "a challenge to his unaffected conviction after being resentenced." Application for Relief, 1/29/19, at 2 (unpaginated).

On February 11, 2019, we granted Appellant's Application for Relief and remanded to the trial court. Upon remand, Appellant filed an Amended

³ **Commonwealth v. Grazier**, 713 A.2d 81 (Pa. 1988).

Pa.R.A.P. 1925(b) Statement, citing **Magwood, supra**, and raising four substantive issues, three challenging his underlying conviction and one challenging the imposition of costs following his resentencing. The trial court issued a Supplemental Opinion in response.

Appellant raises the following issues on appeal, restated for clarity:

1. Whether Appellant's resentencing created a new Judgment subject to direct appeal pursuant to **Magwood v. Patterson**, 561 U.S. 320 (2010);
2. Whether the Commonwealth violated Appellant's due process rights by suppressing and destroying mandatory discovery pursuant to **Brady v. Maryland**, 373 U.S. 83 (1963);
3. Whether the Commonwealth violated Appellant's due process rights by failing to allege and prove a date for his crimes with reasonable certainty pursuant to **Commonwealth v. Devlin**, 333 A.2d 888 (Pa. 1975);
4. Whether the evidence was sufficient to support the verdict of the jury pursuant to **Commonwealth v. Robinson**, 817 A.2d 1153 (Pa. [Super.] 2003); and
5. Whether the resentencing court erred when it directed Appellant to pay court costs related to his resentencing hearing pursuant to **Commonwealth v. Lehman**, 201 A.3d 1279 (Pa. Super. 2019).

See Appellant's Br., 5/21/19, at 8-9.⁴

⁴ As noted, *supra*, after this Court granted Appellant's request for a second remand, Appellant filed an amended Pa.R.A.P. 1925(b) Statement, raising four entirely new issues for appellate review. **Compare** Amended Pa.R.A.P. 1925(b) Statement, 2/25/19, **with** Pa.R.A.P. 1925(b) Statement, 5/18/18. Appellant did not reference, incorporate, or otherwise preserve the issues raised by his prior, appointed appellate counsel. Accordingly, Appellant abandoned those claims, and we deem them waived. **See** Pa.R.A.P. 1925(b)(4); **see generally Commonwealth v. Jette**, 23 A.3d 1032 (Pa. 2011) (holding an appellant is not entitled to hybrid representation);

In his first issue, Appellant asserts that a Judgment of Sentence consists of both a conviction and a sentence. *Id.* at 16. According to Appellant, when the trial court resentenced him on March 6, 2018, the scope of his appeal encompassed both the new sentence imposed as well as the merits of his underlying conviction. *See id.* at 16-24. Appellant is incorrect.

When a trial court resents a defendant in order to correct an illegal sentence, the defendant may not file a direct appeal attacking his underlying conviction. **Commonwealth v. Cook**, 175 A.3d 345, 350 (Pa. Super. 2017). The scope of an appeal is limited to issues pertaining to the resentencing procedure. **Commonwealth v. Anderson**, 801 A.2d 1264, 1266 (Pa. Super. 2002).

In support of his claim, Appellant relies on **Magwood**, *supra*.⁵ In that case, the Supreme Court considered procedural limitations on a petitioner's right to allege constitutional defects in a new sentence. **Magwood**, 561 U.S. at 323-24. The Court did not recognize the right of a criminal defendant to challenge his underlying conviction following re-sentencing proceedings. Indeed, the Court clarified that "Magwood has not attempted to challenge his underlying conviction." *Id.* at 342. **Magwood** is factually and legally

Commonwealth v. Ray, 134 A.3d 1109, 1114-15 (Pa. Super. 2016) (citation omitted) (reiterating that a *pro se* litigant must comply with the Pennsylvania Rules of Appellate Procedure and observing that one who chooses to represent himself "assumes the risk that his lack of legal training will place him at a disadvantage.").

⁵ The trial court declined to address this argument. *See* Trial Ct. Supplemental Opinion, 3/26/19, at 3-4.

distinguishable from the instant case. Thus, Appellant's reliance upon it is misplaced.

Because Appellant may not challenge his underlying conviction, the scope of his appeal is limited to issues related to his March 6, 2018 resentencing. Accordingly, Appellant's first issue is without merit.

In his second, third, and fourth issues, Appellant raises issues relevant to his underlying conviction. Specifically, he challenges the sufficiency of the evidence introduced at trial and asserts that the Commonwealth withheld exculpatory evidence. **See** Appellant's Br. at 25, 34, 44. For the reasons noted above, these issues are beyond the permissible scope of this appeal. Thus, we decline to address them.

In his fifth issue, Appellant contends that the trial court erred when it imposed court costs related to his resentencing. ***Id.*** at 54. We agree.

Appellant's claim implicates the legality of his sentence. ***Commonwealth v. Lehman***, 201 A.3d 1279, 1283 (Pa. Super. 2019), *appeal granted*, 215 A.3d 967 (Pa. June 25, 2019). We review an illegal sentencing claim *de novo*, and our scope of review is plenary. ***Commonwealth v. White***, 193 A.3d 977, 985 (Pa. Super. 2018).

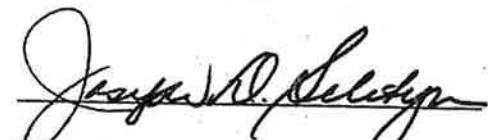
"A defendant does not . . . reasonably expect to be financially responsible for the costs associated with resentencing necessitated by changes in law many years later." ***Lehman***, 201 A.3d at 1287. Thus, the trial court lacks authority to impose costs associated with resentencing a defendant where the prior sentence was illegal. ***Id.***

The trial court concedes that it erred when it sentenced Appellant to pay costs associated with his resentencing because his resentencing resulted from our Supreme Court's determination that the mandatory minimum sentence authorized by statute and imposed for IDSI convictions was illegal. **See** Trial Ct. Supplemental Op. at 4.

We agree with the trial court's analysis. Appellant is not responsible for the costs associated with his resentencing because the Supreme Court deemed the law authorizing his initial sentence illegal. Accordingly, we vacate that portion of his Judgment of Sentence and remand for further proceedings consistent with this Memorandum. We affirm in all other respects.

Judgment of Sentence affirmed in part and vacated in part. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/15/2020

APPENDIX C

Motion for Leave to Proceed In Forma Pauperis

No. 21-7152

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY HEATH BARNEY,
PETITIONER

vs.¶

SUPERINTENDENT OBERLANDER, SCI-FOREST,
RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

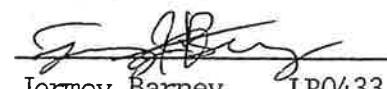
Petitioner has previously been granted leave to proceed in forma pauperis in the following court(s):¶

Lancaster County Court of Common Pleas
Pennsylvania Superior Court

Petitioner's affidavit or declaration in support of this motion is attached hereto.

I declare under penalty of perjury that the following is true and correct.

Executed on September 15, 2021


Jeremy Barney, LR0433

**AFFIDAVIT OR DECLARATION IN SUPPORT
OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

I, Jermey Barney, am the petitioner in the above-entitled case. In support of my motion to proceed in forma pauperis, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For you, estimate the average amount of money received from each of the following sources during the past 12 months. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Employment	\$35.00 a month average the past 12 months
Gifts	\$5.00 a month average the past 12 months
Total monthly income:	\$40.00 a month average the past 12 months

2. List your employment for the past two years, most recent first!

Pennsylvania Department of Corrections
SCI-Forest
PO Box 307
Marienville, PA 16239
\$60.00
Date of Employment: 8/14/2014

3. Jermey Barney does not have a spouse.

4. How much cash do you have? \$0.00

State any money you have in bank accounts or in any other financial institution.
None

5. List the assets, and their values, which you own. Do not list clothing and ordinary household furnishings.

None

6. States every person, business, or organization owing you money, and the amount.
None

7. State the persons who rely on you for support.

J. B. Son 16 years old

8. Estimate the average monthly expenses you have.

Telephone	\$10.00 a month
Cable	\$17.00 a month
Food	\$20.00 a month
Legal Expenses	\$10,00 a month
Student Loan	\$13,000 owed
Credit Cards	\$7,000 owed
Motor Vehicle	\$23,000 owed (repo)
House	\$167,000 owed (foreclosure)

Total monthly expenses: \$57.00

Total expenses: \$210,000 owed

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? None

10. Have you paid or will you be paying an attorney any money for services in connection with this case, including the completion of this form? None

11. Have you paid or will you be paying anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? None

12. Provide any other information that will help explain why you cannot pay the cost of this case.

Jermey Barney is currently incarcerated in the Pennsylvania Department of Corrections with no financial support on the outside, as he is doing this petition Pro se.

I declare under penalty of perjury that the following is true and correct.

Executed on April 23, 2022.



Jermey Barney LR0433
Paralegal/Legal Assisant