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**NON-PRECEDENTIAL DECISION - SEE
SUPERIOR COURT I.O.P. 65.37 FILED
MARCH 09, 2023**

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 1168 MDA 2018
Appellant :

Appeal from the Order Entered April 18, 2018
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 920 MDA 2019
Appellant :

Appeal from the Order Entered May 23, 2019
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

App. 2

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 1179 MDA 2019
Appellant :

Appeal from the Order Entered June 18, 2019
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 1582 MDA 2019
Appellant :

Appeal from the Order Entered September 16, 2019
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 589 MDA 2020
Appellant :

Appeal from the PCRA Order Entered March 2, 2020
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

App. 3

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 947 MDA 2020
Appellant :

Appeal from the Order Dated July 8, 2020
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 502 MDA 2021
Appellant :

Appeal from the Order Entered March 30, 2021
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 182 MDA 2022
Appellant :

Appeal from the Order Entered December 29, 2021
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003716-2015

BEFORE: STABILE, J., DUBOW, J., and
McCAFFERY, J.

MEMORANDUM PER CURIAM: FILED MARCH
09, 2023

We address together these eight appeals, taken by prolific *pro se* filer Sean M. Donahue (Appellant), from orders entered between 2018 and 2021 at the same criminal docket in the Dauphin County Court of Common Pleas.¹ On April 19, 2016, Appellant was

¹ Throughout this matter, Appellant has filed copious filings, each lengthy and including hundreds of pages of attachments. The trial docket spans 93 pages. Each of the briefs in these eight appeals, together with their exhibits, exceed 600 pages; at 920 MDA 2019 alone, the brief, with attachments, is 1,481 pages long.

Appellant has previously taken six appeals in this matter, all of which were dismissed or quashed. *See* 1329 MDA 2018 (Pa. Super. Dec. 7, 2018 order) (quashing appeal from non-final April 24, 2018, trial court order denying: motion for nominal appeal bail; request for trial & pre-trial transcripts; 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), *appeal denied* 45 MAL 2019 (Pa. Jul. 9, 2019); 1417 MDA 2018 (Pa. Super. Dec. 7, 2018 order) (quashing appeal from same April 24, 2018, trial court order, which had been entered on trial docket a second time), *appeal denied* 47 MAL 2019 (Pa. Jul. 9, 2019); 1607 MDA 2019 (Pa. Super. Feb. 3, 2020 order) (dismissing as duplicative of

convicted by a jury of two counts of harassment,² and on the same day received a sentence of two consecutive terms of one year's probation. At 1168 MDA 2018, we affirm the April 18, 2018, order denying Appellant's "Motion for Permission to Attend

appeal at 1582 MDA 2019); 946 MDA 2020 (Pa. Super. Dec. 23, 2020 order) (quashing appeal from non-final June 16, 2020, order denying motion for preliminary hearing transcripts and exhibits); 948 MDA 2020 (Pa. Super. Dec. 23, 2020 order) (quashing appeal from duplicate non-final June 16, 2020, order denying motion for preliminary hearing transcripts and exhibits); 789 MDA 2021 (Pa. Super. Aug. 23, 2021 order) (quashing premature appeal where trial court had not filed an order disposing of Appellant's April 22, 2021, petition for writ of *coram nobis*).

Additionally, currently before this panel are Appellant's four *pro se* appeals relating to his terroristic threats conviction in the Luzerne County Court of Common Pleas at trial docket CP-40-CR-0003501-2012. *See* 1876 MDA 2018, 1647 MDA 2019, 566 MDA 2021, 743 MDA 2022. In that matter, Appellant sent an email message in August of 2012 to the Luzerne County District Attorney, threatening to "essentially engage in a gun fight with police officers[] if the District Attorney does not do as he desires[, and stating] people will be killed if he does not get the actions that he demands." *Commonwealth v. Donahue*, 1949 MDA 2017 (unpub. memo. at 1-2) (Pa. Super. Aug. 22, 2018) (direct appeal), *appeal denied*, 753 MAL 2018 (Pa. Apr. 23, 2019), *cert. denied*, 19-5808 (U.S. Oct. 15, 2019).

² 18 Pa.C.S. § 2709(a)(4) ("A person commits . . . harassment when, with intent to harass, annoy or alarm another, the person

Potential Job Interview at Pennsylvania Department of Labor and Industry,” as we determine that order is now moot. At the remaining dockets, 920 MDA 2019, 1179 MDA 2019, 1582 MDA 2019, 589 MDA 2020, 947 MDA 2020, 502 MDA 2021, and 182 MDA 2022, we affirm the orders denying Appellant’s multiple petitions for writ of *coram nobis* and Post Conviction Relief Act³ (PCRA) relief, on the ground he is no longer serving his sentence.⁴ Appellant has also filed a total of twelve applications for relief with this Court; we deny all of them.

I. 2016 Trial & Judgment of Sentence

The underlying charges arose from Appellant’s sending, in November of 2014, four threatening email messages to approximately 50 individuals, including employees of the Pennsylvania Department of Labor and Industry. A jury trial was conducted on April 19, 2016.

Generally, the nature of the communications concerned Appellant’s grievances and perceived injustices carried out by Commonwealth

. . . communicates to or about such other person any . . . threatening or obscene words [or language[.]”).

³ 42 Pa.C.S. §§ 9541-9546.

⁴ See 42 Pa.C.S. §§ 9542 (PCRA “shall be the sole means of obtaining collateral relief and encompasses all other common

employees related to his unsuccessful applications for employment and his preferred status as a veteran.

... Appellant used the following language in his communications to the e-mail recipients — “I will pursue punishment of you”; “[t]hat is a threat”; “You won’t have to explain to a judge how you rectify me 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”; and “I hope all of you suffer terrible tragedies.” N.T., 4/19/16, at 22, 28, 36, 44; Commonwealth Exhibits 1–4.

Commonwealth v. Donahue, 1469 MDA 2016 (unpub. memo. at 2) (Pa. Super. June 5, 2017) (paragraph break added), appeal denied, 610 MAL 2017 (Pa. Jan. 30, 2018).

law . . . remedies . . . including . . . coram nobis.”); 9543(a)(1)(i) (to be eligible for PCRA relief, petitioner must be “currently serving a sentence of imprisonment, probation or parole for the crime”).

Appellant did not testify or present any evidence. The jury found him guilty of two counts of harassment.⁵ On the same day, April 19, 2016, the trial court sentenced Appellant to two consecutive terms of one-year probation. The court also directed him to have no communication with certain Department of Labor employees.

Appellant appealed, and this Court affirmed the judgment of sentence on June 5, 2017. Donahue, 1469 MDA 2016. The Pennsylvania Supreme Court denied his petition for allowance of appeal on January 30, 2018.

Since then, Appellant has filed copious petitions advancing various grievances. The instant eight appeals are taken from orders, entered between April 2018 and December 2021, denying relief. Appellant's numerous appeals have resulted in the transmittal, back and forth, of the certified record between the trial court and this Court. This Court directed that his related appeals be listed

⁵ The jury was hung on a count of terroristic threats. N.T., 4/18-19/16, at 103. The Commonwealth then withdrew that charge. Id. at 104-05.

consecutively, and they are now before this merits panel.⁶

Upon informal inquiry by this panel, the trial court filed a letter, explaining that Appellant completed serving his probation in May of 2018.⁷ Letter from Trial Ct., 1/30/23. The following day, Appellant filed identical “Application[s] for Relief in Response to that Letter” at all eight appeals. He argued his sentence should have expired on April 19, 2018, but the Dauphin County probation office “kept [him] on probation” until May 14, 2018, and thus his sentence is illegal. *See, e.g.* Appellant’s Application for Relief in Response to that Letter, 1168 MDA 2018, 1/31/21, at 2. In light of our disposition, we deny all eight applications. Appellant has also filed four other applications with this Court for relief, as discussed *infra*. We likewise deny those applications.

⁶ In December of 2021, this Court continued, at Appellant’s request, oral argument for these appeals. *See e.g.* 1168 MDA 2018 (order) (Pa. Super. Dec. 10, 2021). Appellant requested a second continuance, which this panel denied. *See* 1168 MDA 2018 (order) (Pa. Super. Feb. 3, 2023).

⁷ In past opinions, the trial court stated specifically that Appellant completed his probation sentence on May 14, 2018. *See* Trial Ct. Op., 6/17/19, at 5.

II. PCRA Standard of Review & Eligibility for Relief

We first note: “Our standard of review of the denial of a PCRA petition is limited to examining whether the evidence of record supports the court’s determination and whether its decision is free of legal error.” *Commonwealth v. Beatty*, 207 A.3d 957, 960-61 (Pa. Super. 2019).

The PCRA “shall be the sole means of obtaining collateral relief and encompasses all other common law . . . remedies . . . including . . . coram nobis.” 42 Pa.C.S. § 9542.

“To be eligible for [PCRA relief], the petitioner must plead and prove by a preponderance of the evidence” they are “currently serving a sentence of imprisonment, probation or parole for the crime[.]” 42 Pa.C.S. § 9543(a)(1)(i). Additionally,

Pennsylvania law makes clear the trial court has no jurisdiction to consider a subsequent PCRA petition while an appeal from the denial of the petitioner’s prior PCRA petition in the same case is still pending on appeal. A petitioner must choose either to appeal from the order denying his prior PCRA petition or to file a new PCRA petition; the petitioner cannot do both, . . . because “prevailing law requires that the

subsequent petition must give way to a pending appeal from the order denying a prior petition.” If the petitioner pursues the pending appeal, then the PCRA court is required . . . to dismiss any subsequent PCRA petitions filed while that appeal is pending.

Beatty, 207 A.3d at 961 (citations omitted & paragraph break added).

We now address Appellant’s eight appeals *seriatim*.

**III. 1168 MDA 2018:
April 18, 2018, Denial of Motion for
Job Interview**

On April 2, 2018, Appellant filed a *pro se* “Motion for Permission to Attend Potential Job Interview at Pennsylvania Department of Labor and Industry CareerLink or other Facility Owned or Controlled by That Agency.” Appellant claimed the Department of Labor asked if he were interested in a job as a human resources analyst.⁸

⁸ The motion stated Appellant was filing an identical motion with the Luzerne County trial court.

Although Appellant did not state a reason for seeking such permission, the trial court pointed out his sentence included a condition that he have no communication with certain Department of Labor employees. Trial Ct. Op., 9/4/18, at 5. The court also noted “the contact was made by a new employee who was unfamiliar with [Appellant’s] case[.]” Order, 4/18/18. On April 18, 2018, the court denied Appellant’s motion, finding his sentence, including the “no communication” order, was still in effect. Trial Ct. Op., 9/4/18, at 5. Appellant filed a notice of appeal on May 2, 2018.⁹

As stated above, the trial court confirmed that Appellant completed his sentence in May of 2018. When a defendant completes a sentence, he is no longer subject to any direct criminal or civil consequences thereto, and thus any challenge to the

⁹ Appellant mistakenly filed the notice of appeal with this Court, which initially docketed it at 37 MDM 2018 and then forwarded it to the trial court. See Pa.R.A.P. 905(a)(4) (“If a notice of appeal is mistakenly filed in an appellate court . . . the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.”).

sentence is incapable of review and moot. *See Commonwealth v. Schmohl*, 975 A.2d 1144, 1149 (Pa. Super. 2009); *Commonwealth v. King*, 786 A.2d 993, 996-97 (Pa. Super. 2001). Accordingly, we deem Appellant's present appeal is moot, and we affirm the April 18, 2018, order denying his motion for permission to attend a job interview with the Department of Labor.¹⁰

Appellant has also filed in this Court, at this appeal docket, two nearly identical "Application[s] for Relief," on January 20 and 22, 2023. He requests that certain trial exhibits be quashed, struck and expunged. On February 2nd, he filed a "Resubmission of Appellant's December 11, 2018 Application for Relief," which: (1) averred a government agency cannot be a victim of harassment; (2) requested this Court to recommend to the state legislature that the "harass, annoy, threaten, or alarm" portion of the harassment statute should also require physical contact; and (3) asserted the PCRA is overly broad. In light of our disposition of this appeal, we deny all three petitions.

¹⁰ Furthermore, there is no indication that the same alleged 2018 job opening remains available now, more than four years later.

**IV. 920 MDA 2019:
May 23, 2019, Order Denying Petition for
Writ of Coram Nobis**

For ease of discussion, we review Appellant's ensuing filings in chronological order. All of them were filed after he had filed the above appeal, 1168 MDA 2018, and after he completed his sentence.

Appellant first filed a *pro se* PCRA petition on August 15, 2018. On December 31, 2018, the trial court appointed counsel to represent Appellant, and subsequently appointed Shannon Sprow, Esquire, as new counsel. On April 4th, Attorney Sprow filed a motion to withdraw from representation.¹¹ The September 2019 denial of this PCRA petition is discussed *infra*, at Superior Court docket 1582 MDA 2019.

Meanwhile, on May 21, 2019, while represented by counsel of record, and while his first PCRA petition was still pending, Appellant filed a *pro se*, 33-page petition for writ of *coram nobis*.¹²

¹¹ See *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) (en banc).

¹² See *Commonwealth v. Descardes*, 136 A.3d 493, 494 n.1 (Pa. 2016) ("A writ of *coram nobis* 'is generally available to challenge

He claimed, *inter alia*: (1) his “court appointed PCRA attorney is ineffective and hasn’t done her job;” (2) there was “[n]ewly discovered evidence regarding the previously concealed identity of the police officer who actually collected the evidence[,]” and there was “evidence tampering and entrapment[,]” and (3) the trial court gave “bad jury instructions[.]” Appellant’s Petition for Writ of Coram Nobis, 5/21/19, at 1-3.

The trial court denied this petition two days later, on May 23, 2019, concluding Appellant was not entitled to relief because he was no longer serving his sentence. The court further found the jury-instruction issue was waived because it could have been raised during trial.

We agree with both rationales and affirm the May 23, 2019, order denying relief. Regardless of Appellant’s titling his filing as a petition for writ of *coram nobis*, the claims presented were cognizable under the PCRA, and thus “the PCRA [was] the only method of obtaining” the requested review. *See* 42 Pa.C.S. §§ 9542 (PCRA “shall be the sole means of obtaining collateral relief and encompasses all other

the validity of a judgment based on facts not before the court when the judgment was entered.”).

common law . . . remedies . . . including . . . coram nobis.”), 9543(a)(1)(i), (3) (to be eligible for PCRA relief, petitioner must be “currently serving a sentence of imprisonment, probation or parole for the crime” and must show “the allegation of error has not been . . . waived”), 9544(b) (issue is waived for PCRA purposes “if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, [or] on appeal”); *Descardes*, 136 A.3d at 501 (“[P]ursuant to the plain language of Section 9542, where a claim is cognizable under the PCRA, the PCRA is the only method of obtaining collateral review.”).

Additionally, we note that because Appellant filed the *pro se* petition while he was represented by counsel of record, the denial of relief was also proper under our long standing policy precluding hybrid representation. Our Supreme Court has explained:

[A] defendant in a criminal case may not confuse and overburden the courts by filing his own pro se briefs at the same time his counsel is filing briefs for him. . . . [This] rationale . . . applies equally to PCRA proceedings[.] We will not require courts considering PCRA petitions to struggle through the pro se filings of defendants

when qualified counsel represent those defendants.

Commonwealth v. Pursell, 724 A.2d 293, 302 (Pa. 1999). *See also Commonwealth v. Jette*, 23 A.3d 1032, 1044 (Pa. 2011) (“[T]he proper response to any pro se pleading is to refer the pleading to counsel, and to take no further action on the *pro se* pleading unless counsel forwards a motion.”).

V. 1179 MDA 2019:

June 17, 2019, Order Denying Supplement to Writ of Coram Nobis

On June 12, 2019 — three weeks after the denial of the above petition for writ of *coram nobis* — Appellant filed a *pro se*, 43-page “Coram Nobis Supplement to Ongoing PCRA and Separate Petition for a Writ of Coram Nobis.” He reiterated the claims in the May 21, 2019, *coram nobis* filing.

The trial court denied relief on this petition on June 18, 2019. We affirm, as we agree with the court’s rationale — Appellant had completed serving his sentence and was thus not entitled to *coram nobis* or PCRA relief. *See* 42 Pa.C.S. § 9543(a)(1)(i); Trial Ct. Op., 8/15/19. The denial of relief was also proper because Appellant had a pending PCRA appeal at the same trial court docket. *See Beatty*, 207 A.3d at 961. Finally, Appellant filed this petition

when he was represented by PCRA counsel; denial of relief was proper on this basis as well. *See Pursell*, 724 A.2d at 302.

**VI. 1582 MDA 2019:
September 26, 2019, Order
Denying PCRA Petition**

This appeal pertains to Appellant's first PCRA petition, which was filed on August 15, 2018. On June 17, 2019, the trial court issued Pa.R.Crim.P. 907 notice of intent to dismiss the petition, again reasoning Appellant was not entitled to relief because he was no longer serving his sentence. Trial Ct. Op., 6/17/19, at 5 (unpaginated). At this time, the court also granted Attorney Sprow's motion to withdraw as counsel. On July 5th, Appellant filed an objection to the order permitting counsel to withdraw. On September 16, 2019, the court formally denied the PCRA petition, and Appellant appealed to this Court.

Again, the trial court's denial of relief was proper because there was a pending appeal pertaining to a prior PCRA petition. *See Beatty*, 207 A.3d at 961. We also affirm the order on the ground Appellant was no longer serving his sentence. *See* 42 Pa.C.S. § 9543(a)(1)(i).

At this Superior Court docket, Appellant has also filed with this Court an application for relief, entitled “Brief in Support of: Appellant’s Resubmission of his September 9, 2020 and September 10, 2020 Applications for Relief with Regard to the Issues that Were Deferred by the Superior Court Order of December 29, 2021.” He avers the record is missing documents, because the copy of the PCRA petition is not the original document that he filed. As no relief is due for the reasons stated above, we deny this application.

**VII. 589 MDA 2020: March 2, 2020 Order
Denying Motion to
Correct & Expunge Trial Record**

Next, on March 2, 2020, Appellant filed a *pro se* “Motion to Correct Court Record at 1582 MDA 2019 & Motion to Expunge County Trial Court Record and Magisterial Court Record Because the Record is Not Reliable.” The 1582 MDA 2019 docket pertains to the appeal taken from the September 16, 2019, order denying Appellant’s PCRA petition, addressed in the immediately preceding section.¹³ In this motion, Appellant averred his PCRA petition — “86 pages [in

¹³ However, in fact, all of these appeals share the same certified record.

length] with more than 6,000 pages of appendices” — as well as his objection to Attorney Sprow’s withdrawal, were missing from the certified record. Appellant’s Motion to Correct Court Record at 1582 MDA 2019 & Motion to Expunge County Trial Court Record and Magisterial Court Record Because the Record is Not Reliable, 3/2/20, at 2, 4. Appellant claimed “someone intentionally interfered with the trial court record to prevent [his] issues from being raised, [this] was an act of fraud unto the court[,]” and therefore the entire criminal case “must be expunged because the accuracy of the trial court record . . . cannot be trusted.” *Id.* at 11-12.

On March 2, 2020, the trial court issued an order, directing the court clerk to transmit the missing PCRA petition to this Court. The court also noted Appellant’s objection to counsel’s withdrawal had already been transmitted to this Court. The court then denied Appellant’s motion to expunge the entire trial record. The court found, *inter alia*: (1) the missing filings have been added to the certified record; and (2) Appellant presented no evidence in support of his “broad assertion that the trial court record is unreliable.” Trial Ct. Op., 5/28/20, at 2.

We again conclude Appellant was not entitled to relief on the March 2, 2020, motion, because he had

completed serving his sentence and an appeal from the denial of a prior PCRA petition was pending. *See* 42 Pa.C.S. § 9543(a)(1)(i); *Beatty*, 207 A.3d at 961.

**VIII. 589 MDA 2020: July 8, 2020, Order
Denying Petition for Writ of Certiorari**

Next, on July 2, 2020, Appellant filed a “Petition for Writ of Certiorari,” asserting the preliminary hearing transcript and exhibits were missing from the certified record. Appellant alleged the “magistrate [judge] obviously removed those documents from the record[, and this action] equates to no evidence having been presented at the pretrial phase.” Appellant’s Petition for Writ of Certiorari, 7/2/20, at 9. Appellant reasoned the trial court should thus expunge both the magisterial court and trial court records. *Id.* at 10-11.

The trial court denied this petition on July 8, 2020, reasoning Appellant’s claim was moot, as the preliminary hearing transcripts had been transmitted to the Superior Court. Trial Ct. Op., 9/14/20, at 2; Order, 7/8/20.

We affirm, as Appellant is not entitled to any post-conviction collateral relief because he is no longer serving his sentence, and because he had a pending appeal from the denial of a prior PCRA petition. *See* 42 Pa.C.S. § 9543(a)(1)(i); *Beatty*, 207

A.3d at 961. Furthermore, we note that in response to Appellant's multiple applications for relief filed at 1582 MDA 2019,¹⁴ this Court issued an order on October 26, 2020, which stated: "The copies of the preliminary hearing transcript and preliminary hearing exhibits that were forwarded to this Court by the trial court have been accepted by this Court as part of the certified record." Order, 1582 MDA 2019, 10/26/20, at 1.

**IX. 502 MDA 2021: March, 29, 2021, Order
Denying Petition for Writ of Coram
Nobis/Motion for Expungement**

On March 24, 2021, Appellant filed a single document entitled "I. Petition for Writ of Coram Nobis Based on Clarification of Legislative Intent, II. Petition for Writ of Habeas Corpus Based on Clarification of Legislative Intent, III. Petition for Equitable Relief Based on Clarification of Legislative Intent." Appellant again claimed his conviction should be quashed, reversed, struck, and expunged. He now claimed:

Congress clearly asserted in its intent that even when language steels a crowd to violence, and

¹⁴ We have addressed this appeal above.

even when that violence occurs, as it did throughout the summer of 2020 and again on Jan[.] 6, 2021, the speech itself is protected by US Const. Amend. I.

Appellant's Petition for Writ of Coram Nobis Based on Clarification of Legislative Intent, Writ of Habeas Corpus Based on Clarification of Legislative Intent, Equitable Relief Based on Clarification of Legislative Intent, 3/24/21, at 2.

On March 29, 2021, the trial court issued an order, declaring it lacked jurisdiction to hear the petition because a prior appeal in this case was currently pending. Order, 3/29/21. The court rejected Appellant's contention that the court in fact had jurisdiction "to correct patent and obvious mistakes," where the relief requested — reversal of his judgment of sentence — was not a mere correction of a mistake. Trial Ct. Op., 7/2/21, at 1.

We agree with the trial court's reasoning. *See Beatty*, 207 A.3d at 961. *See also* Pa.R.A.P. 1701(a), (b)(1) (generally, after an appeal is taken, the trial court may no longer proceed further in the matter, although court may "take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed, and

transmitted, [or] take other action . . . ancillary to the appeal”). We also affirm the order on the basis that Appellant is not presently entitled to any post-conviction collateral relief as he is no longer serving his sentence. *See* 42 Pa.C.S. § 9543(a)(1)(i).

In addition, we note that on direct appeal, Appellant raised a free speech argument in challenging the sufficiency of the evidence; he claimed “that none of the language included in the e-mails indicates a specific threat of violence[,]” and “therefore, his conduct was protected speech under the United States and Pennsylvania Constitutions.”¹⁵ *Donahue*, 1469 MDA 2016 (unpub. memo. at 4-5). Appellant’s present attempt to raise a novel free speech claim is waived, as it could have been raised at trial or direct appeal. *See* 42 Pa.C.S. § 9544(b).

¹⁵ The direct appeal panel concluded:

Appellant cannot credibly argue that his free speech rights were in any way infringed in this matter. While Appellant is free to express his disagreement with the Commonwealth employees concerning his dissatisfaction with state policies, he is not empowered to threaten the employees with reference to guns, ammunition, and militia, veiled though they may be.

Donahue, 1469 MDA 2016 (unpub. memo. at 5).

**X. 182 MDA 2022: December 29, 2021, Order
Denying Petition for Writ of Coram Nobis**

On April 22, 2021, the same day Appellant filed a notice of appeal from the denial of the last petition, he filed yet another petition with the trial court: “I. Petition for Writ of Coram Nobis Based on Third Circuit Finding of Fact, II. Petition for Writ of Habeas Corpus Based on Third Circuit Finding of Fact and III. Petition for Equitable Relief Based on Third Circuit Finding of Fact.” Appellant again requested his conviction and case be quashed, reversed, struck, and expunged. He averred a threat to file a lawsuit is protected activity under the First Amendment, and here, the Commonwealth misused the harassment statute to prosecute a protected activity.

On June 16, 2021, Appellant filed a notice of appeal from the “deemed denial” of his petition. This Court quashed the appeal as premature, as there was no trial court order disposing of the petition. *See* 789 MDA 2021 (Pa. Super. Aug. 23, 2021, order). Following the receipt of the record back from this Court, the trial court issued an order on December 29, 2021, denying the petition, again citing the fact that Appellant currently has multiple appeals pending at the same trial docket. Appellant nevertheless appealed from that order.

We affirm the trial court's December 29, 2021 order, again on the bases that Appellant is not entitled to post-conviction collateral relief because he is no longer serving a sentence, his novel free speech argument is waived, and he had an appeal pending from the denial of a prior PCRA petition. See 42 Pa.C.S. §§ 9543(a)(1)(i), 9544(b); *Beatty*, 207 A.3d at 961.

XI. Conclusion

For the foregoing reasons, we conclude Appellant is not entitled to any relief.¹⁶

At 1168 MDA 2018, we affirm the April 18, 2018, order denying Appellant's motion for permission to attend a job interview. We also deny Appellant's four

¹⁶ We caution Appellant to carefully consider his litigious behavior in the future, and hereby notify him that excessively filing frivolous claims, and/or engaging in other conduct that is abusive to our court system, may result in sanctions and/or the filing of injunctions. We point out our Rules of Appellate Procedure permit parties to file an application with this Court for reasonable counsel fees in cases of frivolous appeals and obdurate, vexatious conduct. See Pa.R.A.P. 2744, 2751, 2572; see also *Commonwealth v. Wardlaw*, 249 A.3d 937, 947 (Pa. 2021) ("For example, an appellate court 'may award as further costs damages as may be just,' Pa.R.A.P. 2744, provided that, inter alia, the party receiving such damages makes '[a]n application for further costs and damages.'" (citation omitted).

App. 27

applications for relief, filed January 20, 22, and 31, and February 2, 2023.

At 920 MDA 2019, we affirm the May 23, 2019, order denying Appellant's petition for writ of *coram nobis*. We also deny Appellant's January 31, 2023, application for relief.

At 1179 MDA 2019, we affirm the June 17, 2019, order denying Appellant's supplement to petition for writ of *coram nobis*. We also deny Appellant's January 31, 2023, application for relief.

At 1582 MDA 2019, we affirm the September 26, 2019, order denying Appellant's PCRA petition. We also deny Appellant's: (1) January 28, 2023, "Brief in Support of: Resubmission of his September 9, 2020 and September 10, 2020 Applications for Relief with Regard to the Issues that Were Deferred by the Superior Court Order of December 29, 2021;" and (2) January 31, 2023, application for relief.

At 589 MDA 2020, we affirm the March 2, 2020, order denying Appellant's "Motion to Correct Court Record at 1582 MDA 2019 & Motion to Expunge County Trial Court Record and Magisterial Court Record Because the Record is Not Reliable." We also deny Appellant's January 31, 2023, application for relief.

App. 28

At 589 MDA 2020, we affirm the July 8, 2020, order denying Appellant's petition for writ of certiorari. We also deny Appellant's January 31, 2023, application for relief.

At 502 MDA 2021, we affirm the March 29, 2021, order denying Appellant's "I. Petition for Writ of Coram Nobis Based on Clarification of Legislative Intent, II. Petition for Writ of Habeas Corpus Based on Clarification of Legislative Intent, III. Petition for Equitable Relief Based on Clarification of Legislative Intent." We also deny Appellant's January 31, 2023, application for relief.

At 182 MDA 2022, we affirm the December 29, 2021, order denying Appellant's "I. Petition for Writ of Coram Nobis Based on Third Circuit Finding of Fact, II. Petition for Writ of Habeas Corpus Based on Third Circuit Finding of Fact and III. Petition for Equitable Relief Based on Third Circuit Finding of Fact." We also deny Appellant's January 31, 2023, application for relief.

Orders at all appeals affirmed. All outstanding applications for relief denied.

Judgment Entered.

_____/s/_____
Joseph D. Seletyn, Esq.

App. 29

Prothonotary

Date: 03/09/2023

App. 30

COMMONWEALTH OF	:	IN THE COURT OF
PENNSYLVANIA	:	COMMON PLEAS -
	:	DAUPHIN COUNTY
VS	:	PENNSYLVANIA
	:	
SEAN DONAHUE	:	NO. 3716 CR 2015

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL

BEFORE: HONORABLE DEBORAH E. CURCILLO
DATE: APRIL 18-19, 2016
PLACE: COURTROOM NO. 3

DAUPHIN COUNTY COURTHOUSE
HARRISBURG, PENNSYLVANIA

APPEARANCES:

KATIE ADAM, ESQUIRE
Office of the District Attorney
For - The Commonwealth

FRANK C. SLUZIS, ESQUIRE
For - The Defendant

“

8

1 [The Trial Court:]...
2 ...the Commonwealth has to prove the
3 elements of each of these charges to you beyond a
4 reasonable doubt. And whether the Common
5 wealth does so or -- does so is your decision when
6 you go out to render the verdict.

***”

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

_____/s/_____
Deborah E. Curcillo, J.

Distribution:
Hon. Deborah E. Curcillo

App. 34

Katie Adam, Esq., Dauphin
County District Attorney's
Office

Sean Donahue,
625 Cleveland St., Hazleton, PA 18201

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

ORDER OF COURT

AND NOW, this 18th day of April, 2018, upon consideration of Petitioner's Motion for Permission to Attend Potential Job Interview at Pennsylvania Department of Labor and Industry CareerLink or other Facility Owned or Controlled by That Agency, and the Commonwealth's half-slip indicating that the contact was made by a new employee who was unfamiliar with Petitioner's case, it is **HEREBY ORDERED** that the Motion is **DENIED**.

BY THE COURT:

_____/s/_____
Deborah E. Curcillo, J.

Distribution:

Hon. Deborah E. Curcillo
Katie Adam, Esq., Dauphin County District
Attorney's Office

App. 36

Sean Donahue, 625 Cleveland St., Hazleton, PA
18201

App. 37

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

ORDER OF COURT

AND NOW, this 23rd day of May, 2019, upon consideration of the Defendant's *pro se* "Petition for Writ of Coram Nobis", it is HEREBY ORDERED that the motion is DENIED.

BY THE COURT:

_____/s/_____
Deborah E. Curcillo, J.

Distribution:

Hon. Deborah E. Curcillo
Dauphin County District Attorney's Office
Shannon Kerwin Sprow, Esq., 4245 Route 209,
Elizabethville, PA 17023
Sean Donahue, 625 Cleveland St., Hazleton, PA
18201

App. 38

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

ORDER OF COURT

AND NOW, this 17th day of June, 2019, upon
consideration of the Defendant's *pro se* "Coram Nobis
Supplement to Ongoing PCRA and Separate Petition
For A Writ of Coram Nobis, it is HEREBY
ORDERED that the Petition is DENIED.

BY THE COURT:

_____/s/_____
Deborah E. Curcillo, J.

Distribution:

Hon. Deborah E. Curcillo
Ryan Lysaght, Esq., Dauphin County District
Attorney's Office
Shannon Kerwin Sprow, Esq., 4245 Route 209,
Elizabethville, PA 17023
Sean Donahue, 625 Cleveland St., Hazleton, PA
18201

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

ORDER OF COURT

AND NOW, this 16th day of September, 2019, upon independent consideration of the Petition for Post Conviction Collateral Relief submitted by Petitioner Sean Donahue, this Court's Notice of Intention to Dismiss dated June 17, 2019, and the memorandum opinion attached thereto, said petition is hereby DISMISSED.

Petitioner is hereby advised of his right to appeal this Order to the Superior Court of Pennsylvania within thirty (30) days from the date of this Order. The Clerk of Court is directed to send a copy of this Order to the petitioner by certified mail, return receipt requested.

BY THE COURT:

_____/s/____

Deborah E. Curcillo, J.

Distribution:

App. 40

Hon. Deborah E. Curcillo

Ryan Lysaght, Esq., Dauphin County District
Attorney's Office Shannon Kerwin Sprow, Kerwin &
Kerwin, LLP., 4245 State Route 209, Elizabethville,
PA 17023

Sean Donahue, 625 Cleveland Street, Hazelton, PA
18201

App. 41

COMMONWEALTH OF	:	IN THE COURT OF
PENNSYLVANIA	:	COMMON PLEAS,
	:	DAUPHIN COUNTY,
	:	PENNSYLVANIA
v.	:	
	:	NO. 3716 CR 2015
	:	1582 MDA 2019
	:	
SEAN M. DONAHUE	:	CRIMINAL MATTER

ORDER OF COURT

AND NOW, this 2nd day of March, 2020, upon consideration of the Motion to Correct Court Record at 1582 MDA 2019, it is HEREBY ORDERED that the Dauphin County Clerk of Courts is directed to transmit the missing PCRA Petition in the above-captioned matter to the Superior Court within five (5) days from the date of this Order. The Objection to the Withdrawal of PCRA Counsel, filed on the 5th day of July, 2019, has already been transmitted to the Superior Court.

IT IS FURTHER ORDERED that the Motion to expunge the Trial Court record is DENIED.

BY THE COURT:

_____/s/_____
Deborah E. Curcillo, J.

Distribution:

App. 42

Hon. Deborah E. Curcillo

Clerk of Courts

Ryan Lysaght, Esq., Dauphin County District

Attorney's Office

Sean Donahue, 625 Cleveland Street, Hazelton, PA
18201

App. 43

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

ORDER OF COURT

AND NOW, this 8th day of July, 2020, upon consideration of the Petitioner's Petition for Writ of Certiorari, it is HEREBY ORDERED that the Petition is DENIED.

The Motion for Expungement of the Magisterial District Court record and the Trial Court record SHALL NOT BE ENTERTAINED as the matter is on appeal.

The Dauphin County Clerk of Courts is directed to forward the Preliminary Hearing Transcripts and Exhibits attached to the instant Petition to the Superior Court.

BY THE COURT:

_____/s/____

Deborah E. Curcillo, J.

Distribution:

App. 44

Hon. Deborah E. Curcillo
Ryan Lysaght, Esq., Dauphin County District
Attorney's Office
Sean Donahue, 625 Cleveland Street, Hazelton, PA
18201
Clerk of Courts

App. 45

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

ORDER OF COURT

AND NOW, this 29th day of March 2021, upon consideration of the defendant's Petition for Writ of Coram Nobis, Habeas Corpus, and Equitable Relief Based on Clarification of Legislative Intent, it is **HEREBY ORDERED** that the Petition **SHALL NOT BE ENTERTAINED** as this Court is without jurisdiction to address it because the case is currently pending appeal.

BY THE COURT:

_____/s/____

Deborah E. Curcillo, J.

Distribution:

Hon. Deborah E. Curcillo

Ryan Lysaght, Esq., Dauphin County District

Attorney's Office

Sean Donahue, 625 Cleveland Street, Hazelton, PA
18201

App. 46

Clerk of Courts

App. 47

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

ORDER OF COURT

AND NOW, this 29th day of December 2021, upon consideration of the defendant's Petition for Writ of Coram Nobis, Habeas Corpus, and Equitable Relief Based on Third Circuit Finding of Fact,¹ it is
HEREBY ORDERED that the Petition is DENIED.

BY THE COURT:

_____/s/____

Deborah E. Curcillo, J.

Distribution:

Hon. Deborah E. Curcillo

Ryan Lysaght, Esq., Dauphin County District
Attorney's Office

Sean Donahue, 625 Cleveland Street, Hazelton, PA
18201

Clerk of Courts

¹ Petitioner prematurely filed an appeal regarding this Petition without an Order from this Court. Accordingly, the Pennsylvania Superior Court quashed the appeal as premature.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF : No. 153 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

COMMONWEALTH OF : No. 154 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

COMMONWEALTH OF : No. 155 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

App. 50

COMMONWEALTH OF : No. 156 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

COMMONWEALTH OF : No. 156 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

COMMONWEALTH OF : No. 157 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

App. 51

COMMONWEALTH OF : No. 158 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

COMMONWEALTH OF : No. 159 MAL 2023
PENNSYLVANIA, :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN M. DONAHUE, :
Petitioner :

COMMONWEALTH OF : No. 160 MAL 2023
PENNSYLVANIA, :
Respondent :

[153 MAL 2023, 154 MAL 2023, 155 MAL 2023, 156
MAL 2023, 157 MAL 2023, 158 MAL 2023, 159 MAL
2023 and 160 MAL 2023] - 2

App. 52

	:	Petition for Allowance of
v.	:	Appeal from the Order
	:	of the Superior Court
SEAN M. DONAHUE,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 12th day of September, 2023, the
Petition for Allowance of Appeal is DENIED.

[153 MAL 2023, 154 MAL 2023, 155 MAL 2023, 156
MAL 2023, 157 MAL 2023, 158 MAL 2023, 159 MAL
2023 and 160 MAL 2023] - 3

App. 53

J-A04032-23, J-A04036-23, J-A04040-23,
J-A04042-23

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

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 1876 MDA 2018
Appellant :

Appeal from the Order Entered November 1, 2018
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0003501-2012

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 1647 MDA 2019
Appellant :

Appeal from the Order Entered September 24, 2019
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0003501-2012

App. 54

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 566 MDA 2021
Appellant :

Appeal from the Order Entered April 5, 2021
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0003501-2012

COMMONWEALTH OF : IN THE SUPERIOR
PENNSYLVANIA : COURT OF
v. : PENNSYLVANIA
SEAN M. DONAHUE : No. 743 MDA 2022
Appellant :

Appeal from the Order Entered February 9, 2022
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0003501-2012

BEFORE: STABILE, J., DUBOW, J., and
McCAFFERY, J.

MEMORANDUM PER CURIAM: FILED MARCH
09, 2023

We address together these four appeals, taken by serial *pro se* filer Sean Donahue (Appellant), from orders entered between 2018 and 2022 at the same criminal docket in the Luzerne County Court of Common Pleas.¹

¹ Throughout this matter, Appellant has inundated the courts with numerous filings, each lengthy and including hundreds of pages of attachments. The trial docket spans 89 pages. The briefs for three of these appeals, together with their exhibits, each exceed 600 pages; the brief, with attachments, for 743 MDA 2022 alone is 1,778 pages long.

Appellant has previously taken five appeals in this matter, all of which were dismissed or quashed. *See* 1623 MDA 2018 (Pa. Super. Dec. 28, 2018 order) (quashing appeal from non-final June 14, 2018, trial court order denying “motion for return of all civil rights”); 364 MDA 2019 (Pa. Super. Dec. 10, 2019 order) (quashing appeal from same June 14, 2018, trial court

(Footnote Continued Next Page)

order, which had been entered on trial docket a second time); 1608 MDA 2019 (Pa. Super. Feb. 20, 2020 order) (dismissing as duplicative of appeal at 1647 MDA 2019); 150 MDA 2021 (Pa. Super. Mar. 29, 2021 order) (quashing appeal from non-final January 4, 2021, order denying motion for extension of time to file a post-conviction relief petition); 926 MDA 2022 (Pa. Super. Jul. 26, 2022 order) (dismissing as duplicative of appeal at 743 MDA 2022).

Additionally, currently before this panel are Appellant’s eight *pro se* appeals relating to his harassment convictions in the Dauphin County Court of Common Pleas at Docket No. CP-22-CR-0003716-2015. *See* 1168 MDA 2018, 920 MDA 2019,

Appellant seeks relief after a jury found him guilty of one count of terroristic threats,² on July 10, 2017, and the court imposed a sentence of 120 days to 23 months' imprisonment on September 18, 2017. At Docket No. 1876 MDA 2018, contemporaneous with the appeal, counsel for Appellant, Mary Deady, Esquire, seeks permission to withdraw from representation pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009).³ Based on the following, we grant counsel's petition to withdraw and affirm the court's order. At the remaining dockets, Docket Nos. 1647 MDA 2019, 566 MDA 2021, 743 MDA 2022, we

1179 MDA 2019, 1582 MDA 2019, 589 MDA 2020, 947 MDA 2020, 502 MDA, 182 MDA 2022. In that matter, Appellant sent four threatening email messages to approximately 50 individuals, including employees of the Pennsylvania Department of Labor, which included statements like, "I will pursue punishment of you," and "You won't have to explain to a judge how you rectify me 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" *Commonwealth v. Donahue*, 1469 MDA 2016 (unpub. memo. at 2) (Pa. Super. June 5, 2017) (direct appeal), appeal denied, 610 MAL 2017 (Pa. Jan. 30, 2018).

² 18 Pa.C.S. §2706(a)(1).

³ As will be discussed in detail below, Attorney Deady adopted prior counsel's *Anders* brief.

affirm the orders denying Appellant's multiple petitions for writ of *coram nobis* and Post Conviction Relief Act (PCRA)⁴ relief, on the ground he is no longer serving his sentence.⁵ Appellant has also filed four applications for relief⁶ with this Court at Docket Nos. 1647 MDA 2019 and 743 MDA 2022; we deny all of them.

I. 2017 Trial, Judgment of Sentence, & Subsequent Proceedings

The underlying charges arose from Appellant's sending, in August of 2012, an email message to the Luzerne County District Attorney, threatening to "essentially engage in a gun fight with police officers[] if the District Attorney does not do as he desires[, and stating] people will be killed if he

⁴ 42 Pa.C.S. §§ 9541-9546.

⁵ See 42 Pa.C.S. §§ 9542 (PCRA "shall be the sole means of obtaining collateral relief and encompasses all other common law . . . remedies . . . including . . . *coram nobis*."), 9543(a)(1)(i) (to be eligible for PCRA relief, petitioner must be "currently serving a sentence of imprisonment, probation or parole for the crime").

⁶ Specifically, Appellant filed: (1) an "Application for Relief Per Pa.R.A.P. 1926(b)(1) to Supplement the Certified Trial Court Record with the Attached Copy of the Trial Exhibits and Trial Transcript, which Indexes the Exhibits" on January 22, 2023 at Docket No. 743 MDA 2022; (2) a "Notice to the Superior Court

does not get the actions that he demands.” Commonwealth v. Donahue, 1949 MDA 2017 (unpub. memo. at 1-2) (Pa. Super. Aug. 22, 2018) (direct appeal), appeal denied, 753 MAL 2018 (Pa. Apr. 23, 2019), cert. denied, 19-5808 (U.S. Oct. 15, 2019). Appellant continued to send additional e-mails to the District Attorney, which contained “threats of violence towards government employees and police officers.” *Id.*

The Commonwealth charged Appellant with terroristic threats and harassment. Subsequently, Appellant filed a writ of habeas corpus to dismiss the charges. On October 28, 2013, the trial court dismissed the charges, to which the Commonwealth filed an appeal. A panel of this Court affirmed the dismissal of the harassment charge, but reversed the dismissal of the terroristic threats charge, and remanded the matter to the trial court for further

Regarding Appellant’s January 25, 2022 Request to the Trial Court Regarding Trial Exhibits” on February 2, 2023, also at Docket No. 743 MDA 2022; (3) a “Second Notice to the Superior Court Regarding Appellant’s January 25, 2022 Request to the Trial Court Regarding Trial Exhibits” on February 8, 2023, also at Docket No. 743 MDA 2022; and (4) an “Application for Relief” on February 6, 2023, at Docket No. 1647 MDA 2019. We will dispose of these applications concertedly with their related appeals.

proceedings. See *Commonwealth v. Donahue*, 2184 MDA 2013 (Pa. Super. May 19, 2015) (unpub. memo. at 8-19), appeal denied, 660 MAL 2015 (Pa. Dec. 22, 2015).

As noted above, on July 10, 2017, a jury found Appellant guilty of terroristic threats. On September 18, 2017, the trial court sentenced him to a term of 120 days to 23 months' imprisonment, with 280 days credit for time served, and he was immediately paroled. See *Donahue*, 1949 MDA 2017 (unpub. memo. at 6). Thereafter, Matthew P. Kelly, Esquire, was appointed as Appellant's conflict counsel. Appellant filed a post-sentence motion, which the court denied on December 7, 2017. Appellant filed a direct appeal, and Attorney Kelly filed a petition to withdraw as counsel and an accompanying brief pursuant to *Anders*. This Court affirmed the judgment of sentence on August 22, 2018, and granted Attorney Kelly's motion to withdraw. *Donahue*, 1949 MDA 2017. Appellant filed a petition for reargument, which was denied on October 17, 2018. The Pennsylvania Supreme Court denied Appellant's petition for allowance of appeal on April 23, 2019, and the United States Supreme Court denied his petition for writ of certiorari on October 15, 2019.

In the interim, Appellant filed a *pro se* motion for stay of sentence on October 9, 2018, “so that he will still be able to file a PCRA Petition and so that [he] will not be time barred.” Appellant’s Motion for Stay of Sentence, 10/9/18, at 1. On October 31, 2018, the trial court held a hearing on the motion. Appellant and Attorney Kelly were both present at the proceeding. Attorney Kelly stated that his appearance was due to “a procedural quagmire[,]” because while he had been granted the motion to withdraw as to Appellant’s direct appeal, he was “still counsel of record” as to Appellant’s “pending appeal for return of property[.]” N.T., 10/31/18, at 3-4.⁷ For purposes of these appeals, and as will be discussed *supra*, it appears Attorney Kelly was also considered counsel of record in relation to Appellant’s motion for stay of sentence. *See id.* at 19 (“THE COURT: But you’re not representing him because you’re out of the case. [Attorney Kelly]: I’m back in, Judge.”).

The following day, the trial court entered an order, denying Appellant’s motion for the following reasons:

1. A serious question exists as to whether we have jurisdiction to even consider this motion in

⁷ That matter regarding the return of property is not before us.

light of the fact that [Appellant] has a petition for allowance of appeal pending before the [Pennsylvania] Supreme Court from the denial of his direct appeal.

2. While it might be a difficult decision for him, [Appellant] does have the ability to preserve his PCRA rights by withdrawing his motion for allowance of appeal to the Supreme Court and filing a PCRA petition prior to November [21], 2018, which all counsel seem to agree is the maximum date of his existing sentence.

Order of Court, 11/1/2018, at 1-2 (unpaginated). Appellant appealed from the trial court's order, which is currently docketed before this panel at No. 1876 MDA 2018.

Since then, Appellant has filed copious petitions advancing various grievances. The remaining three appeals (Docket Nos. 1647 MDA 2018, 566 MDA 2021, 743 MDA 2022) are taken from orders, entered between August 2019 and February 2022, denying relief as to Appellant's multiple petitions for writ of *coram nobis*. Appellant's numerous appeals have resulted in the transmittal, back and forth, of the certified record between the trial court and this Court. This Court directed that his related appeals

be listed consecutively, and they are now before this merits panel.⁸

Upon informal inquiry by this panel, the trial court provided a letter from the Luzerne County Department of Probation Services (DPS), explaining that Appellant completed serving his supervision (or sentence) on November 21, 2018.⁹ *See* Letter from Briana Cantwell, Luzerne County Department of Probation Services, 1/26/23.

II. 1876 MDA 2018
November 1, 2018, Denial of Motion for Stay of
Sentence, Anders Brief,
& Counsel's Motion to Withdraw

As mentioned, Appellant filed a *pro se* notice of appeal regarding the trial court's November 1, 2018, order denying his motion to stay of his sentence. He

⁸ This Court previously continued oral argument for these matters on December 10, 2021. *See* Order, 12/10/21. Appellant asked for a second continuance on January 29, 2023. We denied his request. *See* Order, 2/6/23.

⁹ At the October 31, 2018, hearing, the trial court indicated Appellant's maximum sentence date was November 12, 2018, as opposed to November 21st, as stated in the DPS letter. *See* N.T., 10/31/18, at 17. The discrepancy of nine days does not affect our analysis, but we will apply the later date to our analysis.

then filed a *pro se* application for the appointment of new counsel which this Court denied without prejudice to seek relief in the trial court. *See* Order, 12/21/18. On January 10, 2019, Attorney Kelly filed an *Anders* brief and an application to withdraw as counsel. On January 30, 2019, this Court issued a rule to show cause (RTSC) why the appeal should not be quashed as interlocutory. *See* Order, 1/30/19. Appellant filed a *pro se* response to the RTSC, which was forwarded to Attorney Kelly. *See Jette*¹⁰ Letter Sent to Counsel, 2/4/19. On February 8, 2019, Attorney Kelly also filed a response to the RTSC, which merely stated: “[A]ppellant alleges that said Order is a final Order of Court and that this matter is ripe for disposition.” *See* Attorney Kelly’s Response to Rule to Show Cause, 2/8/19.

During this time, on December 31, 2018, Appellant filed a *pro se* request for the appointment of new counsel in the trial court. The trial court entered an order on February 5, 2019, in response to Appellant’s request, which removed Attorney Kelly and appointed Attorney Deady to represent Appellant. In light of the trial court’s February 5th order, this Court denied Attorney Kelly’s petition to

¹⁰ *Commonwealth v. Jette*, 23 A.3d 1032 (Pa. 2011).

withdraw as counsel as moot. *See* Order, 2/15/19. On March 5, 2019, we directed Attorney Deady to enter her appearance in this Court, to respond to the RTSC, and to advise the Court whether she intends to rely on the *Anders* brief filed by Attorney Kelly or file a new brief. *See* Order, 3/5/19.

On March 15, 2019, Attorney Deady filed a response to the RTSC, stating that pursuant to *Holmes supra*, Appellant was entitled to unitary review of both his direct appeal and PCRA issues as he met the exception of a short sentence, and therefore, a claim that Attorney Kelly was ineffective had arguable merit, but did not satisfy the remaining requirements for obtaining ineffective assistance of counsel relief.¹¹ *See* Appellant's Response as to Why Appeal Should Not Be Quashed, 3/15/19, at 4-5. Specifically, Attorney Deady stated that: (1) the record was not developed enough and, therefore, did not support the claim that counsel lacked a

¹¹ Counsel is presumed effective, and to overcome that presumption, a petitioner must plead and prove: (1) the underlying claim has arguable merit; (2) counsel lacked a reasonable basis for his act or omission; and (3) petitioner suffered actual prejudice. *Commonwealth v. Treiber*, 121 A.3d 435, 445 (Pa. 2015). A claim will be denied if the petitioner fails to meet any one of these prongs. *See id.*

reasonable strategic basis for his actions; (2) she was not aware of any law or rule of appellate procedure that would provide for simultaneous jurisdiction over the issue of judgment of sentence at both the trial court and appellate level; and (3) Appellant was no longer serving his sentence and, consequently, there would be no point to staying his sentence. *Id.* at 5-6. Attorney Deady stated that she would rely on prior counsel's *Anders* brief and "would concur that this appeal should be quashed as interlocutory." *Id.* at 6. The following day, Appellant filed a *pro se* answer to Attorney Deady's reply. On April 3, 2019, this Court discharged the RTSC and referred the issue to the merits panel. The matter went dormant until October 8, 2021, when this Court directed Attorney Deady to file a separate petition to withdraw as counsel — because we had denied Attorney Kelly's withdrawal motion as moot — and Attorney Deady complied on October 8, 2021.¹² The matter is now properly before us.

¹² Notably, Appellant filed a *pro se* answer to Attorney Deady's application to withdraw, which was 649 pages in length. See Appellant Response to Incorrect Claims Made by [Attorney] Deady in her October 8, 2021 Application to Withdraw, 10/19/21.

Appellant presents, *via* counsel's *Anders* brief, the following issue for our review:

I. Whether trial court has jurisdiction and authority to consider Appellant's Motion for Stay of Sentence[?]

Anders Brief at 1.

When, as here, Attorney Deady files a petition to withdraw and accompanying *Anders* brief, we must first examine the request to withdraw before addressing any of the substantive issues raised on appeal. *Commonwealth v. Bennett*, 124 A.3d 327, 330 (Pa. Super. 2015). An attorney seeking to withdraw from representation on appeal must:

- 1) petition the court for leave to withdraw stating that, after making a conscientious examination of the record, counsel has determined that the appeal would be frivolous; 2) furnish a copy of the brief to the defendant; and 3) advise the defendant that he or she has the right to retain private counsel or raise additional arguments that the defendant deems worthy of the court's attention.

Commonwealth v. Cartrette, 83 A.3d 1030, 1032 (Pa. Super. 2013) (en banc). Pursuant to *Santiago*, an *Anders* brief must also:

(1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Id., quoting *Santiago*, 978 A.2d at 361.

In the present case, both Attorney Kelly and Attorney Deady filed petitions for leave to withdraw on January 10, 2019 and October 8, 2021, respectively.¹³ In Attorney Deady's petition, she averred she reviewed the record and determined "this appeal is wholly frivolous and that no meritorious issues exist." Attorney Deady's Petition to Withdraw as Counsel, 10/8/21, at 1 (unpaginated). While Attorney Deady's petition did not include a

¹³ Based on history of this case, we find it necessary to review both attorneys' filings.

copy of any letter to Appellant advising him of his appellate rights, we presume he received the document because he filed a response to it on October 19, 2021. *See* Appellant's Response to Incorrect Claims Made by [Attorney] Deady in her October 8, 2021 Application to Withdraw, 10/19/21. Moreover, Attorney Kelly had sent a letter to Appellant, advising him of his right to proceed with newly retained counsel or *pro se*, and to raise any additional points deemed worthy for this Court's attention. *See* Attorney Kelly's Letter to Appellant, 1/9/19 at 1 (unpaginated); *see also Commonwealth v. Millisock*, 873 A.2d 748 (Pa. Super. 2005).

The *Anders* brief raises the "stay of sentence" challenge, as well as counsel's reasons why the issues would be wholly frivolous. *See Anders* Brief at 6-8. Appellant filed a *pro se* response to the brief on February 28, 2019, and on March 16, 2019, after Attorney Deady indicated that she would rely on Attorney Kelly's brief. Accordingly, we determine Attorney Deady has complied with the technical requirements of *Anders* and *Santiago*. *See Cartrette*, 83 A.3d at 1032.

We now review the issue presented in the *Anders* brief and conduct an independent review of the record to discern if there are non-frivolous issues.

See *Commonwealth v. Ziegler*, 112 A.3d 656, 660 (Pa. Super. 2015). We conclude there are none.

Appellant claims that the trial court erred by denying his motion for stay of sentence. See *Anders* Brief at 6. Appellant sought the stay of sentence because: (1) his time for filing a PCRA petition was limited since his sentence was to expire approximately one month later; (2) his direct appeal was still ongoing but he wanted the opportunity to file a PCRA petition; (3) there were “many issues that were deemed by the trial court to be matters that must wait, until after the [d]irect [a]ppeal is complete and the PCRA phase of the case is initiated, [which] could have actually been simultaneously considered during the [d]irect [a]ppeal process.” Appellant’s Motion for Stay of Sentence, 10/9/18, at 1-2.

A review of the record reveals that at the October 2018 hearing on the matter, both counsel for Appellant and the Commonwealth indicated there were two appellate matters pending — the petition for allowance of appeal before the Pennsylvania Supreme Court as to the denial of Appellant’s direct appeal as well as an appeal before this Court relating to Appellant’s motion for a return of property. N.T., 10/31/18, at 4, 6. Furthermore, the parties and the

court acknowledged Appellant's sentence would be completed in mid-November 2018. *Id.* at 10. Moreover, Attorney Kelly indicated that Appellant "could withdraw his appeal and deal with the PCRA. I've seen that happen all the time. Because you can't address the PCRA while there's an appeal pending. . . . That's the only way to do it, I think." *Id.* at 7.

Appellant's argument fails for several reasons. First, pursuant to Pennsylvania Rule of Appellate Procedure 1701(a), "after an appeal is taken or review of a quasijudicial order is sought, the trial court . . . may no longer proceed further in the matter." Pa.R.A.P. 1701(a); see *Commonwealth v. Smith*, 244 A.3d 13, 17 (Pa. Super. 2020) ("Once an appeal is filed, a trial court has no jurisdiction to proceed further in the matter, absent limited exceptions not applicable here."). Accordingly, here, the court lacked jurisdiction to review a PCRA petition while Appellant's direct appeal was still pending. See *Commonwealth v. Leslie*, 757 A.2d 984, 985 (Pa. Super. 2000) ("A PCRA petition may only be filed after an appellant has waived or exhausted his direct appeal rights."); see also *Commonwealth v. Williams*, 215 A.3d 1019, 1023 (Pa. Super. 2019) (explaining that "[i]f a petition is filed while a direct appeal is pending, the PCRA court should dismiss it without prejudice towards the petitioner's right to

file a petition once his direct appeal rights have been exhausted”) (citation omitted). Indeed, as Attorney Kelly pointed out at the hearing, Appellant could have withdrawn his direct appeal and then filed a PCRA petition, thereby, preserving and protecting his purported PCRA claims. He has presented no law to support his contention that he may proceed on both a direct appeal and a PCRA review simultaneously.¹⁴

Second, when a defendant completes a sentence, he is no longer subject to any direct criminal or civil consequences thereto, and thus any challenge to the sentence is incapable of review and moot. See *Commonwealth v. Schmohl*, 975 A.2d 1144, 1149 (Pa. Super. 2009); *Commonwealth v. King*, 786 A.2d 993,

¹⁴ It merits mention that *Holmes*, which Appellant references, does not stand for the proposition that an appellant may pursue a direct appeal and a PCRA petition at the same time. Rather, *Holmes* held that a trial court retained discretion to entertain ineffectiveness claims on post-verdict motions and direct appeal “only if (1) there is good cause shown, and (2) the unitary review so indulged is preceded by the defendant’s knowing and express waiver of his entitlement to seek PCRA review from his conviction and sentence, including an express recognition that the waiver subjects further collateral review to the time and serial petition restrictions of the PCRA.” *Holmes*, 79 A.3d at 564 (footnotes omitted).

996-97 (Pa. Super. 2001). As stated above, the Luzerne County DPS confirmed that Appellant completed his sentence in November of 2018. Accordingly, we deem Appellant's present appeal is moot. *See id.* Moreover, our independent review of the record reveals no non-frivolous issues to be raised on appeal. *See Ziegler*, 112 A.3d at 660. In sum, we agree with Attorney Deady that Appellant's desired issue is frivolous, and conclude the record reveals no other potential, non-frivolous issue for appeal at Docket No. 1876 MDA 2018. Accordingly, we grant Attorney Deady's petition to withdraw from representation and affirm the November 1, 2018, order denying his motion for stay of sentence.

**III. 1647 MDA 2019, 566 MDA 2021,
& 743 MDA 2022**

For ease of discussion, we review Appellant's ensuing filings in chronological order. All of them were filed after he had filed the above appeal, 1876 MDA 2018, and after he completed his sentence.

**A. PCRA Standard of Review
& Eligibility for Relief**

We first note: "Our standard of review of the denial of a PCRA petition is limited to examining whether the evidence of record supports the court's determination and whether its decision is free of

legal error.” *Commonwealth v. Beatty*, 207 A.3d 957, 960-61 (Pa. Super. 2019).

The PCRA “shall be the sole means of obtaining collateral relief and encompasses all other common law . . . remedies . . . including . . . coram nobis.” 42 Pa.C.S. § 9542.

“To be eligible for [PCRA] relief[,] the petitioner must plead and prove by a preponderance of the evidence” they are “currently serving a sentence of imprisonment, probation or parole for the crime[.]” 42 Pa.C.S. § 9543(a)(1)(i). Additionally, as stated above:

Pennsylvania law makes clear the trial court has no jurisdiction to consider a subsequent PCRA petition while an appeal from the denial of the petitioner’s prior PCRA petition in the same case is still pending on appeal. A petitioner must choose either to appeal from the order denying his prior PCRA petition or to file a new PCRA petition; the petitioner cannot do both, . . . because “prevailing law requires that the subsequent petition must give way to a pending appeal from the order denying a prior petition.”

If the petitioner pursues the pending appeal, then the PCRA court is required . . . to dismiss

any subsequent PCRA petitions filed while that appeal is pending.

Beatty, 207 A.3d at 961 (citations omitted & paragraph break added).

B. 1647 MDA 2019
September 24, 2019, Order Denying Petition for
Writ of *Coram Nobis*

On August 26, 2019, Appellant filed a pro se document entitled: “I. Addendum to Transcription of October 3, 2012 Preliminary Hearing Transcript; II. Petition for Writ of *Coram Nobis* (New Transcript); III. Petition for Writ of Habeas Corpus (New Transcript).” Appellant raised the issue of “after-discovered evidence,” and sought relief under 42 Pa.C.S. §§ 9542, 9543(a)(2)(i), (ii), (iv), (vi), and 9545(b)(1)(i)-(ii), (b)(2). *See* Appellant’s Petition for Writ of *Coram Nobis*, 8/26/19, at 26-27. On September 24, 2019, the trial court denied the petition, stating: “Initially, we decline to take action based on our belief that [Appellant] is no longer serving a sentence. With respect to the merits of the [p]etition, we are satisfied beyond any doubt that the new ‘evidence’ would not have had any effect on

the jury’s verdict.” Order, 9/24/19.¹⁵

At this juncture, we note that Appellant filed his petition while his direct appeal was still pending before the United States Supreme Court, which did not deny his petition for writ of certiorari until October of 2019. Based on this procedural detail, it appears the trial court, in its subsequent opinion, however, suggested: “A remand is necessary to vacate [its] September 24, 2019, [o]rder denying [Appellant]’s [p]etition for [w]rit of [c]oram [n]obis and reconsider [his] [p]etition . . . as a [p]etition

¹⁵ During this time, Appellant filed several more *pro se coram nobis* petitions; (1) May 30, 2019, petition for writ of coram nobis; (2) June 13, 2019, corrected petition for writ of *coram nobis*; (3) July 10, 2019, petition for writ of *coram nobis*; (4) July 15, 2019, petition for writ of *coram nobis* III and petition for writ of habeas corpus II; and (5) July 25, 2019, petition for writ of habeas corpus III. Appellant mistakenly believed that the September 24, 2019, order denied all of these petitions. As such, he filed a single notice of appeal at Docket No. 1608 MDA 2019, purporting to appeal from the denial of all the petitions. He later filed new notices of appeal at 1640-1647 MDA 2019.

The trial court clarified that its September 24th order denied only his August 26, 2019, petition. On December 16, 2019, this Court directed Appellant to show cause why the appeal at 1608 MDA 2019 should not be quashed (1) as non-complaint with Pa.R.A.P. 341 because on its face, the notice of appeal appeared to be appealing from nine separate orders, and (2) as duplicative of the present appeal. *See* Order, 12/16/19.

under the [PCRA].” Trial Ct. Op., 8/27/20, at 3 (unpaginated). The court further noted: “All of [Appellant]’s claims are cognizable under the PCRA as they seek relief from his judgment of sentence after it became final and involve claims that should be brought in a PCRA petition.” *Id.* at 4 (unpaginated).¹⁶ We conclude that no relief is due.

Appellant filed a response, admitting that the appeals were identical and did not object to 1608 MDA 2019 being quashed. By separate orders, this Court quashed the appeal at 1608 MDA 2019 and directed that Appellant be permitted to file a Pa.R.A.P. 1925(b) concise statement and that the trial court file a supplemental opinion. *See* Orders, 2/20/20. Appellant filed his concise statement on February 26, 2020, and the trial court filed a supplemental opinion on August 27, 2020.

¹⁶ By letter filed August 19, 2021, the trial court again requested that this Court remand the matter so that the petition at issue could be addressed pursuant to the PCRA. *See* Letter from Senior Judge Stephen B. Lieberman to Superior Court, 8/19/21, at 1 (unpaginated). The next day, Appellant filed a *pro se* response in opposition to the remand. Three days later, this Court directed the Commonwealth to show cause why the appeal should not be remanded. *See* Order, 8/24/21. The Commonwealth filed a response, explaining that that it understood the trial court’s position but noting that the trial court lacked jurisdiction to proceed under the PCRA while the record remained with this Court. *See* Commonwealth’s Answer to Rule to Show Cause Order, 8/25/21, at 1-2.

First, regardless of Appellant's titling his filing as a petition for writ of *coram nobis*, the claims presented were cognizable under the PCRA, and thus "the PCRA [was] the only method of obtaining" the requested review. See 42 Pa.C.S. § 9542 (PCRA "shall be the sole means of obtaining collateral relief and encompasses all other common law . . . remedies . . . including . . . *coram nobis*."), *Commonwealth v. Descardes*, 136 A.3d 493, 501 (Pa. 2016) ("[P]ursuant to the plain language of Section 9542, where a claim is cognizable under the PCRA, the PCRA is the only method of obtaining collateral review."). As such, the court correctly treated this petition as a PCRA petition in its September 24th order and denied relief because Appellant was no longer serving his sentence when he filed the petition. See 42 Pa.C.S. § 9543(a)(1)(i) (to be eligible for PCRA relief, petitioner must be "currently serving a sentence of imprisonment, probation or parole for the crime"). Indeed, this Court has previously opined:

[T]he Pennsylvania Supreme Court has held that, to be eligible for relief under the PCRA, the petitioner must be "currently serving a sentence of imprisonment, probation or parole for the crime." 42 Pa.C.S. § 9543(a)(1)(i). As soon as his sentence is completed, the petitioner becomes ineligible for relief, regardless of whether he was

serving his sentence when he filed the petition. In addition, this court determined in *Commonwealth v. Fisher*, 703 A.2d 714 (Pa. Super. 1997), that the PCRA precludes relief for those petitioners whose sentences have expired, regardless of the collateral consequences of their sentence.

Commonwealth v. Hart, 911 A.2d 939, 941-42 (Pa. Super. 2006). Accordingly, we discern that a remand is not necessary as the trial court did not err in its denial of PCRA relief.¹⁷

Second, it appears Appellant was represented by counsel during this time,¹⁸ and therefore, the denial of relief was also proper under our long standing policy precluding hybrid representation. The

¹⁷ Moreover, Appellant improperly filed this petition while his direct appeal was still pending. See *Williams*, 215 A.3d at 1023. He should have withdrawn his direct appeal with the United States Supreme Court if he wanted to pursue his petition.

¹⁸ It merits repeating the trial court entered an order on February 5, 2019, which removed Attorney Kelly and appointed Attorney Deady to represent Appellant as to his motion for stay of sentence. Appellant filed his *pro se* petition approximately six months later. The court copied Attorney Deady and Attorney Kelly on its September 24, 2019, order and its August 27, 2020, opinion.

Pennsylvania Supreme Court has explained:

[A] defendant in a criminal case may not confuse and overburden the courts by filing his own *pro se* briefs at the same time his counsel is filing briefs for him

* * *

[This] rationale . . . applies equally to PCRA proceedings[.] We will not require courts considering PCRA petitions to struggle through the *pro se* filings of defendants when qualified counsel represent those defendants. . . .

Commonwealth v. Pursell, 724 A.2d 293, 302 (Pa. 1999). *See also Commonwealth v. Jette*, 23 A.3d 1032, 1044 (Pa. 2011) (“[T]he proper response to any *pro se* pleading is to refer the pleading to counsel, and to take no further action on the *pro se* pleading unless counsel forwards a motion.”).¹⁹ Again, we reiterate that Appellant completed serving his sentence as of November 2018 — approximately ten months before he filed this petition. Accordingly, Appellant is not entitled to relief, and the court properly denied Appellant’s August 26, 2019, petition.

¹⁹ Even if Appellant was not represented by counsel at the time, Pennsylvania Rule of Criminal Procedure Rule 904, which requires the PCRA court to appoint counsel to represent an appellant in his first petition, would not be applicable. In *Hart*,

At this Superior Court docket, on February 6, 2023, Appellant filed with this Court an application for relief. He attached a copy of his August 26th petition “with the intent of making it easier for [this] Court to identify the underlying petition in the original record.” *See* Application for Relief, 2/6/23, at 1. As this Court located the petition in the certified record, despite Appellant’s voluminous filings, we deny this application as moot.

C. 566 MDA 2021

**April 5, 2021, Order Denying Petition for Writ
of Coram Nobis**

On March 16, 2021, Appellant filed a document entitled “Petitions for Writ of Coram Nobis, Habeas Corpus, Equitable Relief and Attachments.” The trial court denied this petition on April 5, 2021, stating it was without jurisdiction to consider the petition “as the appeal in this case was still pending before the Superior Court of Pennsylvania.” Order, 4/5/21.

supra, a panel of this Court held: “Although it is axiomatic that a first-time PCRA petitioner is entitled to assistance of counsel, regardless of whether or not the petition is timely on its face, the failure to appoint counsel is not reversible error where the petitioner’s sentence has expired.” *Hart*, 911 A.2d at 942 (emphasis added).

We conclude Appellant was not entitled to relief on the March 16, 2021, PCRA petition, because he had completed serving his sentence and an appeal from the denial of a prior PCRA petition was pending. *See* 42 Pa.C.S. § 9543(a)(1)(i); *Beatty*, 207 A.3d at 961. We thus affirm the trial court's order.

Furthermore, we note that Appellant's March 16th PCRA petition appears to be untimely. "The PCRA's time restrictions are jurisdictional in nature, and a court may not entertain untimely PCRA petitions." *Commonwealth v. Burton*, 158 A.3d 618, 627 (Pa. 2017). Here, Appellant's judgment of sentence became final on October 15, 2019, when the United States Supreme Court denied his petition for writ of certiorari. *See* 42 Pa.C.S. § 9545(b)(3). Appellant then had one year from that date to file a PCRA petition. *See* 42 Pa.C.S. § 9545(b)(1). Thus, this March 6, 2021, PCRA petition was facially untimely.

D. 743 MDA 2022

**February 9, 2022, Order Denying Petition for
Writ of Coram Nobis**

On February 2, 2022, Appellant filed a document entitled "Petition for Writ of Coram Nobis, Habeas & Equitable Relief & Application for Relief." In this petition, he alleges that the email that he sent to the

District Attorney, which led to his underlying conviction, qualifies as “free speech” and there were “inaccuracies within the four corners of the charging documents [which gave] rise to a legitimate material challenge to the content within the four corners of the charging documents.” Appellant’s Petition for Writ of *Coram Nobis*, 2/2/22, at 3-4. The trial court denied this petition seven days later, again stating it was without jurisdiction to consider the petition “as the appeal in this case is still pending before the Superior Court of Pennsylvania.” Order, 2/9/22.

Akin to the appeal at Docket No. 566, the trial court’s denial of relief was proper because there was a pending appeal pertaining to a prior PCRA petition. See *Beatty*, 207 A.3d at 961. We also affirm the order on the ground Appellant was no longer serving his sentence. See 42 Pa.C.S. § 9543(a)(1)(i). Furthermore, the petition appears to be facially untimely pursuant to 42 Pa.C.S. § 9545 and *Burton*, 158 A.3d at 627. Accordingly, the trial court properly denied Appellant’s February 2nd petition.

At this Superior Court docket, Appellant has filed an application for relief, entitled “Application for Relief Per Pa.R.A.P. 1926(b)(1) to Supplement the Certified Trial Court Record with the Attached Copy of the Trial Exhibits and Trial Transcript, which

Indexes the Exhibits.” He avers the certified record may be missing certain documents, and requests to supplement the record. Appellant also has filed a “Notice to the Superior Court Regarding Appellant’s January 25, 2022 Request to the Trial Court Regarding Trial Exhibits” and a “Second Notice to the Superior Court Regarding Appellant’s January 25, 2022 Request to the Trial Court Regarding Trial Exhibits.” These filings pertain to Appellant’s request to the trial court to order the release of several trial exhibits. As no appellate relief is due for the reasons stated above, we deny these applications.

XI. Conclusion

For the foregoing reasons, we conclude Appellant is not entitled to any relief.²⁰

²⁰ We caution Appellant to carefully consider his litigious behavior in the future, and hereby notify him that excessively filing frivolous claims, and/or engaging in other conduct that is abusive to our court system, may result in sanctions and/or the filing of injunctions. We point out our Rules of Appellate Procedure permit parties to file an application with this Court for reasonable counsel fees in cases of frivolous appeals and obdurate, vexatious conduct. See Pa.R.A.P. 2744, 2751, 2572; see also *Commonwealth v. Wardlaw*, (Footnote Continued Next Page)

249 A.3d 937, 947 (Pa. 2021) (“For example, an appellate court ‘may award as further costs damages as may be just,’ Pa.R.A.P. 2744, provided that, *inter alia*, the party receiving such

At 1876 MDA 2018, we affirm the November 1, 2018, order denying Appellant's motion for stay of sentence. We also grant Attorney Deady's petition to withdraw as counsel.

At 1647 MDA 2019, we affirm the September 24, 2019, order denying Appellant's petition, entitled "I. Addendum to Transcription of October 3, 2012 Preliminary Hearing Transcript; II. Petition for Writ of *Coram Nobis* (New Transcript); III. Petition for Writ of *Habeas Corpus* (New Transcript)." We also deny Appellant's February 6, 2023, application for relief.

At 566 MDA 2021, we affirm the April 5, 2021, order denying Appellant's petition entitled "Petitions for Writ of *Coram Nobis*, *Habeas Corpus*, *Equitable Relief* and *Attachments*."

At 743 MDA 2022, we affirm the February 9, 2022, order denying Appellant's petition entitled "Petition for Writ of *Coram Nobis*, *Habeas* & *Equitable Relief* & *Application for Relief*." We also deny Appellant's: (1) January 22, 2023, "Application for Relief Per Pa.R.A.P. 1926(b)(1) to Supplement the Certified Trial Court Record with the Attached Copy

damages makes '[a]n application for further costs and damages.'" (citation omitted).

of the Trial Exhibits and Trial Transcript, which Indexes the Exhibits;" (2) February 2, 2023, 'Notice to the Superior Court Regarding Appellant's January 25, 2022 Request to the Trial Court Regarding Trial Exhibits'; and (3) February 8, 2023, "Second Notice to the Superior Court Regarding Appellant's January 25, 2022 Request to the Trial Court Regarding Trial Exhibits."

Orders at all appeals affirmed. All outstanding applications for relief denied.

Judgment Entered.

_____/s/_____

Joseph D. Seletyn, Esq.

Prothonotary

Date: 03/09/2023

COMMONWEALTH OF : COURT OF COMMON
PENNSYLVANIA : PLEAS OF
 : LUZERNE COUNTY,
v. : PENNSYLVANIA
 : CRIMINAL ACTION -
SEAN DONAHUE, : LAW
Defendant : No. 3501 of 2012

ORDER OF COURT

NOW, THIS 31ST DAY OF OCTOBER, following before us is Defendant's motion for stay of sentence, raising a question as to whether or not the current status of his direct appeal prevents him from filing a PCRA petition in the future.

We deny Defendant's motion for stay of sentence for the following reasons:

1. A serious question exists as to whether we have jurisdiction to even consider this motion in light of the fact that Defendant has a petition for allowance of appeal pending before the Supreme Court from the denial of his direct appeal.

2. While it might be a difficult decision for him, Defendant does have the ability to preserve his

App. 87

PCRA rights by withdrawing his motion for allowance of appeal to the Supreme Court and filing a PCRA petition prior to November 12, 2018, which all counsel seem to agree is the max date of his existing sentence.

By the Court:

_____/s/_____
J. Michael Williamson, Sr. V. J.

App. 88

IN THE COURT OF COMMON PLEAS OF
LUZERNE COUNTY, PENNSYLVANIA CRIMINAL
DIVISION

COMMONWEALTH OF)
PENNSYLVANIA) NO:CP-40-CR-003501
) -2012
v.)
)
SEAN DONAHUE)

ORDER

Before us is a Petition for Writ of Coram Nobis raising the issue of “after discovered evidence.”

Initially, we decline to take action based on our belief that Defendant is no longer serving a sentence. With respect to the merits of the Petition, we are satisfied beyond any doubt that the new “evidence” would not have had any effect on the jury’s verdict.

NOW, this 13th day of September, 2019, Defendant’s Petition for a Writ of Coram Nobis is DENIED without hearing and without further argument.

BY-THE COURT:

_____/s/_____
J. Michael Williamson, Senior Judge
Specially Presiding

App. 89

cc: Mary Victoria Deady

Luzerne County Department of Conflicts
200 N. River Street, Wilkes-Barre, PA 18711

Matthew P. Kelly, Esquire

400 Third Avenue, Suite 205, Kingston, PA
18704 Christopher Schmidt, Deputy Attorney
General

Office of Attorney General,
Criminal Prosecutions Section
Strawberry Square, Floor 16, Harrisburg, PA
17120

Sean Donahue, Defendant

625 Cleveland Street, Hazelton, PA 18201

Lori Umphred, Court Administration

[Date Stamped: CLERK OF COURTS CRIMINAL
LUZ CNTY SEP 14'19_{AM}9:25]

App. 90

COMMONWEALTH OF	:	IN THE COURT OF
PENNSYLVANIA	:	COMMON PLEAS
	:	OF LUZERNE
	:	COUNTY
vs.	:	
	:	<u>CRIMINAL</u>
	:	<u>DIVISION</u>
	:	
SEAN DONAHUE,	:	CP-40-CR-0003501
Defendant	:	-2012

ORDER

NOW, this 25TH day of March, 2021, upon consideration of Defendant's Petitions for Writ of Coram Nobis, Writ of Habeas Corpus, and Equitable Relief, filed on March 16, 2021, it is hereby ORDERED AND DECREED that said Petitions are DENIED. This Court is without jurisdiction to consider said Petitions, as the appeal in this case is still pending before the Superior Court of Pennsylvania.

The Clerk of Courts Office of Luzerne County is ORDERED AND DIRECTED to mail a copy of this Order to the Defendant and all counsel of record, pursuant to Pa.R.Crim.P. 114.

BY THE COURT:

App. 91

_____/s/_____
STEPHEN B. LIEBERMAN, S.J

[Date Stamped: CLERK OF COURTS CRIMIN
LUZ CNTY APR 5'21_{PM}12:]

CC:

District Attorney's Office
200 N. River Street
Wilkes-Barre, PA 18711

Mary Deady, Esq.
Office of Conflict Counsel
200 N. River Street
Wilkes-Barre, PA 18711

Matthew P. Kelly, Esq.
400 Third Ave., Ste. 205
Kingston, PA 18704

Sean Donahue
625 Cleveland Street
Hazleton, PA 18201

App. 92

COMMONWEALTH OF	:	IN THE COURT OF
PENNSYLVANIA	:	COMMON PLEAS
	:	OF LUZERNE
	:	COUNTY
vs.	:	
	:	<u>CRIMINAL</u>
	:	<u>DIVISION</u>
	:	
SEAN DONAHUE,	:	CP-40-CR-0003501
Defendant	:	-2012

ORDER

AND NOW, this 9TH-day of February, 2022, upon consideration of Defendant's Petition for Writ of Coram Nobis, ^ Habeas and Equitable Relief, filed on 2/ 2/ 2022, it is hereby ORDERED AND DECREED that said Petition is DENIED. This Court is without jurisdiction to consider said Petition, as the appeal in this case is still pending before the Superior Court of Pennsylvania.

The Clerk of Courts Office of Luzerne County is ORDERED AND DIRECTED to mail a copy of this Order to the Defendant and all counsel of record, pursuant to Pa.R.Crim.P. 114.

BY THE COURT:

_____/s/____

App. 93

STEPHEN B. LIEBERMAN, S.J
Appointed Visiting Judge

[Date Stamped: CLERK OF COURTS CRIMINAL
LUZ CNTY FEB 9'22_{AM}11:15]

CC:

District Attorney's Office
200 N. River Street
Wilkes-Barre, PA 18711

Mary Deady, Esq.
Office of Conflict Counsel
200 N. River Street
Wilkes-Barre, PA 18711

Matthew P. Kelly, Esq.
400 Third Ave., Ste. 205
Kingston, PA 18704

Sean Donahue
625 Cleveland Street
Hazleton, PA 18201

App. 95

On Behalf of Sean Donahue
Defendant

5

MR. ANDERSON: I do not, Your Honor. Although I haven't been told this specifically, I've got a sneaking suspicion that they're lost. I asked the Hazleton Police Department, you know, where is the evidence in this case and where is the file, and they switched over computer systems or something at some point, you know, and he was arrested in 2012 so a lot of time went by and at some point they switched over either their computer system or their file room or something and

6

a bunch of files got lost. His apparently is one of them. I've never seen anything that they seized. I don't--I know that they took a couple of computers. I think there may have been some rudimentary analysis of those. I saw a few pages of reports which were provided to Mr. Matangos, those reports which honestly made no sense to me whatsoever and they certainly weren't used during the trial as Your Honor knows. In fact, the

App. 96

defendant stipulated at trial that he sent the subject email.

THE DEFENDANT: No, I did not.

THE COURT: Well, Mr. Matangos did.

THE DEFENDANT: I specifically told him not to, Your Honor, and I remember there was-

THE COURT: Okay. I understand that...

7

...Mr. Anderson just said, it's because there's something screwy about the cases. And now after all this time Mr. Anderson is telling us they can't even find the files and the evidence in your case which, you know, raises some suspicion about what's going on...

26

THE DEFENDANT:
Well, there is one concern. How can we appeal the rule that says many of these

issues are to be raised on PCRA rather than in direct appeal? How is that, that issue alone where many of these issues I raise Your Honor has said, well, that may be valid, may not be valid, but it would be

27

on PCRA, how do we appeal the issue of whether those issues should be raised on PCRA and -- how do we appeal that rule so that they could instead be raised on direct appeal and how do we deal -- suppose the sentence is done before the U.S. Supreme Court has a chance to decide whether they'll hear the case and --

THE COURT: You have a problem there.

THE DEFENDANT: And that's the issue.

THE COURT: I suppose I could amend the sentence to give you 120 days to 5 years, but you don't want me to do that.

THE DEFENDANT: No, I do not. So in this circumstance, it seems as if the Pennsylvania Judicial System has

App. 98

allowed itself to let cases go into the
history books knowing full well there
may have been errors that are of
material value maybe even to the point
that it's an injustice.

***"

App. 99

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF : No. 183 MAL 2023
PENNSYLVANIA :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN DONAHUE, :
Petitioner :

ORDER

PER CURIAM

AND NOW, this 12th day of September, 2023, the
Petition for Allowance of Appeal
is DENIED.

App. 100

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF : No. 184 MAL 2023
PENNSYLVANIA :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN DONAHUE, :
Petitioner :

ORDER

PER CURIAM

AND NOW, this 12th day of September, 2023, the
Petition for Allowance of Appeal
is DENIED.

App. 101

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF : No. 185 MAL 2023
PENNSYLVANIA :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN DONAHUE, :
Petitioner :

ORDER

PER CURIAM

AND NOW, this 12th day of September, 2023, the
Petition for Allowance of Appeal
is DENIED.

App. 102

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF : No. 186 MAL 2023
PENNSYLVANIA :
Respondent :
v. : Petition for Allowance of
: Appeal from the Order
: of the Superior Court
SEAN DONAHUE, :
Petitioner :

ORDER

PER CURIAM

AND NOW, this 12th day of September, 2023, the
Petition for Allowance of Appeal
is DENIED.

App. 103

BLD-067 NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2997

SEAN M. DONAHUE,
Appellant

v.

DAUPHIN COUNTY; DAUPHIN COUNTY PRISON;
PA STATE CAPITOL POLICE;
PENNSYLVANIA DEPARTMENT OF GENERAL
SERVICES; UNKNOWN DAUPHIN COUNTY
PRISON GUARDS AND ADMINISTRATION
EMPLOYEES; KATIE LYNN ADAM; RICHARD C.
SHUR; LISA M. SAUDER; MARY JANE
MCMILLAN; HEATHER ROTH; ELAINE B.
STALFA; DEBORAH E. CURCILLO

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1:19-cv-00890)
District Judge: Honorable Christopher C. Conner

Submitted for Possible Dismissal Pursuant to 28
U.S.C. § 1915(e)(2)(B) or

App. 104

Summary Action Pursuant to Third Circuit LAR 27.4
and I.O.P. 10.6
January 14, 2021

Before: AMBRO, SHWARTZ, and PORTER, Circuit
Judges

(Opinion filed: March 24, 2021)

OPINION*

* This disposition is not an opinion of the full Court
and pursuant to I.O.P. 5.7 does not constitute
binding precedent.

PER CURIAM

Appellant Sean Donahue, proceeding pro se and
in forma pauperis, appeals an order of the United
States District Court for the Middle District of
Pennsylvania dismissing his civil rights action. We
will dismiss this appeal as frivolous and malicious.

In 2016, Donahue was convicted in the
Pennsylvania Court of Common Pleas for Dauphin
County for harassment, based on threatening emails
he had sent to various public employees and officials,

and sentenced to two years' probation. Despite ongoing attempts to appeal his conviction, Donahue filed a federal civil rights action against several defendants related to the criminal charges. The Middle District of Pennsylvania dismissed that action as barred by the favorable-termination requirement of Heck v. Humphrey, 512 U.S. 477, 486–87 (1994), and we summarily affirmed. See Donahue v. Dauphin Cnty. Solics. Off., 788 F. App'x 854, 857 (3d Cir. 2019) (per curiam).

While that first civil rights action was pending in this Court, three relevant events occurred: Donahue was denied permission to appeal his conviction to the Pennsylvania Supreme Court, see Commonwealth v. Donahue, 180 A.3d 1211 (Pa. 2018) (table); the U.S. Supreme Court denied his petition for certiorari in his direct criminal appeal, see Donahue v. Pennsylvania, 138 S. Ct. 2626 (2018) (mem.); and Donahue filed his second civil rights action against the same defendants based on the same facts, see Donahue v. Dauphin County, No. 1:18-cv-0839, 2018 WL 3217478 (M.D. Pa. July 2, 2018). The District Court dismissed that second action on largely the same grounds as the first, and we affirmed. See Donahue v. County of Dauphin, 747 F. App'x 42 (3d Cir. 2019) (per curiam).

Undeterred, Donahue filed this, his third civil rights action against a nearly identical slate of defendants, based on the same events surrounding the investigation, trial, and conviction.¹ Yet again, a Magistrate Judge recommended dismissal of his complaint; yet again, the District Court adopted that recommendation; yet again, Donahue timely filed a notice of appeal.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over a district court's decision to dismiss a complaint as frivolous or malicious. See Dooley v. Wetzel, 957 F.3d 366, 373–74 (3d Cir. 2020). Having granted Donahue's motion to proceed in forma pauperis in this Court, we must make an independent determination under 28 U.S.C. § 1915(e)(2)(B) and must dismiss his appeal if it is malicious, i.e., it “is an attempt to vex, injure or

¹ This is not Donahue's only line of repetitive litigation. He has lodged other meritless challenges to this and a separate conviction for similar conduct, see, e.g., *Donahue v. Super. Ct. of Pa.*, No. 19-1625, 2019 WL 4665756 (3d Cir. Sept. 5, 2019), cert. denied, 140 S. Ct. 1245 (2020), and has filed several suits against government agencies and officials seeking the benefits he claims to have been denied, see, e.g., *Donahue v. Acosta*, 789 F. App'x 324 (3d Cir. 2019), cert. denied sub nom. *Donahue v. Scalia*, 140 S. Ct. 2660 (2020).

harass the defendant[s],” Deutsch v. United States, 67 F.3d 1080, 1086 (3d Cir. 1995), or if it is frivolous, meaning it “lacks an arguable basis either in law or in fact,” Neitzke v. Williams, 490 U.S. 319, 325 (1989). The former inquiry examines the litigant’s subjective intent, but the latter is an objective standard. See Deutsch, 67 F.3d at 1086–87.

Donahue’s appeal is subjectively malicious. The District Court based its own conclusion that the complaint was malicious on Donahue’s litigation history, noting that this Court and our sister circuits have held that “[r]epetitious litigation of virtually identical causes of action may be dismissed under §1915 as frivolous or malicious.” McWilliams v. Colorado, 121 F.3d 573, 574 (10th Cir. 1997) (internal quotation marks and citation omitted). Yet no better evidence of his state of mind exists than his own words—words that led to his criminal conviction and that he conveniently appended to his complaint here. Two of the missives that a Pennsylvania jury found sufficiently harassing to warrant criminal sanction disclose Donahue’s subjective intent in pursuing these subsequent civil complaints. First, in an email dated November 26, 2014, Donahue wrote to the head of the Pennsylvania Civil Service Commission (and including some of the named defendants here as

recipients) that if his demands for various veterans' employment benefits were not met:

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 [the Pennsylvania Department of Labor & Industry] now claims its employees faced and fear that they still face from me. This is a threat and I make that threat with the full confidence of Democracy and no fear whatsoever of the federal and state courts.

Compl. App. 38-39, ECF No. 1-3. Then, in an email dated November 29, 2014, he wrote to various recipients, including some of the named defendants in this action: "I am going to find a LEGAL way to pound the [expletive] out of your government agencies and I'm going to use that method, whatever it is in whatever context makes it LEGAL, to pound your employees into submission until they stop denying me my benefits." *Id.* at 47. Donahue's voluminous filings in state and federal court since he wrote these words clearly demonstrate an intent to vex, injure, and harass these defendants "into

submission.” We strongly reject Donahue’s assumption that he is entitled to use the courts for these purposes.

Moreover, this appeal is frivolous for its total lack of arguable merit in law or fact. Donahue has been told by this Court on two prior occasions that as part of a civil rights action, these claims implicate the validity of his conviction, and are therefore barred by the favorable termination requirement. See Heck, 512 U.S. at 486–87. Here, as the District Court noted, Donahue did not even challenge the applicability of the Heck bar to his claims; he merely seeks to overturn that decision. See Order at 2 n.1, ECF No. 11. Similarly, on appeal, he quarrels with the holding of Heck and its progeny in our circuit, asserting that he “must first pass through the Appellate court and must be an aggrieved party” to ultimately challenge Heck in the Supreme Court. Resp. at 2, CA3 ECF No. 5. Yet Donahue raised the same arguments about what he perceives to be the errors of Heck and this Court’s line of cases thereafter in a previous meritless suit. His complaint here “incorporates” nearly fifty pages of what appears to be a petition for certiorari “not adjudicated by the [U.S.] Supreme Court” and intended to follow his second civil rights action. Compl. at 5, ¶ 6, ECF No. 1 (referring to M.D. Pa.

docket number 1:18-cv-00839); see also id. at 6–54 (reproducing petition). However, Donahue has not cited any record of his having petitioned the Supreme Court following that action, nor have we been able to find one. His desire to raise untimely challenges to Heck and its progeny now, after failing to seek certiorari when appropriate, is entirely insufficient to justify proceeding with a precluded case. Donahue makes no arguments in support of his appeal on which to base an opposite conclusion.

Related to his repetitious challenges to the Heck bar, the District Court also dismissed Donahue’s complaint as frivolous based on principles of res judicata that apply with equal force to this appeal. Res judicata bars a suit when there has been: “(1) a final judgment on the merits in a prior suit; (2) involving the same parties or their privies; and (3) a subsequent suit based on the same cause of action.” Elkadrawy v. Vanguard Grp., 584 F.3d 169, 172 (3d Cir. 2009). The District Court dismissed Donahue’s second civil rights case—in which all but one of the named defendants are identical to the instant action—with prejudice as Heck barred (as discussed above) and time barred, and we affirmed. See Donahue, 747 F. App’x at 43–44. A dismissal based on the running of the statute of limitations is a final judgment on the merits for the purposes of res

judicata. See Elkadrawy, 584 F.3d at 173. Thus, all claims dismissed as time barred in the previous action are barred here by res judicata.

We also find that Donahue's purportedly "new" evidence is, in fact, an argument he has already presented to this Court. In his second civil rights action, when requesting rehearing en banc, Donahue made the same claims about his "new knowledge" of Defendant Gregory Budman's employment as a police officer that he makes here in support of his right to a new cause of action. Compare Pet. for Reh'g at 4–6, Donahue v. County of Dauphin, 747 F. App'x 42 (3d Cir. 2019) (No. 18-2568) (emphasizing the "new knowledge that Budman is a cop"), with Compl. at 4, ECF No. 1 (claiming "a right to a new cause of action" based on the discovery of this same defendant's employment). Not only have we heard these claims, but as the Magistrate Judge correctly noted, Budman was a defendant in Donahue's second case from the outset. See R. & R. at 10, ECF No. 5. Res judicata bars claims that were brought or could have been brought in a prior suit based on the same cause of action. See Elkadrawy, 584 F.3d at 173. Thus, we find that Donahue could have brought these claims against Budman at the time of filing his second civil rights complaint, and did in fact present his arguments to this Court in his prior case, and

therefore the claims are barred by res judicata, rendering this appeal frivolous.

Finally,² between the second action and the instant one, Donahue added Judge Curcillo to the list of defendants. As the Magistrate Judge and District Court found, she is protected by absolute judicial immunity from liability for her conduct during Donahue's trial. See Stump v. Sparkman, 435 U.S. 349, 356–57 (1978). Furthermore, Donahue's assertion that the judge employed "MindShark" techniques on the jury to sway them in the prosecution's favor is, in the words of the Magistrate Judge, "fanciful, fantastic, delusional, irrational, and wholly incredible," R. & R. at 11, ECF No. 5, and ultimately, "patently frivolous," id. at 17–18.

For all these reasons, we will dismiss his appeal as frivolous and malicious. We advise Donahue to refrain from filing further frivolous or malicious appeals in this Court to avoid the imposition of

² The District Court also found other miscellaneous grounds to dismiss Donahue's complaint, largely based on sovereign and individual immunities. See R. & R. at 21–22; Order at 1. We affirmed these same grounds for dismissal in the previous action, see Donahue, 747 F. App'x at 43–44, and thus they are incorporated into our consideration of res judicata.

sanctions, such as forfeiting the privilege of proceeding without payment of fees or other appropriate measures.

U.S. Const. Amend. I:

“Congress shall make no law... abridging the
freedom of speech, ...and to petition the Government
for a redress of grievances.”

U.S. Const. Amend. IV:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

U.S. Const. Amend. V:

“No person shall be...deprived of ...liberty, or
property, without due process of law”.

Pa. Const. Art I, §8:

“Security from searches and seizures.
The people shall be secure in their persons,
houses, papers and possessions from
unreasonable searches and seizures, and no
warrant to search any place or to seize any
person or things shall issue without describing
them as nearly as may be, nor without
probable cause, supported by oath or
affirmation subscribed to by the affiant.”

18 Pa. C.S. §2709:

“Harassment.

(a) Offense defined.--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;

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures...

(c) Grading.--

(1) Except as provided under paragraph (3), an offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.

(2) An offense under subsection (a)(4), (5), (6) or (7) or (a.1) shall constitute a misdemeanor of the third degree.

***”

18 Pa. C.S. §2706:

“§2706. Terroristic threats.

(a) Offense defined.--A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to:

(1) commit any crime of violence with intent to terrorize another;

***”

42 Pa. C.S. § 9543:

“Chapter 95. Post-trial Matters

§ 9543. Eligibility for relief.

(a) General rule.--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;

(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.

(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.

(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.

(b) Exception.--Even if the petitioner has met the requirements of subsection (a), the petition shall be dismissed if it appears at any time that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. A petition may be dismissed due to delay in the filing by the petitioner only after a hearing upon a motion to dismiss. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have discovered by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.

***"

“NY Penal L §240.30 (2012):

§ 240.30 Aggravated harassment in the second degree. A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:

1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or

(b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm;

***”

NY Penal L §240.30 (2023):

“§ 240.30 Aggravated harassment in the second degree. A person is guilty of aggravated harassment in the second degree when:

1. With intent to harass another person, the actor either:

3. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or

4. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person as defined in section 530.11 of the criminal procedure law;

***”

NY Penal L §240.26 (2023):

“§ 240.26 Harassment in the second degree. A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places;

***”

Pa.R.Crim.P. 904(C):

“Rule 904. Entry of Appearance and Appointment of Counsel; In Forma Pauperis.

(C) Except as provided in paragraph (H), when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.

(H) Appointment of Counsel in Death Penalty Cases.

***”

App. 127

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

SEAN M. DONAHUE :
 :
vs : 3:CV-14-1351
 :
CITY OF HAZLETON :

BEFORE: THE HONORABLE MALACHY E.
MANNION

PLACE: COURTROOM NO. 3

PROCEEDINGS: JURY TRIAL

DATE: TUESDAY, JANUARY 14, 2022

APPEARANCES:

For the Plaintiff:

SEAN M. DONAHUE, PRO SE
625 CLEVELAND STREET
HAZLETON, PA 18201

For the Defendants:

SEAN P. McDONOUGH, ESQ.
DOUGHERTY, LEVENTHAL & PRICE, LLP
75 GLENMAURA NATIONAL BLVD.
MOOSIC, PA 18507

[Donahue:]Q. Were you one of the officers who complained of carbon monoxide poisoning?

[King:]A. I was evaluated by E. M. S. and provided oxygen after entering into your home, yes.

Q. Would you please describe any symptoms that you felt that required you to be evaluated by E. M. S. and getting oxygen?

A. Didn't really have symptoms per se. The fire department notified us there were high levels of C. O. detected in there and we should be evaluated by E. M. S.

[Donahue:]Q. And is it true that at some point the officers who were in the house who had arrested me had indicated that they felt dizzy or nauseous or affected by carbon monoxide?

[Ledger:]A. Yes, I was aware of that.

[Donahue:]Q. Okay. Do you remember that the fire department took over the scene at some point because of carbon monoxide?

[Gallagher:]A. I know the fire department came to the scene. I won't say they necessarily took over our scene... I believe as soon as you were taken into custody all officers exited the interior of the residence.

[Gallagher]: I believe you were taken out rather quickly due to the environment within the residence. We were unsure whether or not it was safe for us or you to be inside. You were removed along with police personnel so the fire department can come up and deem the residence safe...

[Donahue:]Q. Okay. And were you
among the officers who was treated for

carbon monoxide?

[Coffman:]A. Yes.

Q. Did the carbon monoxide symptoms
occur right then at that time or shortly
thereafter?

A. I don't remember. I just remember
when it was over I was feeling a little
bit nauseous and they gave me oxygen.

***"

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THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

SEAN M. DONAHUE :
 :
 vs : 3:CV-14-1351
 :
 CITY OF HAZLETON :

BEFORE: THE HONORABLE MALACHY E.
MANNION

PLACE: COURTROOM NO. 3

PROCEEDINGS: JURY TRIAL

DATE: TUESDAY, JANUARY 19, 2022

APPEARANCES:

For the Plaintiff:

SEAN M. DONAHUE, PRO SE
625 CLEVELAND STREET
HAZLETON, PA 18201

For the Defendants:

SEAN P. McDONOUGH, ESQ.
DOUGHERTY, LEVENTHAL & PRICE, LLP
75 GLENMAURA NATIONAL BLVD.
MOOSIC, PA 18507

“

“[Donahue:]...It's plaintiff 13
[Attachment B.9 Hazleton Defs'
#002116-#002119]...

[Donahue]Q. Now, is that an e-mail that
you sent to... Salavantis?

[DeAndrea]A. Yes, it is.

THE COURT: It's admitted.

Q. Officer DeAndrea, would you please
tell us what the date of that e-mail is?

A. It was sent Friday, August 17th, 2012
at 3:34 p.m.

Q. ...And would you please tell us what
the subject of that e-mail is, the subject
line?

A. The subject line refers to the subject
line from the e-mail behind--below it,
which is reference harassment and

conspiracy complaints against corporal Wetzell and others.

Q. And then could you just read that--the one line you sent to ...Salavantis?

33

A. Do you consider this a threat.

Q. Thank you. And do you agree it's your signature block down below?

A. That is my signature block as the chief of police.

Q. And below is that the e-mail you were making reference to, the next one?

A. Yes, it is and I did--I apologize. I did forward that e-mail from you to...Salavantis...

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Q. So my question is, is it the exact same e-mail for which I was arrested? That's the question.

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35

THE WITNESS: Yes, that is the e-mail.

58

[Donahue:]Q. How do you know the
carbon monoxide intoxication inside the
home or the carbon monoxide gas
...really occurred?

...

[DeAndrea:]A. I was informed that
there was."

***"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

SEAN M. DONAHUE,	*	
Plaintiff	*	Case No.
vs.	*	3:14 - CV - 1351
CITY OF HAZLETON	*	
et al.,	*	
Defendants	*	

* * * * *

DEPOSITION OF
JASON ZOLA
March 19, 2015

“

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[Thompson:]Q. Okay. So there was no indication upon entry that there might be carbon monoxide —.

[Jason Zola:]A. Oh, there definitely was. You could smell — I mean, I

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immediately upon entry — we almost
actually backed out of the house
originally because when we went in,
after encountering the kitchen chairs, I
had said, something's not right here.
There's a smell in this house.
Something's not right. And sure enough,
upon contacting the fire company, there
was a presence of carbon monoxide in
there. There was a smell coming from
the stoker.

***"
