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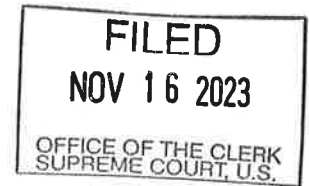
IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

Sean M. Donahue,
Petitioner

v.

Commonwealth of Pennsylvania,
Respondent



ON PETITION FOR A WRIT OF CERTIORARI TO

The Superior Court of Pennsylvania
Consolidated Opinion at Nos. Nos. 1876 MDA 2018, 1647 MDA 2019,
566 MDA 2021, 743 MDA 2022.

COMMON PLEAS COURT OF LUZERNE COUNTY PENNSYLVANIA
DOCKET: CP-40-CR-3501-2012

TO: THE HONORABLE JUSTICE ALITO:

1. Sean M. Donahue, *pro se*, RESPECTFULLY intends to Petition for Certiorari for two related cases that arise from Pennsylvania. The Petitioner avers that in both cases, he was unduly found culpable for events that were of no moment and to which no criminal statute can be justly applied.
2. The Petitioner is submitting two separate motions, one for each of the two cases.

- JAN 12 2023
3. The Petitioner RESPECTFULLY REQUESTS the following;
 - (1) An extension of 60 days to February 12, 2023 to submit a Petition for a *writ of certiorari* in the attached two state cases.
 - (2) Leave to mitigate costs by consolidating the two petitions into one Petition for Certiorari.
 - (3) To proceed on standard 8.5 x 11 copy paper.
 - (4) To proceed *in forma pauperis*. (A Copy of the IFP Application and Affidavit is Attached)
 4. The attached two cases include
 - (1) the Consolidated Superior Court of Pennsylvania Opinion at *Commonwealth v. Donahue, Nos. 1168 MDA 2018, 920 MDA 2019, 1179 MDA 2019, 1582 MDA 2019, 589 MDA 2020, 947 MDA 2020, 502 MDA 2021, 182 MDA 2022 (Pa. Super. Ct. Mar. 9, 2023)*. (Attachment A.2) The Petitioner was denied Allowance of Appeal by the Supreme Court of Pennsylvania at *Commonwealth v. Donahue, No. 153 MAL 2023, 154 MAL 2023, 155 MAL 2023, 156 MAL 2023, 157 MAL 2023, 158 MAL 2023, 159 MAL 2023, 160 MAL 2023, (Pa. Sept. 12, 2023)*. (Attachment A.1); and

(2) the Consolidated Superior Court of Pennsylvania Opinion at *Commonwealth v. Donahue*, No. 1876 MDA 2018, 1647 MDA 2019, 566 MDA 2021, 743 MDA 2022, (Pa. Super. Ct. Mar. 9, 2023)

.(Attachment B.2) The Petitioner was denied Allowance of Appeal by the Supreme Court of Pennsylvania at *Commonwealth v.*

Donahue, No. 183 MAL 2023, 184 MAL 2023, 185 MAL 2023, 186 MAL 2023, (Pa. Sept. 12, 2023). (Attachments B.1.1 - B.1.4)

5. The Petitioner intends to only “present issues of importance beyond the particular facts and parties involved”. (Guide For Prospective *ifp* Petitioners For Writs Of Certiorari, ¶2) The issues the Petitioner wishes to present are prevalent in both state cases below and likely to arise in similar cases throughout the US well into the future.

6. The issues being raised by the Petitioner are the following;

- I. In states that offer unitary review of direct appeal and post conviction relief matters,¹ when an appellant’s court appointed counsel gives the appellant a choice to accept either choosing between direct appeal or PCRA or forfeiting representation by counsel, is the appellant entitled to review of the portion of the

¹ In Pennsylvania, Post Conviction Relief Act (PCRA)

unitary review that he was wrongly denied by counsel, either by state appellate court review *nunc pro tunc* or through federal *habeas corpus* review *nunc pro tunc*?

(I.a) In both of the cases below, the court appointed counsels for each case forced the appellant to choose between either direct review or collateral review and did so despite their knowledge of the fact that state common law precedent granted the appellant a right to simultaneously pursue a unitary review of both direct appeal and collateral issues. (*Com. v. Holmes*, 79 A.3d 562, 621 Pa. 595 (2013); *Commonwealth v. Delgros*, 183 A.3d 352, 646 Pa. 27 (2018))

In the Dauphin County case, it was the court appointed counsel who denied the Petitioner access to unitary review by forcing him to choose either direct appeal or PCRA. In the Luzerne County case, it was the trial court, the court appointed counsel and the Attorney General's office that denied the Petitioner access to unitary review by forcing him to choose between direct appeal or PCRA.

(I.b) This question has not been addressed by the Supreme Court of the United States and raises the federal question of whether or not a court appointed counsel can deny representation on matters for which

the counsel was specifically appointed under Pa.R.Crim.P. 904(C).
(Attachment H) The Petitioner avers that the Court must extend the constraints of *Ross v. Varano*, 712 F.3d 784 (3d Cir. 2013), *United States v. Cronin*, 466 U.S. 648 (1984) and *Strickland v. Washington*, 466 U.S. 668 (1984) to this circumstance despite the fact that the Petitioner maxed out his sentence prior to the completion of the direct appeal, which served to deny him access to PCRA in both cases per 18 Pa. C.S. §9543(a)(1)(i);

“§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;”

(18 Pa. C.S. §9543(a)(1)(i), Attachment I)

II. In states that reject a “good faith exception to the exclusionary rule”, are appellants who later discover that the evidence that was used against them at trial could only have been lawfully admitted via a “good faith exception” entitled to state appellate court review *nunc pro tunc* or to federal *habeas corpus* review *nunc pro tunc*?

(II.a) In both cases below, the copies of emails that were presented as evidence were the fruit of illegal and warrantless wiretaps. The hardcopies of the emails also left police custody after first being collected and were then illegally distributed by police to alleged victims, who then handed the evidence to different police officers, which enabled the evidence to be recollected anew, as if it had never been illegally intercepted prior to the evidence being presented at trial. Without “a good faith exception” the evidence was explicitly inadmissible in Pennsylvania trial proceedings. This fact is proven by the information that appears in the letterhead of the copies of emails that were presented to the juries in both cases. (*Article I, Section 8, of the Pennsylvania Constitution, Attachment C; Com. v. Edmunds, 586 A.2d 887, 526 Pa. 374 (1991); Com. v. Diego, 119 A.3d 370 (Pa. Super. Ct. 2015)*) U.S. Const. Amend. IV, V, Attachments J & K)

(II.b) Since Pennsylvania’s adoption of its own precedent at *Edmunds supra*, the Supreme Court of the United States has only addressed Pennsylvania barring of “a good faith exception” within the context of operating motor vehicles while willfully intoxicated. The Court has never addressed Pennsylvania’s Edmunds bar within the

context of police intercepting electronic communications and/or accessing archived electronic communications or paper copies thereof.

III. Does *Coffin v. United States*, 156 U.S. 432, 457, 15 S. Ct. 394, 39 L. Ed. 481 (1895), in which the Court opined that

“it has been held not error to refuse to charge the presumption of innocence where the charge actually given was, that the law required that the State should prove the material elements of the crime beyond doubt”,

render it axiomatic that when a state trial court removes the presumption of innocence before the jury is presented with any evidence, the necessary standard of proof for the case is “beyond doubt”, not “beyond a reasonable doubt”, and in state trial cases in which this occurs, is the appellant entitled to state appellate court review *nunc pro tunc* or to federal *habeas corpus* review *nunc pro tunc*?

(III.a) In the case below that arises from Dauphin County, Pennsylvania, the court explicitly removed the presumption of innocence during its opening instructions to the jury. The removal of the presumption of innocence prior to any evidence having been presented to the jury was not error but the court’s failure to raise the standard of proof to “beyond doubt” was an axiomatic error that knows

no time or finality bar to review. (*Coffin supra p457; Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996)*)

(III.b) The Court has only addressed cases in which objections were raised to jury instructions that lowered the standard of proof. (*Francis v. Franklin, 471 U.S. 307, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985)*) The last time the Court addressed a case in which it was not deemed to be error for jury instructions to not charge the presumption of innocence was in 1895 at *Coffin supra p457*. Post *In re winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)*, the Supreme Court of the United States has never addressed a case in which no objection was raised to the removal of the presumption of innocence at the beginning of a jury trial but the Petitioner argues that, per the Court's incorporation of *Morehead v. State, 34 Ohio St. 212* at *Coffin supra p457*, the standard of proof is raised to "beyond doubt".

IV. In states that do not have an explicit involuntary intoxication law or common law rule but evidence that is later presented in civil court by police officers proves that the appellant was involuntarily and unknowingly intoxicated by carbon monoxide gas at and around the time of the events for which the appellant was found

culpable, is the Appellant entitled to state appellate court review *nunc pro tunc* or to federal *habeas corpus* review *nunc pro tunc*?

(IV.a) At *Donahue v. City of Hazleton, Civil No. 3: 14-1351 (M.D. Pa.)*, police officers testified at civil trial that the environment in which the Petitioner lives was subject to non-lethal levels of carbon monoxide gas at the very time that the events for which the Petitioner was found culpable in the case that arises from Luzerne County, Pennsylvania were alleged to have occurred. This fact proves that the Petitioner should not have been found culpable for either of the two state cases below.

(IV.b) The Court has not addressed the issue of an involuntary intoxication defense outside the context of charges related to the operation of motor vehicles while intoxicated.

V. In state cases where law enforcement and the individuals claiming to be victims of true threats intentionally decide to wait until after a long weekend, or even after several months have passed, to initiate criminal action based on what they later present to the court as a true threat, do both law enforcement and those claiming to be victims forfeit their claims to having been victimized by the

speech that they later present to the court as a true threat and is the Petitioner entitled to state appellate court review *nunc pro tunc* or to federal *habeas corpus* review *nunc pro tunc*?

(V) In both cases, police and the alleged victims decided to wait until after long weekends, and even after several months had passed, before they initiated criminal charges against the Petitioner based on claims of true threats. In both cases, the intentional delays prove that both police and the alleged victims concluded that there were no true threats.

(V.a) The Supreme Court of the United States has never addressed this issue.

VI. Is the U.S. Senate's finding in the Trump II Impeachment proceedings that the speech used by President Trump during January of 2020 is constitutionally protected speech binding on the courts, such that, the Senate's ruling clarified that Congress' legislative intent of *U.S. Const. Amend. I* (Attachment E) is that any speech that is equally as, or less, harsh, inflammatory, harassing, threatening, terroristic or "*incendiary*" (*Trump II Senate Impeachment Hearing S730*) than is the language that was

reviewed by Congress through *Trump II* is also protected speech (id S616, S658-661, S668-669, S674-677, S689, S718-719, S727, S730-731, Schumer S734, 2021) AND is an appellant who was found culpable of such speech entitled to state appellate court review *nunc pro tunc* or to federal *habeas corpus* review *nunc pro tunc*?

(VI.a) In both cases, the very worst speech that was alleged by police to be true threats was not equally as, or more, harsh, inflammatory, harassing, threatening, terroristic or “*incendiary*” (*Trump II Senate Impeachment Hearing S730*) than the language that Congress reviewed in *Trump II*.

(VI.b) The Court has never addressed this issue.

VII. Did the state in the cases below fail to show that the speech that was presented as “true threats” meets the standard of “recklessness” as defined by *Counterman v. Colorado*, 143 S. Ct. 2106, 600 U.S. 66, Pp. 4–14, 216 L. Ed. 2d 775 (2023)?

(VII.a) This standard was not met in either of the two cases below. (*Sandstrom v. Montana*, 442 U.S. 510 (1979))

(VII.b) The Petitioner avers that the Court's ruling in *Counterman supra* requires the Court to compel Pennsylvania to apply the standard established in *People v. Golb*, 23 N.Y.3d 455, 15 N.E.3d 805, 991 N.Y.S.2d 792. PART III, (2014) to each of its "true threats" statutes, which will require Pennsylvania to strike both its terroristic threats statute 18 Pa. C.S. §2706 (Attachment F) and its harassment statute 18 Pa. C.S. §2709 (Attachment G) due to the unconstitutionality of those statutes.

7. The Petitioner requires a 60 day extension to both continue his search for an attorney to represent him in this matter and to prepare his petition *pro se*. There are several reasons the Petitioner is unable to research, write and file his petition by December 11, 2023.

8. The Petitioner was busy during the previous months filing briefs in the Commonwealth Court of PA.

9. On September 26, 2023, the Petitioner filed an appellant brief at Commonwealth Court of Pennsylvania No. 699 CD 2023. (*Sean M. Donahue v. Pennsylvania Department of Human Services, No. 699 CD 2023, (State Civil Service Commission, Commonwealth Court of Pennsylvania)*)

10. In October the Petitioner filed ancillary filings at that same docket and on November 5, 2023, with leave of the state court, the Petitioner also filed an amended appellant brief at that same docket.

11. On September 18, 2023, the Petitioner filed an intervenor's brief at Commonwealth Court of PA No. 361 CD 2023. (*Department of Human Services v. State Civil Service Commission, No. 361 CD 2023, Commonwealth Court of Pennsylvania*)

12. On September 27, 2023, the Petitioner filed an ancillary filing at 3d Cir No. 22-3029 (*Donahue v. CITY OF HAZLETON, PA, No. 22-3029 (3d Cir. Nov. 3, 2023)*).

13. October 2, 2023, the Petitioner filed a Reply Brief at that same docket.

14. On September 25, 2023, the Petitioner was hired by the Commonwealth of Pennsylvania but has not yet found an attorney who will represent him in this matter.

15. The Petitioner will likely not be able to pay any attorney who will take his case and, therefore, must most likely represent himself *pro se* in this matter.

16. The Superior Court of Pennsylvania addressed multiple issues that arose from the two trial cases below in two separate consolidated opinions.

17. In order to mitigate costs and because the Petitioner intends to present matters that are relevant to both cases and because both cases are similar cases that arose from the state's filing of charges under the same statutes, the Petitioner seeks to have all matters reviewed in a single consolidated Petition for a *writ of certiorari*.

18. Though the Petitioner was hired by the Commonwealth of Pennsylvania on September 25, 2023, the Petitioner's salary is not enough to cover the cost of printing in booklet format, nor is it enough to hire an attorney at full cost or to pay the filing costs.

19. The cheapest price that the Petitioner could find to publish a *pro se* petition for certiorari is approximately \$2,000. (See Copy of email from Cockle Legal Briefs Mon, Oct 23, 2023 at 2:07 PM, Attachment D)

20. For the aforesaid reasons, the Petitioner RESPECTFULLY REQUESTS that (1) he be granted a 60 day extension of time to file a Petition for a *writ of certiorari* in this matter; (2) that the Court consolidate its review of the matters that arise from the two state

opinions below; (3) that the Petitioner be permitted to proceed on 11 x 8.5 paper and (4) that the Petitioner be permitted to proceed *in forma pauperis*.

21. The foregoing document is true in both fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Nov-16, 2023
Date

Sean M. Donahue
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**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 153 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	from the Order of the Superior Court
	:	
	:	
SEAN M. DONAHUE,	:	
	:	
Petitioner	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	No. 154 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	from the Order of the Superior Court
	:	
	:	
SEAN M. DONAHUE,	:	
	:	
Petitioner	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	No. 155 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	from the Order of the Superior Court
	:	
	:	
SEAN M. DONAHUE,	:	
	:	
Petitioner	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	No. 156 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	from the Order of the Superior Court
	:	

SEAN M. DONAHUE,

Petitioner

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

No. 157 MAL 2023

Petition for Allowance of Appeal
from the Order of the Superior Court

SEAN M. DONAHUE,

Petitioner

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

No. 158 MAL 2023

Petition for Allowance of Appeal
from the Order of the Superior Court

SEAN M. DONAHUE,

Petitioner

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

No. 159 MAL 2023

Petition for Allowance of Appeal
from the Order of the Superior Court

SEAN M. DONAHUE,

Petitioner

COMMONWEALTH OF PENNSYLVANIA,

Respondent

No. 160 MAL 2023

[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

v.

: Petition for Allowance of Appeal
: from the Order of the Superior Court
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:
:
:
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:
:

SEAN M. DONAHUE,


Petitioner

ORDER

PER CURIAM

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

A True Copy Elizabeth E. Zisk
As Of 09/12/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

[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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
v. :
: SEAN M. DONAHUE
: Appellant : No. 1168 MDA 2018
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 PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
v. :
: SEAN M. DONAHUE
: Appellant : No. 920 MDA 2019
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

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
:
: v. :
:
:
: SEAN M. DONAHUE :
:
: Appellant : No. 1582 MDA 2019
:
: 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 PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
:
: v. :
:
:
: SEAN M. DONAHUE :
:
: Appellant : No. 589 MDA 2020
:
: 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

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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

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

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

¹ Throughout this matter, Appellant has filed copious filings, each lengthy and including hundreds of pages of attachments. The trial docket spans 93 pages.
(Footnote Continued Next Page)

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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 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).

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

On April 19, 2016, Appellant was 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 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.

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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 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).

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

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.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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 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

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.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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.

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."

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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

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

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

“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 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

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.”).

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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.

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-

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

page petition for writ of *coram nobis*.¹² 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 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

¹² **See Commonwealth v. Descardes**, 136 A.3d 493, 494 n.1 (Pa. 2016) (“A writ of coram nobis `is generally available to challenge the validity of a judgment based on facts not before the court when the judgment was entered.”).

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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 length] with more than 6,000 pages of appendices" — as well as his objection

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

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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. We thus affirm the trial court's order.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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

¹⁴ We have addressed this appeal above.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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 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.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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

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).

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

speech claim is waived, as it could have been raised at trial or direct appeal.

See 42 Pa.C.S. § 9544(b).

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.

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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 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.

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).

J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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.

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

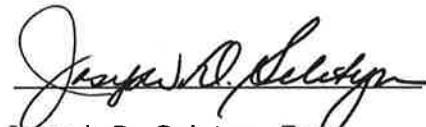
J-A04031-23, J-A04033-23, J-A04034-23, J-A04035-23, J-A04037-23,
J-A04038-23, J-A04039-23, J-A04041-23

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.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 03/09/2023

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 183 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	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**.

A True Copy Elizabeth E. Zisk
As Of 09/12/2023


Attest:
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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

ORDER

PER CURIAM

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Attest: 
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 185 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	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**.

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As Of 09/12/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 186 MAL 2023
	:	
Respondent	:	
	:	Petition for Allowance of Appeal
v.	:	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**.

A True Copy Elizabeth E. Zisk
As Of 09/12/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v. :
:
:
SEAN DONAHUE :
:
Appellant : No. 1876 MDA 2018
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 PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v. :
:
:
SEAN DONAHUE :
:
Appellant : No. 1647 MDA 2019
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

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

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

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 order).
(Footnote Continued Next Page)

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

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, 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.

dockets, Docket Nos. 1647 MDA 2019, 566 MDA 2021, 743 MDA 2022, we 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 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.

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 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

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

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 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 max[imum] 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 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,

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.

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 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 **Commonwealth v. Holmes**, 79 A.3d 562 (Pa. 2013), Appellant was entitled to unitary review of both his direct appeal and PCRA

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

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 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

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.**

— and Attorney Deady complied on October 8, 2021.¹² The matter is now properly before us.

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

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.

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 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).

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

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, 996-97 (Pa. Super. 2001). As stated above, the Luzerne County DPS confirmed that Appellant completed his sentence in November of

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).

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