

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

MICHAEL CHRISTOPHER ROMIG

Appellant

No. 997 MDA 2024

Appeal from the PCRA Order Entered June 13, 2024
In the Court of Common Pleas of Mifflin County Criminal Division at
No(s): CP-44-CR-0000560-2016

BEFORE: LAZARUS, P.J., BOWES, J., and LANE, J.

MEMORANDUM BY BOWES, J.:

FILED MAY 23, 2025

Michael Christopher Romig appeals from the order that dismissed as untimely his serial petition filed pursuant to the Post Conviction Relief Act ("PCRA"). We affirm.

This matter stems from the beating of James Barry Moore on the evening of August 2, 2016. Appellant, Moore, and a female friend, Kelly McTavish, were drinking at Appellant's residence when Appellant showed McTavish naked pictures of himself on his cell phone. After Moore expressed that Appellant's actions were inappropriate, Appellant punched Moore in the face. Appellant left the room, but shortly thereafter returned to drag Moore to the ground and proceeded to repeatedly kick him in the head and chest. He then held a knife to Moore's neck and threatened to kill him. The beating

resulted in severe injuries to Moore. He was paralyzed from the chest down, lost use of his hands and sexual organs, and control of his bladder and bowels.

Based on the aforementioned events, Appellant was arrested and charged with two counts of aggravated assault and one count of simple assault. A jury convicted him of all three offenses, and the trial court sentenced him to an aggregate term of nine and one-half to thirty years of imprisonment. On appeal, Appellant argued, *inter alia*, that the trial court abused its discretion in failing to instruct the jury about the justified use of deadly force against an intruder pursuant to the castle doctrine. This Court concluded that this issue was waived not only because appellate counsel omitted it from the direct appeal brief, but also because trial counsel did not object on this basis during jury instructions. We otherwise affirmed Appellant's judgment of sentence, and our Supreme Court denied his request for further review. ***See Commonwealth v. Romig***, 2018 WL 6598400 (Pa. Super. 2018) (unpublished memorandum), *appeal denied*, 215 A.3d 561 (Pa. 2019).

Appellant's timely first PCRA petition followed. Relevantly, he alleged ineffective assistance of appellate counsel for neglecting to brief the jury instruction argument.¹ The PCRA court denied the petition, which we affirmed on appeal, finding that Appellant failed to establish prejudice. Specifically, we

¹ Appellant did not challenge trial counsel's effectiveness for failing to object to the court's instruction.

concluded that the castle doctrine did not apply since Moore did not unlawfully or forcefully enter Appellant's residence. **See Commonwealth v. Romig**, 258 A.3d 552, 2021 WL 2624701, at *6-7 (Pa.Super. 2021) (non-precedential decision).

Appellant next sought relief by filing a federal *habeas corpus* petition in the United States District Court for the Middle District of Pennsylvania. Appellant again maintained that the trial court abused its discretion in omitting a castle doctrine jury instruction. To obtain *habeas* relief in the federal courts, a petitioner must first exhaust his state remedies by asserting a claim that has been through "one complete round of the State's established appellate review process, and which has been adjudicated on the merits." **Romig v. Brittain**, 2023 WL 8258785, at *2 (M.D. Pa. November 29, 2023). If a petitioner has not done so, his argument will be deemed "procedurally defaulted," i.e., waived. **Bridges v. Beard**, 941 F.Supp.2d 584, 621 (E.D. Pa. 2013). However, the district court may nevertheless review such a claim if the petitioner establishes "cause for the default and actual prejudice[.]" **Id.** Ineffective assistance of counsel may serve as a basis for cause. **Romig**, 2023 WL 8258785, at n.58.

Here, the district court concluded that Appellant's jury instruction argument was waived. To establish the element of cause, Appellant contended that appellate counsel neglected to brief this issue. However, the district court, like this Court, found that trial counsel additionally waived this

matter by failing to object at trial. The court further determined that Appellant could not prove prejudice because the castle doctrine was inapplicable to his case insofar as the victim was not an intruder. **See Romig**, 2023 WL 8258785, at *4-6. Based on his interpretation of the district court's ruling, Appellant filed the instant *pro se* petition, docketed on March 28, 2024. Therein, he alleged that his petition met the governmental interference and newly-discovered facts exceptions to the PCRA's one-year time bar.

Pursuant to Pa.R.Crim.P. 907, the PCRA court issued an opinion and order stating its intention to dismiss Appellant's petition without a hearing as untimely. Appellant filed a response asserting that the PCRA judge should recuse himself because he presided over Appellant's preliminary hearing. Upon consideration, the court dismissed the petition and authored a separate opinion and order denying recusal. Appellant appealed the order dismissing his PCRA petition and filed a court-ordered concise statement in accordance with Pa.R.A.P. 1925(b). In lieu of a Rule 1925(a) opinion, the court directed us to its Rule 907 opinion and order.

Appellant presents the following questions:

- 1.) Is it an excuse where Appellant is procedurally defaulted at the hands of counsel (direct appeal, and PCRA), where [Appellant] first became aware by U.S. District Court opinion, **Romig v. Brittain**, 2023 WL 8258785 (M.D. Pa. November 29, 2023), pursuant to 42 Pa.C.S. § 9545(b)(1)(i-iii), where PCRA stewardship was challenged by [Appellant] multiple times during proceedings, [*i.e.*] **Romig**, 2018 WL 6598400, and Supreme Court No. 276 Mt 2021/92 MM 2021?

2.) Should have Judge Jonathan W. Reed recused himself as potentially bias, [sic] from sitting as PCRA judge in this matter where he was in fact the issuing authority/preliminary hearing judge that bound charges over for trial, where [the] victim was not present at preliminary hearing and an objection was lodged regarding medical reports and the truth of the matter within them, with instructions "as long as someone involved in preparing them would be present at trial", where this did not happen and [Appellant] was convicted violating his constitutional right to a fair trial, and this shows bias of this judge?

3.) Was there a miscarriage of justice where trial court abused d[i]scretion by choosing not to give requested deadly force/castle doctrine justification jury instruction, of which was defaulted by layered ineffective assistance of counsels, where a strong showing a miscarriage of justice might have occurred (emphasis added) [sic]?

Appellant's brief at 6 (some capitalization and citations altered).

We begin with an overview of the pertinent legal principles. This Court reviews the denial of a PCRA petition "to determine whether the record supports the PCRA court's findings and whether its order is free of legal error." **Commonwealth v. Min**, 320 A.3d 727, 730 (Pa.Super. 2024). Where a PCRA petition "is untimely, and none of the timeliness exceptions [is] met, courts do not have jurisdiction to address the substance of the underlying claims." **Commonwealth v. Mickleals**, ___ A.3d ___, 2025 WL 1122104, at *4 (Pa.Super. April 16, 2025). With respect to timeliness, the PCRA provides:

Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the

Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S. § 9545(b)(1).

A petition invoking any of the exceptions must be filed "within one year of the date the claim could have been presented." 42 Pa.C.S. § 9545(b)(2).

Additionally, "we emphasize that it is the petitioner who bears the burden to allege and prove that one of the timeliness exceptions applies."

Commonwealth v. Chimenti, 218 A.3d 963, 974 (Pa.Super. 2019).

Here, Appellant invokes the governmental interference and newly-discovered facts exceptions based upon the district court's recent decision. Specifically, he argues that the district court deemed his castle doctrine claim unreviewable because PCRA counsel neglected to challenge trial counsel's omission. **See** PCRA Petition, 3/28/24, at 3; Appellant's brief at 11.

Appellant submitted the instant petition on March 13, 2024, five years after this Court affirmed his judgment of sentence and our High Court denied review. **See** 42 Pa.C.S. § 9545(b)(3). Appellant's petition is thus untimely on its face. Initially, we observe that since Appellant's brief is devoid of argument in support of the governmental interference exception, that

assertion is waived and we will not address it on the merits. **See Commonwealth v. Johnson**, 985 A.2d 915, 924 (Pa. 2009) ("Where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived." (cleaned up)). Appellant's reliance on the district court's decision for the newly discovered facts exception also fails. Plainly, the purported discovery of PCRA counsel's ineffective assistance does not constitute a "new fact" that would allow Appellant to overcome the PCRA's one-year time limitation. **See Commonwealth v. Bradley**, 261 A.3d 381, 404 n.18 (Pa. 2021). Rather, Appellant's attack on PCRA counsel's stewardship must have been presented on appeal from the denial of his first, timely petition. **See id.** at 405 (holding that a petitioner must "raise claims of ineffective PCRA counsel at the first opportunity").

Accordingly, the PCRA court did not abuse its discretion in dismissing Appellant's petition as untimely where Appellant has not met his burden to prove a timeliness exception.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 5/23/2025

COMMONWEALTH OF PENNSYLVANIA : CP-44-CR-560-2016
IN THE COURT OF COMMON PLEAS OF MIFFLIN COUNTY, PENNSYLVANIA

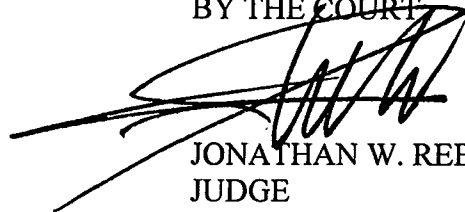
v.

MICHAEL C. ROMIG

ORDER

AND NOW, this 13th day of June, 2024, upon consideration of Defendant's Response to Court's Order/Intention to Dismiss Second PCRA, filed May 28, 2024, and for the reasons stated in the Court's Order dated April 22, 2024¹, it is hereby **ORDERED** and **DECREED** that Defendant's Petition for Post-Conviction Relief is hereby **DISMISSED**. Defendant shall have **thirty (30) days** from the date of this Order to appeal to the Pennsylvania Superior Court.

BY THE COURT



JONATHAN W. REED
JUDGE

2024 JUN 13 PM 3:21
CLERK OF COURTS

c: Michael C. Romig, QK-6374,
c/o SCI Frackville, 1111 Altamont Boulevard, Frackville, PA 17931
District Attorney
File

¹ The Court enters a separate Order contemporaneously addressing Defendant's request for recusal.

IN THE COURT OF COMMON PLEAS OF MIFFLIN COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CP-44-CR-560-2016

v.

MICHAEL C. ROMIG

ORDER

AND NOW, this 22nd day of April, 2024, upon consideration of Defendant's second Motion for Post-Conviction Collateral Relief, filed March 28, 2024, the Court hereby gives notice to Defendant of the Court's intention to dismiss his Motion as untimely filed. The Court finds an evidentiary hearing is not necessary in this matter, as there are no genuine issues concerning any material fact and Defendant is not entitled to post-conviction collateral relief. Defendant has **twenty (20) days**, from the date of this Order, to respond to the Court's intention to dismiss his motion.

A petition for relief under the Post-Conviction Relief Act ("PCRA" hereafter), including a second or subsequent petition, must be filed within one year of the date the judgment becomes final. 42 Pa.C.S. § 9545(b)(1)(2010); *Commonwealth v. Rienzi*, 827 A.2d 369, 370 (Pa. 2003)(citing *Commonwealth v. Lark*, 746 A.2d 585, 587 (Pa. 2000)). The PCRA's timing requirements are jurisdictional and a court cannot address an untimely petition. *Commonwealth v. Crews*, 863 A.2d 498, 501 (Pa. 2004). Therefore, to be entitled to relief, when a petition is untimely filed, a defendant must plead and prove an exception set forth under 42 Pa.C.S. § 9545(b)(1)(i-iii). *Commonwealth v. Baldwin*, 789 A.2d 728 (Pa. Super. 2001). A petition invoking an exception to the one-year filing period must be filed within one year of the date the claim could have been presented. 42 Pa.C.S. § 9545 (b)(2).

Furthermore, a bald assertion does not permit a defendant to invoke the time-bar exception. *Commonwealth v. Derrickson*, 923 A.2d 466, 469 (Pa. Super. 2007). Timeliness exceptions must be specifically pleaded or they may not be invoked and it is the defendant's burden to prove the exceptions apply. *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999). Nor is PCRA relief available for errors that have been previously litigated. An issue has been previously litigated if it has been raised and decided in a proceeding collaterally attacking the conviction or sentence. *Commonwealth v. Abu-Jamal*, 833 A.2d 719 (Pa. 2003). If a defendant's claims have been previously litigated, a defendant is not entitled to relief. *Commonwealth v. Fowler*, 930 A.2d 586, 594 (Pa. Super. 2007).

Here, on July 10, 2019, the Pennsylvania Supreme Court denied further review of Defendant's judgment of sentence. Thereafter, Defendant had 90 days to appeal to the United States Supreme Court, but did not. Defendant filed his second PCRA on March 28, 2024. As such, Defendant's second PCRA is patently untimely unless he has satisfied his burden of pleading and proving that one of the enumerated exceptions applies.

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Defendant claims trial counsel, Michael Gingerich, direct appeal counsel, Justin Miller and PCRA counsel, Scott Pletcher, were ineffective and avers he is entitled to relief due to an exception under 42 Pa.C.S. § 9545 (b)(1)(i) and (ii). In support of this position, Defendant states he advised counsel he believed he was entitled to a "Deadly Force Castle Doctrine Inst." and his trial counsel, direct appeal counsel, and PCRA counsel either waived or procedurally defaulted on this issue. Essentially, Defendant is attempting to turn an ineffective assistance of counsel claim into a government interference or newly-discovered facts exception to merit untimely relief.

In order to establish the governmental interference exception, a petitioner must plead and

prove: (1) the failure to previously raise the claim was the result of interference by government officials and (2) the petitioner could not have obtained the information earlier with the exercise of due diligence. *Commonwealth v. Abu-Jamal*, 941 A.2d 1263, 1268 (Pa. 2008). In other words, a petitioner is required to show that but for the interference of a government actor "he could not have filed his claim earlier." *Commonwealth v. Stokes*, 959 A.2d 306, 310 (Pa. 2008).

Defendant has failed to show that the failure to raise this claim was the result of government interference or that he could not have obtained the information earlier with the exercise of due diligence. In his petition for relief, Defendant states he intends to prove his claim was late due to governmental interference by showing "[t]his county has used the same progression of attorneys as they have in another case to maintain a conviction" causing procedural default. Without more, Defendant's bald assertion does not entitle him to relief. Furthermore, this exception has not been plead with specificity and Defendant has not provided a reasonable explanation why, with the exercise of due diligence, the alleged interference could not have been ascertained earlier, Defendant has not met his burden of proving this exception applies.

Moreover, if it is Defendant's intention to argue ineffective assistance of court appointed counsel in invoking the government interference exception, that argument too must fail. It is well-established that allegations of ineffectiveness do not meet an exception to the time-bar. *Commonwealth v. Lark*, 746 A.2d 585, 589 (Pa. 2000). Additionally, defense counsel, whether retained or appointed, are not government officials. 42 Pa.C.S. §9545(b)(4). It has been well established that there is no merit to a claim of government interference regarding the action of a court appointed attorney. *Commonwealth v. Staton*, 184 A.3d 949, 957 (Pa. 2018).

Defendant also alleges timeliness under the newly-discovered facts exception. The timeliness exception set forth in Section 9545(b)(1)(ii) requires a petitioner to demonstrate he did not know the facts upon which he based his petition and could not have learned those facts earlier by the exercise of due diligence. *Commonwealth v. Bennett*, 930 A.2d 1264, 1271 (2007). Due diligence demands that the petitioner take reasonable steps to protect his own interests. *Commonwealth v. Carr*, 768 A.2d 1164, 1168 (Pa. Super. 2001). A petitioner must explain why he could not have learned the new fact(s) earlier with the exercise of due diligence. *Commonwealth v. Breakiron*, 781 A.2d 94, 98 (2001); *Commonwealth v. Monaco*, 996 A.2d 1076, 1080 (Pa. Super. 2010). This rule is strictly enforced. *Id.*

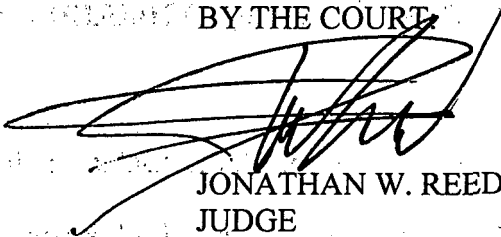
In his petition for relief, Defendant states, "Petitioner could not control direct appeal counsel's failure to argue a raised issue in argument section of his brief." Defendant does not plead that this information was unknown to him and that he could not have ascertained it earlier by exercising due diligence. Rather, a review of the file shows this information was known to Defendant, as this issue was already addressed in his first PCRA.

In his first PCRA Petition, Defendant claimed this Court abused its discretion when it failed to instruct the jury on the Castle Doctrine and on the use of deadly force. Further, he claimed appellate counsel was ineffective for failing to raise this claim on direct appeal. This allegation was found to be without merit in an Opinion filed by this Court on August 20, 2020. This decision was affirmed by the Superior Court on June 25, 2021. Accordingly, even if Defendant had raised the issue in a timely manner, he is not entitled to relief as the issue has been previously litigated.

A second petition for post-conviction relief will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice might have occurred.

Commonwealth v. Carpenter, 725 A.2d 154, 160 (Pa. 1999). A review of the merits of the instant petition fails to satisfy the miscarriage of justice standard. Here, Defendant has failed to demonstrate that "the proceedings which resulted in his conviction were so unfair that a miscarriage of justice occurred which no civilized society could tolerate, or that he was innocent of the crimes for which he was charged." *Commonwealth v. Burkhardt*, 833 A.2d 233, 236, (Pa.Super. 2003). For these reasons, the Court gives notice to Defendant of the Court's intention to dismiss his Motion as untimely filed.

BY THE COURT


JONATHAN W. REED
JUDGE

c: ~~Michael C. Romig, QK-6374,~~
c/o SCI Frackville, 1111 Altamont Boulevard, Frackville, PA 17931
District Attorney
File

IN THE COURT OF COMMON PLEAS OF MIFFLIN COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : CP-44-CR-560-2016

v.

MICHAEL C. ROMIG,

ORDER

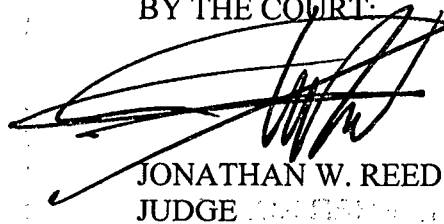
AND NOW, this 13th day of June, 2024, upon consideration of Defendant's Motion of Recusal, filed May 28, 2024, it is hereby **ORDERED** and **DECREED** that said Motion is **DENIED**.

As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged. *Commonwealth v. Bonds*, 890 A.2d 414 (Pa. Super. 2005). In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to assess the case in an impartial manner, free of personal bias or interest in the outcome. *Id.* The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. *Id.* This is a personal and unreviewable decision that only the jurist can make. *Id.* Furthermore, the mere participation by the presiding judge in an earlier state of the proceeding neither suggests the existence of actual impropriety nor provides a basis for a finding of the appearance of impropriety. *Commonwealth v. Green*, 347 A.2d 682 (1975).

Having reviewed the record in this case and Defendant's reasons for requesting recusal, the Court finds it is able to assess this case in an impartial manner that is free of personal bias or interest in the outcome. Defendant has failed to demonstrate any evidence of this Court's bias or prejudice or any evidence tending to show the appearance of any such bias or prejudice. As such, the Court cannot find continued involvement in this case would create an appearance of

impropriety or would tend to undermine public confidence. Therefore, in the exercise of discretion, in good-faith, and with due consideration for the general duty to hear and decide matters, Defendant's request for recusal is denied.

BY THE COURT:



JONATHAN W. REED
JUDGE

c: Michael C. Romig, QK-6374,
c/o SCI Frackville, 1111 Altamont Boulevard, Frackville, PA 17931
District Attorney
File

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

: No. 324 MAL 2025

Respondent

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

v.

MICHAEL CHRISTOPHER ROMIG,

Petitioner

ORDER

PER CURIAM

AND NOW, this 21st day of January, 2026, the Petition for Allowance of Appeal is
DENIED.

A True Copy Elizabeth E. Zisk
As Of 01/21/2026

Attest: *Elizabeth E. Zisk*
Chief Clerk
Supreme Court of Pennsylvania

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

Mifflin County Criminal Division
CP-44-CR-0000560-2016

MICHAEL CHRISTOPHER ROMIG

Appellant

No. 997 MDA 2024

ORDER

Upon consideration of the August 15, 2024 filing docketed in this Court as "Other," filed by *pro se* Appellant Romig, the filing is **DENIED**.

PER CURIAM

9-14-16
Preliminary
hearing
transcript
Proceeding

Michael C. Romig QK6374
S.C.I. Frackville
1111 Altamont Blvd.
Frackville, Pennsylvania 17931

December 2nd 2024

To: Superior Court middle district of Pennsylvania

Re: 997 MDA 2024 (October 21, 2024 ORDER)

The above referenced ORDER denied Appellants August 15, 2024 filing docketed in the Court as "Other". This filing was the preliminary hearing transcript (9-14-2016) as related to this case and should be considered due to the ineffectiveness of Trial Counsel (Michael S. Gingerich) as it is described in the enclosed copy of his November 18, 2017 correspondence to me (per my request to have the preliminary hearing transcript filed on the record.) third paragraph.

This Appellant should not be faulted by this counsel or the Trial Court's error, Where the Transcript of this proceeding should still be considered by this Court as it is the back-bone of Appellants agument (as it is referenced in Appellant's Brief filed August 27, 2024.)

For these reasons the transcripts provided to this Court should be considered by this Court as reproduced record.

enclosures: 10-21-24 ORDER
11-18-17 Attorney Correspondence sf

cc.
District Attorney Torquato
Clerk of Courts Mifflin County
Attorney Gingerich

Very Truly Yours


Michael C. Romig QK6374

MICHAEL S. GINGERICH

ATTORNEY AT LAW

4045 EAST MAIN STREET

P.O. BOX 971

BELLEVILLE, PA 17004

717-935-2001

18 November 2017

Michael C. Romig
KR-8614
SCI-Camp Hill
P.O. Box 200
Camp Hill, PA 17001-0200

Re: Commonwealth v. Michael Christopher Romig
CP-44-CR-560-2016
Disciplinary Complaint No. C3-17-616

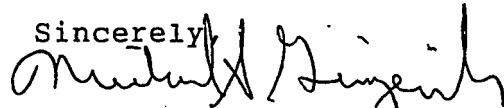
Dear Mr. Romig:

Enclosed please find a copy of the Court Order scheduling a hearing on my Petition For Leave to Withdraw as Court-Appointed Counsel for January 4, 2018 at 9:00 A.M.

Since the hearing on my Petition For Leave to Withdraw as your attorney is scheduled for the same time as the hearing/argument on your Post-Sentence Motions, it would be prudent to file any appropriate supplement to the Post-Sentence Motions already filed prior to January 4th, so that the court can consider them at that time. As long as I remain your attorney, I would be required to endorse any pro se Motions filed by you, to avoid objections to hybrid representation that could be raised by the Court or the Commonwealth.

I checked on the transcript of the Preliminary Hearing. It is filed to a Miscellaneous Number (MD-85-2016), since at the time of the Preliminary Hearing there was no Common Pleas Docket Number assigned to your case. The Clerk of Courts indicated to me that this Misc. Docket entry is linked to CR-560-2016 and is a part of the record in your case. I could not refile the transcript of the Preliminary Hearing since it is already filed of record.

Sincerely,



Michael S. Gingerich

Enc.

