NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. HARRY LEO LICIAGA Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2412 EDA 2015

Appeal from the PCRA Order July 6, 2015
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0003464-1989

BEFORE: BENDER, P.J.E., LAZARUS, J., and STEVENS, P.J.E.*

JUDGMENT ORDER BY LAZARUS, J.: **FILED MARCH 22, 2016**

Harry Leo Liciaga appeals, *pro se*, from the trial court's order denying his petition for writ of habeas corpus, which the court treated as a petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546.[1] After careful review, we affirm.

In 1990, Liciaga was convicted by a jury of second-degree murder, burglary, criminal trespass, theft by unlawful taking, receiving stolen

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* Former Justice specially assigned to the Superior Court.

[1] Although the trial court interpreted Liciaga's motion as one filed under the PCRA, we note that a writ of habeas corpus is the appropriate avenue to seek relief for his claim that he is being illegally detained by the Department of Corrections (DOC). ***See Joseph v. Glunt***, 96 A.3d 365 (Pa. Super. 2014). However, it is well settled that we may affirm the trial court on different grounds. ***Commonwealth v. Thompson***, 778 A.2d 1215, 1223 n.6 (Pa. Super. 2001).

property (RSP) and criminal conspiracy. Liciaga was sentenced to serve a term of life imprisonment. Liciaga filed post-sentence motions and a direct appeal, which afforded him no relief. On May 19, 1997, Liciaga filed a PCRA petition. After an evidentiary hearing, his petition was denied. On collateral appeal, our Court affirmed the PCRA court's order. On May 27, 2015, Liciaga filed the instant *pro se* motion for habeas corpus relief. On July 6, 2015, the trial court denied Liciaga's request for relief, interpreting his motion as a PCRA petition. ***See*** Trial Court Order, 7/6/15, at 1-2. This appeal follows.

On appeal, Liciaga claims that he is being illegally detained because the DOC is unable to produce a written sentencing order containing proper statutory authorization for his confinement.

In ***Joseph***, ***supra***, the defendant made a similar argument to the one Liciaga advances in his petition for habeas corpus relief. The defendant in that case also filed a petition for writ of habeas corpus, claiming that his current sentence was illegal because the DOC did not have a written copy of his sentencing order. However, because the trial court determined that the record contained either a transcript of the defendant's sentencing hearing or a separate, valid sentencing order, the court found that "the existent record authorized [the defendant's] incarceration." ***Id.*** at 368. On appeal, our Court held that:

> The trial court properly reviewed the record and discovered a valid sentencing order contained therein. **Moreover, the trial court correctly concluded that, even in the absence of a written sentencing order, the DOC had continuing**

> **authority to detain [the defendant]. We discern no abuse of discretion in the trial court's conclusion.**

Id. at 372 (emphasis added). While a petition for writ of habeas corpus is the proper vehicle for Liciaga's illegal detention claim, ***Joseph*** makes it clear that "section 9764[2] neither expressly vests, nor implies the vestiture, in a prisoner of any remedy for deviation from the procedures prescribed within." ***Id.*** at 371.

Instantly, the DOC produced a Lehigh County sentencing order, at Liciaga's request, that confirms that Liciaga was tried by a jury, found guilty of criminal homicide, burglary, criminal trespass, theft by unlawful taking, and RSP, and sentenced to a term of life imprisonment. Moreover, the certified record contains notes of testimony from Liciaga's sentencing hearing where the Honorable John E. Backenstoe ordered that he serve a life sentence. N.T. Sentencing Hearing, 11/1/90, at 20. Accordingly, we conclude that the trial court did not abuse its discretion[3] in dismissing Liciaga's motion where the existing record authorizes Liciaga's incarceration. ***Joseph***, 96 A.3d at 372; ***Travis v. Giroux***, 83 A.3d 525 (Pa. Cmwlth. 2013).

Order affirmed.

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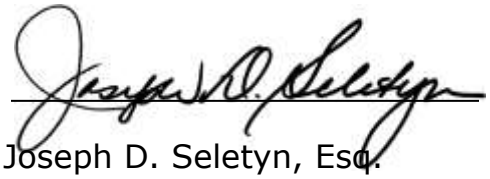
[2] ***See*** 42 Pa.C.S. § 9764 (listing information required upon commitment of inmate to custody of DOC).

[3] The standard of review on appeal following the grant or denial of a habeas corpus petition is whether the trial court abused its discretion. ***In re Garcia***, 984 A.2d 506 (Pa. Super. 2009).

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/22/2016