NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. YURIY FAUSTOV A/K/A YURI SKYBA, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3105 EDA 2014

Appeal from the PCRA Order October 7, 2014
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000840-2011

BEFORE: BOWES, LAZARUS AND PLATT,* JJ.

JUDGMENT ORDER BY BOWES, J.: **FILED MAY 16, 2016**

Yuriy Faustov a/k/a Yuriy Skyba appeals from the October 7, 2014 order dismissing his PCRA petition. We affirm.

On October 11, 2008, a Philadelphia police officer saw Appellant drop a green-tinted baggie containing cocaine. Appellant was charged in this criminal action with one count of possession of a controlled substance. Appellant was found guilty of the offense by the Philadelphia Municipal Court, and, after an appeal, at a non-jury trial. He was sentenced on September 26, 2011, to one year probation, and, on appeal, we affirmed. ***Commonwealth v. Faustov***, 69 A.3d 1281 (Pa.Super. 2013) (unpublished memorandum).

* Retired Senior Judge assigned to the Superior Court.

On January 30, 2014, after expiration of his probationary period, Appellant filed a timely petition for PCRA relief. The petition was dismissed since Appellant was not then serving a sentence of incarceration, probation, or parole. 42 Pa.C.S. § 9543(a)(1)(i) (in order to be eligible for PCRA relief, a PCRA petitioner must be "currently serving a sentence of imprisonment, probation or parole for the crime").

On appeal, Appellant suggests that his averments are not cognizable under the PCRA, and he therefore is eligible for *corum nobis* relief. ***See e.g. Commonwealth v. West***, 938 A.2d 1034, 1044 (Pa. 2007) (allowing defendant to proceed by means of writ of *habeas corpus* since PCRA did not provide relief for his claim).[1] Two positions were presented in the PCRA petition. First, Appellant averred that trial counsel was ineffective for failing to advise Appellant that a non-jury conviction would result in his deportation. Ineffectiveness claims are cognizable under the PCRA. ***Commonwealth ex rel. Dadario v. Goldberg***, 773 A.2d 126 (Pa. 2001); ***see also Commonwealth v. Descardes***, 2016 WL 1249964 (Pa. March 29,

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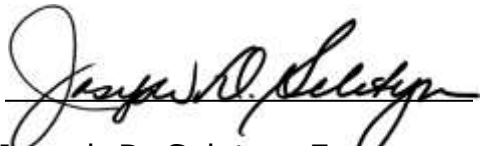
[1] The writ of *coram nobis* was the common law writ available for relief from a conviction where the defendant was no longer imprisoned. ***Commonwealth v. Descardes***, 101 A.3d 105 (Pa.Super. 2014) (*en banc*). Appellant relies upon ***Descardes***, where we held *coram nobis* relief was available to a defendant seeking relief from a guilty plea under ***Padilla v. Kentucky***, 559 U.S. 356 (2010). ***Descardes*** has been reversed by our Supreme Court. ***Commonwealth v. Descardes***, 2016 WL 1249964 (Pa. March 29, 2016).

2016). Second, Appellant asserted that prior counsel was ineffective for defectively litigating his rule-based right to a speedy trial. A defendant's complaint that his counsel was ineffective for failing to assert his rights to a speedy trial under the Rules of Criminal Procedure has specifically been held cognizable under the PCRA. ***Commonwealth v. Prout***, 814 A.2d 693 (Pa.Super. 2002).

Since Appellant's claims are cognizable under the PCRA, the PCRA court correctly treated his petition as a PCRA petition. ***Descardes***, ***supra***; ***Commonwealth v. Oliver***, 128 A.3d 1275 (Pa.Super. 2015); 42 Pa.C.S. § 9542. As Appellant is not serving a sentence of probation, parole, or imprisonment, the PCRA court properly ruled that he is not eligible for PCRA relief. ***Commonwealth v. Turner***, 80 A.3d 754 (Pa. 2013).

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/16/2016