

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

COMMONWEALTH OF PENNSYLVANIA, :
 :
 :
 vs. :
 : No. 691 CR 2005
 :
 TERRY KUENHER, :
 Defendant/Appellant :

Gary F. Dobias, Esquire, Esquire Co-Counsel for the Commonwealth
District Attorney

Terry Kuenher Pro Se

MEMORANDUM OPINION

Webb, S.J. - May 22, 2012

On October 2, 2008, Terry Kuenher ("Appellant") entered into a guilty plea to counts 2 and 5 of the information, which were aggravated assault (F2) and simple assault charge (M2) respectively.¹ As part of his guilty plea, Appellant was sentenced to a term of imprisonment for not less than eighteen (18) months nor more than ten (10) years on the aggravated assault charge and to an imprisonment term of not less than six (6) months nor more than twelve (12) months on the simple assault charge. As the signed stipulation stated, the sentence for the simple assault was to run consecutive to the sentence of

¹ 18 Pa.C.S.A. §§ 2701(a)(1), (4).

the aggravated assault charge.²

Appellant filed a *pro se* "petition for Habeas Corpus" on August 15, 2011 to which this Court denied for lack of jurisdiction. An appeal from that order was subsequently filed; and a Concise Statement of the Errors Complained of on Appeal was submitted³ on March 7, 2011. The following memorandum opinion is prepared and filed in accordance with Pa.R.A.P., Rule 1925(a).

I. Lack of Jurisdiction

The Pennsylvania Constitution states that the Courts of Common Pleas shall have "unlimited original jurisdiction in all cases except as may otherwise be provided by law."⁴ Section 401 of the Appellate Court Jurisdiction Act, which deals with the original jurisdiction of the Commonwealth Court, grants original jurisdiction of all civil actions or proceedings against the Commonwealth or any officer thereof except actions or proceedings in the nature of applications for a writ of habeas corpus or post conviction relief not ancillary to proceedings within the appellate jurisdiction of the Commonwealth Court.⁵ The section goes on to state that such jurisdiction shall be

² Both Appellant's attorney and the Appellant himself signed the stipulation.

³ Pursuant to Pa.R.A.P., Rule 1925(b).

⁴ Pa. Const. Art. V, § 5.

⁵ Appellate Court Jurisdiction Act of July 31, 1970, P.L. --, Act No. 223, 17 P.S. s 211.503.

exclusive. The effect of these provisions is thus conferring upon the Commonwealth Court exclusive jurisdiction over actions the substance of which includes the subject matter of the petition in question, that being of the same scope and having the same perimeters as the previously exclusively enjoyed by the Court of Common Pleas. *Williams v. Pennsylvania Board of Probation and Parole*, 2 Pa.Cmwlth. 312 (1971).

This Court, following the ruling in *Commonwealth v. Schill*, deny Appellant's petition for want of jurisdiction over the subject matter. See *Commonwealth v. Schill*, 647 A.2d 695 (Pa.Cmwlth. 1994).

II. CONCLUSION

As just stated above, this Court **DENIES** Appellant's petition for Writ of Habeas Corpus due to lack of jurisdiction and makes no determination as to the substantive merits of Appellant's appeal.

BY THE COURT:

Richard W. Webb, S.J.