NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. FREDRICK A. POSTIE, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2442 EDA 2014

Appeal from the Order entered July 15, 2014,
in the Court of Common Pleas of Carbon County,
Criminal Division, at No(s): CP-13-CR-0000340-2012
and CP-13-CR-0000343-2012

BEFORE: GANTMAN, P.J., ALLEN, and MUSMANNO, JJ.

MEMORANDUM BY ALLEN, J.: **FILED APRIL 13, 2015**

Fredrick A. Postie ("Appellant") appeals *pro se* from the order denying and dismissing his "Motion to Dismiss Pursuant to Section 110 of the Crimes Code." We affirm.

The trial court summarized the factual and procedural background as follows:

> The pertinent facts in these two companion cases and the relevant case in Schuylkill County are neither lengthy nor complex. In later February of 2012, Police Officer Lori Lienhard, of the Summit Hill Police Department, interviewed [Appellant] as it related to various burglaries that occurred in Carbon and Schuylkill Counties. After admitting his involvement in these burglaries, a plethora of charges were filed against [Appellant] in both counties.
>
> More specifically, the Schuylkill County District Attorney's Office charged [Appellant] with: two counts of criminal conspiracy, four counts of burglary, eight counts of criminal trespass, four counts of theft by unlawful taking or disposition,

> four counts of receiving stolen property, four counts of criminal mischief, and three counts of loitering and prowling at night time, for the alleged burglaries that occurred at 268 East Main Street, Rush Township, 714 and 716 Claremont Avenue, Rush Township, and 474 Fairview Street, Rush Township, respectively. Moreover, the Schuylkill County District Attorney's Office contended that these burglaries occurred sometime between December 12, 2011 and January 22, 2012.
>
> Around the same time, the Carbon County District Attorney's Office filed similar charges against [Appellant], namely, criminal conspiracy, burglary, theft by unlawful taking, receiving stolen property, criminal mischief, and criminal trespass. As alleged in the information to the case indexed 340 CR 2012, [Appellant] committed these various offenses at two residences located at 211 Yard Street, Nesquehoning, Carbon County, sometime between November 17, 2011 and December 3, 2011. Pursuant to the case identified as 343 CR 2012, the Commonwealth has alleged that during the time period of November 30, 2011 through December 21, 2011, [Appellant] committed the offenses listed above at the residences located at: 99, 100, 116, and 495 West White Bear Drive, with all four residences located in the borough of Summit Hill, Carbon County.
>
> Thereafter, [Appellant] stood trial for the charges in Schuylkill County where, by a jury of his peers, he was convicted on twenty-five of twenty-nine counts. Subsequent to that trial, [Appellant] filed the instant compulsory joinder motion here in Carbon County. In the motion, [Appellant] argues that based upon his convictions in Schuylkill County on similar charges, the Carbon County District Attorney is barred from prosecuting him for alleged offenses that might have happened in Carbon County.
>
> After holding a hearing on the motion, [the trial court] by Court Order dated July 15, 2014, denied [Appellant's] compulsory joinder motion, [from] which [Appellant] appealed []. [Although the trial court authored an opinion for submission to the Superior Court, it did not order Appellant to comply with Pa.R.A.P. 1925(b).]

Trial Court Opinion, 9/11/14, at 2-4 (footnotes referencing the applicable statutes omitted).

Appellant presents a single question for our review:

> Did the Trial Court err in denying dismissal where the same witnesses and testimony, same evidence, and same investigation by the same officers that were used to produce a conviction in Schuylkill County and will be used in Carbon County at trial creates a Collateral Estoppel issue therefore barring the instant trial where the Commonwealth should have moved for joinder?

Appellant's Brief at 4.

We initially recognize that this interlocutory appeal is properly before us because "an order denying a pretrial motion to dismiss on the grounds of double jeopardy/collateral estoppel is a final, appealable order." ***See, e.g., Commonwealth v. Winter***, 471 A.2d 827, 828 n.1 (Pa. Super. 1984) (citations omitted). Our standard of review of issues concerning [18 Pa.C.S.A. §] 110 is plenary. ***Commonwealth v. Reid***, 35 A.3d 773, 776 (Pa. Super. 2012).

We thus consider Appellant's assertion that "the instant case is nearly an exact copy of the prior case, [and] the issues have previously and fully been litigated, barring the current prosecution." Appellant's Brief at 9. Appellant maintains that "the factors in [18 Pa.C.S.A. § 110] … have been met and ultimately this case is violating [Appellant's constitutional] rights against double jeopardy." ***Id***.

The Commonwealth counters that the trial court "properly found that [Appellant] failed to meet all of the criteria necessary under the Compulsory Joinder Rule, and therefore, failed to show that the prosecution currently

pending in Carbon County is barred." Commonwealth Brief at 2. Upon review, we agree with the Commonwealth.

With regard to compulsory joinder, the Crimes Code specifies:

> **§ 110. When prosecution barred by former prosecution for different offense**
>
> Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:
>
> (1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when prosecution barred by former prosecution for the same offense) and the subsequent prosecution is for:
>
> (i) any offense of which the defendant could have been convicted on the first prosecution;
>
> (ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense; or
>
> (iii) the same conduct, unless:
>
> (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or
>
> (B) the second offense was not consummated when the former trial began.

18 Pa.C.S.A. § 110(1).

In ***Commonwealth v. Fithian,*** 961 A.2d 66, 72 (Pa. 2008), our Supreme Court explained:

> As has been summarized by our Court, Section 110(1)(ii), which is the focus in this appeal, contains four requirements which, if met, preclude a subsequent prosecution due to a former prosecution for a different offense:
>
> (1) the former prosecution must have resulted in an acquittal or conviction;
>
> (2) the current prosecution is based upon the same criminal conduct or arose from the same criminal episode as the former prosecution;
>
> (3) the prosecutor was aware of the instant charges before the commencement of the trial on the former charges; and
>
> (4) the current offense occurred within the same judicial district as the former prosecution.
>
> *See Nolan,* 579 Pa. at 308, 855 A.2d at 839; *Commonwealth v. Hockenbury,* 549 Pa. 527, 533, 701 A.2d 1334, 1337 (1997). *Each prong of this test must be met for compulsory joinder to apply.*

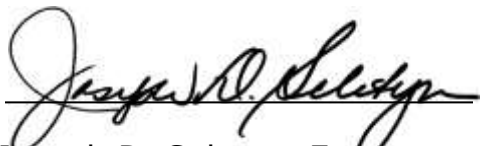
Fithian, 961 A.2d at 72 (underline added for emphasis).

In the instant case, the Commonwealth conceded that the first and third prongs articulated in 18 Pa.C.S.A. § 110 and ***Fithian*** had been met. Upon review, we find that the Honorable Joseph J. Matika, sitting as the trial

court, has provided a thoughtful analysis, concluding that the second and fourth prongs (whether Appellant's offenses arose from the same criminal episode and in the same judicial district as the former prosecution) were not met. In explaining his conclusion, Judge Matika has authored a comprehensive and well-reasoned opinion in which he artfully applies pertinent statutory and case law to the facts of record in this case, such that further commentary by this Court would be redundant. Accordingly, we adopt Judge Matika's September 11, 2014 opinion as our own in disposing of this appeal.

Order affirmed. Jurisdiction relinquished. Case remanded for further proceedings.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/13/2015