

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Koehler

No. 768 CAP (Pa. Apr. 24, 2020) (Dougherty, J., concurring and dissenting) · No. 768 CAP · Decided April 24, 2020

SUMMARY

This is a concurring and dissenting opinion by Justice Dougherty of the Supreme Court of Pennsylvania in Commonwealth v. Koehler. The opinion addresses whether a PCRA court may consider a collateral due-process claim based on alleged judicial bias by a former Supreme Court justice and order relief affecting a prior appellate decision. Justice Dougherty would reverse and remand for the PCRA court to determine the petition's timeliness and merits, while criticizing the majority for addressing an unripe and advisory question.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Dougherty; Justice Mundy
JURISDICTION	Pennsylvania
DECIDED	April 24, 2020
DOCKET	768 CAP
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Bradford County Court of Common Pleas's dismissal of a facially untimely second PCRA petition without a hearing. Justice Dougherty would reverse and remand for the PCRA court to determine timeliness and eligibility for relief before addressing any issue concerning the appropriate remedy for the alleged appellate judicial-bias violation.
STANDARD OF REVIEW	Jurisdictional issues, including PCRA timeliness, are reviewed as threshold questions and may be considered sua sponte. The opinion also applies the statutory requirement that a PCRA petitioner plead and prove eligibility for relief by a preponderance of the evidence.
PRECEDENTIAL VALUE	nonprecedential separate opinion
PARTIES	John Joseph Koehler, Jr. v. Commonwealth of Pennsylvania

TOPICS

state post-conviction relief

post-conviction relief

due process

appellate procedure

appellate jurisdiction

PRACTICE AREAS

state post-conviction relief

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the PCRA court erred by dismissing the second PCRA petition without first determining whether it was timely and whether Koehler established eligibility for relief under the PCRA.
2. Whether a judicial-bias-based due process claim arising from an appellate judge's participation in a prior appeal is theoretically cognizable under the PCRA.
3. Whether a PCRA court may order a higher appellate tribunal to rehear a prior appeal nunc pro tunc based on alleged appellate judicial bias.
4. What remedy is constitutionally permissible if a petitioner proves a judicial-bias-based due process violation during a prior appellate proceeding.

HOLDINGS

1. The PCRA court erred by addressing the requested relief before determining whether the petition was timely and whether the petitioner was eligible for PCRA relief. The case should be reversed and remanded for those threshold determinations.
2. For purposes of the opinion's analysis, a claim alleging a constitutional error during the appellate process, including judicial bias, is theoretically cognizable under the PCRA, subject to the PCRA's ordinary timeliness and eligibility requirements.
3. Due process requires recusal only when the probability of actual bias is too high to be constitutionally tolerable, assessed objectively by asking whether the average judge in the circumstances is likely to be neutral or whether there is an unconstitutional potential for bias. The mere appearance of bias is not enough.
4. A PCRA court, as an inferior tribunal, is constitutionally precluded from granting a nunc pro tunc appeal that would require the Pennsylvania Supreme Court to rehear a prior appeal without one of its former justices.
5. The constitutionally permissible remedy would be nunc pro tunc reinstatement of the petitioner's right to seek reargument under Pa.R.A.P. 2543, rather than a nunc pro tunc appeal requiring the Supreme Court to rehear the case.

KEY QUOTATIONS

“if a PCRA petition is untimely, neither this Court nor the trial court has jurisdiction over the petition. Without jurisdiction, we simply do not have the legal authority to address the substantive claims.” (8)

“the inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional

‘potential for bias.’” (18)

“the nunc pro tunc reinstatement of the right to seek reargument is the only lawful remedy for a judicial bias-based due process claim raised on collateral review.” (34)

FACTUAL BACKGROUND

In 1996, a jury convicted Koehler of two first-degree murders and related offenses after he directed an eighteen-year-old man to kill Koehler's girlfriend and her nine-year-old son. The jury imposed two death sentences, and the Pennsylvania Supreme Court affirmed the judgment of sentence. After the Court affirmed denial of Koehler's first PCRA petition, Koehler filed a second petition alleging that former Justice Eakin's participation in the earlier appeal violated due process because of emails concerning domestic violence. The PCRA court dismissed the petition without deciding whether it was timely or whether the alleged bias claim had merit.

PROCEDURAL HISTORY

Koehler was convicted of two counts of first-degree murder and sentenced to death in 1996. The Pennsylvania Supreme Court affirmed on direct review in Koehler I and later affirmed denial of his first PCRA petition in Koehler II. In 2015, Koehler filed a second PCRA petition alleging that former Justice Eakin's participation in Koehler II violated due process because of emails reflecting an allegedly dismissive attitude toward domestic violence. The PCRA court transferred the matter to the Supreme Court, which remanded it for disposition under the PCRA. On remand, the PCRA court dismissed the petition without determining timeliness or eligibility for relief. Justice Dougherty would reverse and remand for those threshold determinations.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the PCRA court to determine first whether the second PCRA petition was timely, then whether Koehler established eligibility for relief under the PCRA, and only if warranted to address the merits and appropriate relief.

CASES CITED

- Commonwealth v. Koehler, 737 A.2d 225 (Pa. 1999)
- Commonwealth v. Koehler, 36 A.3d 121 (Pa. 2012)
- Commonwealth v. Koehler, 160 A.3d 782 (Pa. 2016) (per curiam)
- Commonwealth v. Taylor, 218 A.3d 1275, 1285-86, 1287-92 (Pa. 2019) (Dougherty, J., Opinion in Support of Affirmance)
- Commonwealth v. Chester, 895 A.2d 520, 522 (Pa. 2006)
- Commonwealth v. Cox, 146 A.3d 221, 227 (Pa. 2016)
- Commonwealth v. Abu-Jamal, 941 A.2d 1263, 1267-68 (Pa. 2008)
- Commonwealth v. Whitney, 817 A.2d 473, 478 (Pa. 2003)

- McGinley v. Scott, 164 A.2d 424, 428 (Pa. 1960)
- Alpha Tau Omega Fraternity v. University of Pennsylvania, 464 A.2d 1349, 1353 (Pa. Super. 1983)
- Commonwealth v. Pursell, 749 A.2d 911, 914 (Pa. 2000)
- Commonwealth v. Hall, 771 A.2d 1232, 1235 (Pa. 2001)
- Commonwealth v. Fahy, 737 A.2d 214, 223 (Pa. 1999)
- Commonwealth v. Liebel, 825 A.2d 630, 632, 635-36 (Pa. 2003)
- Commonwealth ex rel. Dadario v. Goldberg, 773 A.2d 126, 130 (Pa. 2001)
- Commonwealth v. Chester, 733 A.2d 1242, 1250 (Pa. 1999)
- Commonwealth v. Haun, 32 A.3d 697, 705 (Pa. 2011)
- Commonwealth v. West, 938 A.2d 1034, 1043-44 (Pa. 2007)
- Commonwealth v. Judge, 916 A.2d 511, 520 (Pa. 2007)
- Commonwealth v. Hackett, 956 A.2d 978, 985 (Pa. 2008)
- Commonwealth v. Cruz, 851 A.2d 870, 875, 878 (Pa. 2004)
- Tumey v. State of Ohio, 273 U.S. 510, 523, 535 (1927)
- Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 820, 823-24, 828 (1986)
- FTC v. Cement Institute, 333 U.S. 683, 702 (1948)
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 872, 876-77, 880-81, 883-84, 887, 890 (2009)
- Williams v. Pennsylvania, 136 S. Ct. 1899, 1905, 1909 (2016)
- In re Murchison, 349 U.S. 133, 136 (1955)
- Mayberry v. Pennsylvania, 400 U.S. 455, 465-66 (1971)
- Commonwealth v. Wallace, 97 A.3d 310, 320 (Pa. 2014)
- In re Melograne, 812 A.2d 1164, 1167 (Pa. 2002)
- In re Avellino, 690 A.2d 1138, 1143 (Pa. 1997)
- Commonwealth v. Tilghman, 673 A.2d 898, 903 (Pa. 1996)
- Walnut Street Associates, Inc. v. Brokerage Concepts, Inc., 20 A.3d 468, 480 (Pa. 2011)
- Commonwealth v. Provident Trust Co. of Philadelphia, 180 A. 16, 17 (Pa. 1935)
- Fiore v. White, 757 A.2d 842, 847 (Pa. 2000)
- Lovrinoff v. Pennsylvania Turnpike Commission, 281 A.2d 176, 178 (Pa. Cmwlth. 1971)
- Commonwealth v. Buehl, 658 A.2d 771, 782 (Pa. 1995)
- Reilly by Reilly v. SEPTA, 489 A.2d 1291, 1298-99, 1301 (Pa. 1985)
- Commonwealth v. Whitmore, 912 A.2d 827, 832, 834 (Pa. 2006)
- In re Bruno, 101 A.3d 635, 655, 660, 668-69, 678-79, 688 (Pa. 2014)
- United States v. Gillespie, 666 F. Supp. 1137, 1139 (N.D. Ill. 1987)
- Jackson ex rel. Sanders v. Hendrick, 746 A.2d 574, 579 (Pa. 2000) (Zappala, J., concurring)
- Barron v. City of Philadelphia, 754 A.2d 738, 740 (Pa. Cmwlth. 2000)
- Darlington, McKeon, Schuckers & Brown, 20A West's Pennsylvania Practice, Appellate Practice § 2546:3
- Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 533, 535 (1983)

- *Hutto v. Davis*, 454 U.S. 370, 375 (1982)
- *Hohn v. United States*, 524 U.S. 236, 252-53 (1998)
- *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1910 (2017)
- *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)
- *Republican Party of Minnesota v. White*, 536 U.S. 765, 796 (2002) (Kennedy, J., concurring)
- *Goodheart v. Casey*, 565 A.2d 757, 763 (Pa. 1989)
- *League of Women Voters of Pennsylvania v. Commonwealth*, 179 A.3d 1080, 1085 (Pa. 2018) (Wecht, J., single-Justice order)
- *In re Crawford's Estate*, 160 A. 585, 587 (Pa. 1931)
- *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003)
- *Philadelphia Entertainment and Development Partners v. City of Philadelphia*, 937 A.2d 385, 392 (Pa. 2007)
- *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659 (Pa. 2005)
- *Department of Environmental Resources v. Jubelirer*, 614 A.2d 204, 212-13 (Pa. 1992)
- *Pennsylvania Public Utility Commission v. Allegheny County*, 203 A.2d 544, 546 (Pa. 1964)
- *Stuckley v. Zoning Hearing Board of Newtown Township*, 79 A.3d 510, 516 (Pa. 2013)
- *Town of McCandless v. McCandless Police Officers Association*, 901 A.2d 991, 1002 (Pa. 2006)
- *In re Gross*, 382 A.2d 116, 120 (Pa. 1978)
- *Okkerse v. Howe*, 556 A.2d 827, 833 (Pa. 1989)