

SUPERIOR COURT OF PENNSYLVANIA

Commonwealth v. Wells, 322 Pa. Super. 380

469 A.2d 672 (1983) · Decided December 16, 1983

SUMMARY

The Pennsylvania Superior Court reviewed an order granting Richard K. Wells’s Post-Conviction Hearing Act petition and dismissing the indictment with prejudice based on an alleged violation of Pennsylvania Rule of Criminal Procedure 1100. The court vacated the order and remanded for a full rehearing because the deciding judge had not presided over or reviewed the record of the prior evidentiary hearing, and the trial court had not made adequate findings of fact.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Rowley, J.; Montemuro, J.; Van der Voort, J.
JURISDICTION	Pennsylvania
DECIDED	December 16, 1983
DISPOSITION	vacated
PROCEDURAL POSTURE	The Commonwealth appealed from an order granting Wells's Post-Conviction Hearing Act petition, dismissing the indictment with prejudice, and discharging him based on an alleged violation of Pennsylvania Rule of Criminal Procedure 1100 and ineffective assistance of counsel.
STANDARD OF REVIEW	The appellate court reviews whether the PCHA court's determination is supported by evidence of record and is free of legal error. It does not conduct a de novo evaluation of testimony presented at the PCHA hearing, and it gives great deference to findings made by the judge who heard the evidence and assessed witness credibility.
PRECEDENTIAL VALUE	Published Pennsylvania Superior Court opinion
PARTIES	Commonwealth of Pennsylvania v. Richard K. Wells

TOPICS

- post-conviction relief
- ineffective assistance
- speedy trial
- appellate procedure
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a PCHA judge may decide a petition after an evidentiary hearing conducted before another judge without reviewing the hearing transcript or conducting a rehearing.
2. Whether the replacement PCHA judge improperly granted relief after an informal conference and without a full, on-the-record evidentiary hearing.
3. Whether the appellate court could independently evaluate the PCHA hearing testimony and resolve the Rule 1100 and ineffective-assistance issues in the first instance.
4. What proceedings were required on remand to determine Wells's ineffective-assistance claim concerning Rule 1100.

HOLDINGS

1. A PCHA judge may not decide the merits of a petition after an evidentiary hearing conducted before another judge without reviewing the notes of testimony or conducting a rehearing.
2. The appellate court could not make the initial evaluation of the PCHA testimony or decide the underlying Rule 1100 and ineffective-assistance issues de novo.
3. Because the Commonwealth objected to disposition without a rehearing and the replacement judge did not review the evidentiary record, a full rehearing was required.

KEY QUOTATIONS

“The practice of arriving at a decision, including the drafting of an opinion and order, and thereafter seeking comments from the “losing” party is not an appropriate procedure.” (385)

“More importantly, the rendering of a decision on a PCHA petition by a judge who was not present at the PCHA hearing and who did not review the notes of testimony, indeed, who expressly declined transcription of the notes is disapproved.” (385)

“On appeal, it is not our function to sit as a trial court and try the case de novo.” (387)

“Thus, this failure, combined with the great lapse of time between the original PCHA hearing and our decision, necessitate that a new hearing be held on appellee's petition.” (389)

FACTUAL BACKGROUND

Wells was arrested in 1975 and charged with criminal homicide arising from Dorothy Davidson's death. He was convicted of second-degree murder in March 1976 and received a life sentence. In his 1979 PCHA petition, Wells alleged that trial and post-verdict counsel were constitutionally ineffective because their conduct resulted in denial of his Rule 1100 speedy-trial rights. After the original PCHA hearing judge withdrew, a replacement judge granted the petition without reviewing the transcript of the prior evidentiary hearing or the transcript of a disputed 1975 continuance proceeding.

PROCEDURAL HISTORY

Wells was convicted of second-degree murder in McKean County in 1976 and sentenced to life imprisonment. After he filed a PCHA petition alleging ineffective assistance related to Rule 1100, an evidentiary hearing was held before Judge Potter. Judge Potter later disqualified himself, and a different judge decided the petition without reviewing the prior hearing transcript, after an informal conference with counsel, and granted relief. The Superior Court vacated that order and remanded for a full rehearing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Conduct a full rehearing on Wells's PCHA petition before the trial court, with an adequate evidentiary record and factual findings. The ineffective-assistance claim concerning Rule 1100 must be evaluated in light of *Commonwealth v. Crowley*, including whether Wells was deprived of his underlying speedy-trial right under the Sixth Amendment or Article I, section 9 of the Pennsylvania Constitution. Jurisdiction was relinquished.

CASES CITED

- *Commonwealth v. Zaffina*, 432 Pa. 435, 248 A.2d 5 (1968)
- *Commonwealth v. Madronal*, 279 Pa. Super. 57, 420 A.2d 742 (1980)
- *Commonwealth v. Stanton*, 294 Pa. Super. 516, 440 A.2d 585 (1982)
- *Commonwealth v. Elliott*, 319 Pa. Super. 521, 466 A.2d 666 (1983)
- *Hyman v. Borock*, 211 Pa. Super. 126, 235 A.2d 621 (1967)
- *Labyoda v. Stine*, 295 Pa. Super. 122, 441 A.2d 379 (1982)
- *Commonwealth v. Crowley*, 502 Pa. 393, 466 A.2d 1009 (1983)
- *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)