

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Fountain

65 MAP 2024 · No. 65 MAP 2024 · Decided March 26, 2026

SUMMARY

Justice Wecht dissents from the Pennsylvania Supreme Court’s decision to dismiss as improvidently granted an appeal concerning whether repeated dilatory and disruptive conduct may constitute an ongoing forfeiture of the right to counsel. The dissent argues that the Court should address this issue of first impression and clarify the application of ongoing waiver and forfeiture doctrines.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice David N. Wecht
JURISDICTION	Supreme Court of Pennsylvania
DECIDED	March 26, 2026
DOCKET	65 MAP 2024
DISPOSITION	dismissed
PROCEDURAL POSTURE	The Commonwealth appealed from the Pennsylvania Superior Court's order vacating and remanding Kevin Scott Fountain's judgment of sentence. The Pennsylvania Supreme Court granted allowance of appeal to consider whether repeated dilatory and disruptive conduct could support an ongoing forfeiture of the right to counsel, but dismissed the appeal as improvidently granted.
PRECEDENTIAL VALUE	Published dissenting statement; no binding merits rule is announced in the provided text.
PARTIES	Commonwealth of Pennsylvania v. Kevin Scott Fountain

TOPICS

- right to counsel
- criminal procedure
- appellate procedure
- mootness

PRACTICE AREAS

- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court erred by failing to treat forfeiture of counsel as a continuing pattern of behavior akin to the ongoing-waiver rule where there was no substantial change in circumstances and the defendant repeatedly exhibited dilatory conduct.
2. Whether Pennsylvania law should recognize or clarify an ongoing-forfeiture-of-counsel doctrine extending the ongoing-waiver doctrine to repeated dilatory and disruptive conduct.

KEY QUOTATIONS

“Today, without explanation, this Court declines to answer the question, opting instead to dismiss the appeal as improvidently granted.” (at 1)

“This Court has yet to address the “ongoing waiver” doctrine that our Superior Court adopted a decade ago.” (at 1)

“Having received ample briefing and oral argument, we should use this opportunity to clarify the application of the ongoing forfeiture doctrine for the bar, the bench, and the public.” (at 1)

FACTUAL BACKGROUND

The appeal concerned whether Fountain's repeated dilatory and disruptive conduct constituted an ongoing forfeiture of his right to counsel. The dissenting statement does not describe the underlying criminal facts or the specific conduct in detail, focusing instead on the Supreme Court's decision not to resolve the legal issue.

PROCEDURAL HISTORY

The York County Court of Common Pleas entered Fountain's judgment of sentence on January 27, 2022. The Superior Court, at No. 944 MDA 2022, vacated and remanded that judgment on December 14, 2023. The Supreme Court granted allowance of appeal, heard argument, and ultimately dismissed the appeal as improvidently granted; Justice Wecht dissented, joined by Justice Mundy.

DISPOSITION

dismissed

CASES CITED

- Commonwealth v. Fountain, 325 A.3d 450 (Pa. 2024)
- Commonwealth v. Phillips, 141 A.3d 512, 520-21 (Pa. Super. 2016)

OPINION

WECHT, DAVID N., J, dissenting.

[J-38-2025] IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT
COMMONWEALTH OF PENNSYLVANIA,; No. 65 MAP 2024 Appellant: Appeal from the
Order of the: Superior Court at No. 944 MDA: 2022, entered on December 14, v.: 2023, Vacating

and Remanding the: Judgment of Sentence of the York: County Court of Common Pleas, KEVIN SCOTT FOUNTAIN,; Criminal Division, at No. CP-67-CR-: 0006836-2018 entered on January Appellee: 27, 2022.: ARGUED: October 7, 2025 DISSENTING STATEMENT JUSTICE WECHT DECIDED: March 26, 2026 We granted allowance of appeal in order to decide whether “the Superior Court err[ed] by failing to treat forfeiture of counsel as a test involving a continuing pattern of behavior akin to the ‘ongoing waiver’ rule where there was no substantial change in circumstance and where Defendant repeatedly exhibited dilatory conduct[?]” 1 Today, without explanation, this Court declines to answer the question, opting instead to dismiss the appeal as improvidently granted.

This Court has yet to address the “ongoing waiver” doctrine that our Superior Court adopted a decade ago. 2 Nor have we considered the extension of such waiver into an “ongoing forfeiture” of counsel rule. These are important matters of first impression implicating the scope of the right to counsel. I have discovered no jurisdictional defect, 1 Commonwealth v. Fountain, 325 A.3d 450 (Pa.

2024) (per curiam). 2 See Commonwealth v. Phillips, 141 A.3d 512, 520-21 (Pa. Super. 2016). procedural hurdle, or mootness problem. The only thing that seems to have changed since we granted review is this Court’s willingness to consider the significant legal issue of whether repeated dilatory and disruptive conduct can constitute an ongoing forfeiture of one’s right to counsel.

Having received ample briefing and oral argument, we should use this opportunity to clarify the application of the ongoing forfeiture doctrine for the bar, the bench, and the public. Instead, the extensive time and effort expended by this Court and the parties go for naught, as does the opportunity to elucidate an important aspect of the law governing criminal defendants’ right to counsel.

I would answer the question that we set out to answer. I respectfully dissent. Justice Mundy joins this dissenting statement. [J-38-2025, 65 MAP 2024] - 2