

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL J. PISKANIN : CIVIL ACTION
(a/k/a "Piscanio") :
 :
 v. :
 :
 MARK A. KRYSEVIG, et al. : NO. 06-cv-04615-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 3, 2007

The magistrate judge to whom this case was referred has filed a report recommending that petitioner's application for a writ of habeas corpus should be dismissed as untimely. The petitioner, who is acting *pro se*, has filed objections to the magistrate's report.

The facts are unusual. Petitioner was tried and convicted in 1981, and was sentenced in 1983. On direct appeal, however, the Pennsylvania Superior Court concluded that the trial court was without jurisdiction because petitioner had earlier filed an appeal from a pretrial denial of his application for bail. Accordingly, in 1985, the Superior Court ordered a new trial. Commonwealth v. Piscanio, 349 Pa. Super. 619 (1985). The Commonwealth appealed. For reasons which are not made clear by the record, the Pennsylvania Supreme Court did not rule on the pending appeal until 1992. In Commonwealth v. Piscanio, 608 A.2d 1027, 530 Pa. 293 (Pa. 1992), the Pennsylvania Supreme Court reversed the decision of the Superior Court and reinstated petitioner's conviction and sentence. As it happened, petitioner

had been released on parole in 1983, and his maximum sentence expired in 1988.

The magistrate judge has correctly determined that, since petitioner is not in custody pursuant to the sentence being challenged, his application for habeas relief must be denied.

Petitioner's objections to the magistrate's report accuse the then district attorney of Lehigh County of chicanery in delaying the ultimate decision of the Pennsylvania Supreme Court until after petitioner was out of jail, and in misleading the Pennsylvania Supreme Court into an erroneous decision. The lack of merit in these wild accusations seems self-evident (the reference is to sinister "masonic" influences), but that issue is entirely irrelevant. Even if the Pennsylvania Supreme Court had not reinstated petitioner's conviction and sentence, there would be no basis for granting federal relief in this proceeding.

Apparently, petitioner is now serving a later sentence imposed for a later conviction, but that conviction is not challenged in this case. Finally, it should be noted that petitioner has set forth absolutely no grounds for suggesting any constitutional infirmity in his 1981 conviction and 1983 sentence involved in the present case.

An Order follows.

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ORDER

AND NOW, this 3rd day of April 2007, upon consideration of the Report and Recommendation of United States Magistrate Judge Jacob P. Hart, and petitioner's objections thereto, IT IS ORDERED:

1. The Report and Recommendation are APPROVED and ADOPTED.
2. The petition is DISMISSED with prejudice.
3. There is no basis for issuing a certificate of appealability.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.