

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

COMMONWEALTH :
 :
v. : CP-51-CR-0006367-2016
 :
DEMETRIUS D. MAYFIELD :

**THE COMMONWEALTH'S MOTION FOR COMPLIANCE
WITH MANDATORY STAY**

The Commonwealth respectfully requests that this Court comply with Rule 1701 of the Pennsylvania Rules of Appellate Procedure, which requires that the Court stay proceedings in this case pending the Commonwealth's appeal. The grounds for this motion are set forth in the accompanying memorandum of law.

Respectfully Submitted,

/s/ Peter Carr

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**THE COMMONWEALTH’S MEMORANDUM OF LAW IN SUPPORT OF
ITS FOR COMPLIANCE WITH MANDATORY STAY PENDING THE
COMMONWEALTH’S APPEAL**

I. INTRODUCTION

On September 19, 2018, the Commonwealth filed a notice of appeal to the Superior Court from this Court’s order of the same date purporting to replace the District Attorney with a “special prosecutor.” That appeal is authorized by Rule 3331 of the Pennsylvania Rules of Appellate procedure, which permits an immediate appeal of “[a]n order relating to the supersession of a district attorney by an Attorney General or by a court, or to the appointment, supervision, administration or operation of a special prosecutor.” Pa.R.A.P. 3331(a)(1).

A copy of the Commonwealth’s notice of appeal is appended to this memorandum for the Court’s convenience.

II. ARGUMENT

Because the Commonwealth has filed a notice of appeal, this Court lacks jurisdiction to proceed further, and any order purporting to rule on the potential revocation of probation would be a nullity.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, the effect of the Commonwealth's notice of appeal is to stay the proceedings before this Court and divest this Court of authority to proceed with a probation revocation hearing:

(a) General rule. Except as otherwise prescribed by these rules, **after an appeal is taken** or review of a quasijudicial order is sought, **the trial court** or other government unit **may no longer proceed further in the matter.**

(b) Authority of a trial court or agency after appeal. After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

(3) Grant [timely] reconsideration of the order which is the subject of the appeal or petition....

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized on application by the appellate court.

(6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

Pa.R.A.P. 1701 (emphasis added). That stay will remain in effect until the case is remanded by the appellate court. *See* Pa.R.A.P. 2591(a) (“On remand of the record the court or other government unit below shall proceed in accordance with the judgment or other order of the appellate court and, except as otherwise provided in such order, Rule 1701(a) ... shall no longer be applicable to the matter.”).

Case law confirms that, as the plain language of Rule 1701 makes clear, a Common Pleas Court has no jurisdiction to take substantive action (except to grant timely reconsideration of the order being appealed) once a notice of appeal is filed. *See, e.g., Commonwealth v. Pearson*, 685 A.2d 551, 557-58 (Pa. Super. 1996) (en banc) (collecting case confirming that, pursuant to Rule 1701, “the trial court was totally divested of jurisdiction by the taking of the appeal”). Indeed, longstanding precedent establishes that, if this Court were to proceed with the probation revocation hearing despite the Commonwealth’s notice of appeal, any order the Court were to purport to enter granting or denying revocation would be an unenforceable nullity.

For example, in *Commonwealth v. Walton*, 472 A.2d 615 (Pa. Super. 1984), a Common Pleas Court judge purported to rule on the defendant's petition for habeas corpus even though an appeal was pending in the same case at the time. On subsequent appeal of the habeas ruling, the Superior Court determined that the Common Pleas Court judge's decision to proceed while an appeal was pending was clearly erroneous, and its purported habeas order was an unlawful nullity:

...Judge Smillie's order was null and void because it was entered during the pendency of defendant's appeal to our Court. **An order entered by a lower court while a case is on appeal is a nullity.** Thus, Judge Smillie's August 11, 1982 order was **void ab initio and of no legal effect.** ... [T]his Court will not give effect to an order entered by the court below during the pendency of an appeal of the same matter to our Court.

Walton, 472 A.2d at 617 (emphasis added and citations omitted); *see also Coarce v. Balint*, 210 A.2d 882, 889 (Pa. 1965) (holding that orders entered in action after appeal taken were without legal effect); *Bell v. Kater*, 839 A.2d 356, 358 (Pa. Super. 2003) (likewise).

Because the Commonwealth has filed a notice of appeal, the proceedings in this case are stayed as a matter of law. The Commonwealth respectfully requests that this Court comply with the stay.

III. CONCLUSION

This Court lacks jurisdiction to proceed with a revocation hearing while the Commonwealth's appeal is pending.

Respectfully submitted,

/s/ Peter Carr

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APPENDIX

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THE COMMONWEALTH'S NOTICE OF APPEAL

Notice is hereby given that the Commonwealth appeals to the Superior Court of Pennsylvania from the Honorable Anne Marie Coyle's September 19, 2018 order appointing a special prosecutor. A copy of this order is presently unavailable. Although no certification is required under Rule 3331(a)(1), the Commonwealth certifies that the order under review will substantially handicap the prosecution of this case.¹

Respectfully Submitted,

/s/ Peter Carr

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¹ Notice of appeal and proof of service are being served upon the following, pursuant to Pa.R.A.P. 906: Prothonotary; trial judge; defense counsel; and court stenographer. Counsel's attention is directed to Pa.R.A.P. 907.

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ORDER FOR TRANSCRIPT PURSUANT TO Pa. R.A.P. 1922

A notice of appeal having been filed in this matter, the official court reporter(s) is (are) hereby ordered to produce, certify and file the transcript(s) in this matter indicated below in conformity with Pa. R.A.P. 1922.

PROOF OF SERVICE ON NOTICE OF APPEAL

I hereby certify that I am this day serving the foregoing Notice of Appeal upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

JUDGE

Honorable Anne Marie B. Coyle
Criminal Justice Center , Room 1413
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COUNSEL

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Signature of counsel for appellant

/s/ Peter Carr¹

Peter Carr

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¹ NOTICE: Under 18 Pa.C.S.a § 4904 (unsworn falsification to authorities), a knowingly false proof of service constitutes a misdemeanor of the second degree.