

INJUSTICE OF THE PENNSYLVANIA POST-CONVICTION RELIEF ACT

A wrongful conviction can result in a life sentence for an innocent person in the state of Pennsylvania. While all other states in The U.S. employ the “collateral consequences doctrine” Pennsylvania has rejected it with the creation of the statute The Pennsylvania General Assembly Title 42 CHAPTER 95 POST-TRIAL MATTERS §9541. The Post-Conviction Relief Act (PCRA). This act has created a barrier for innocent people, who have completed their sentences of incarceration and/or probation, preventing them from having a wrongful conviction overturned. The problem lies within the eligibility requirements stated in the PCRA statute.

In many cases the PCRA is the only remedy in which innocent people can challenge their conviction. However, the eligibility requirements exclude innocent people who are no longer serving a sentence from having a wrongful conviction overturned. It was held in Ahlborn, “The language of the Post-Conviction Relief Act pertaining to eligibility for relief was intended to limit relief to those petitioners whose sentences have not expired and to preclude relief for those whose sentences have expired, regardless of collateral consequences.” *Commonwealth v. Ahlborn*, 453 Pa. Super. 124, (1996). Therefore, based on the court’s interpretation of the PCRA in Ahlborn, all cases where innocent people are wrongfully convicted, the convictions will not be reversed and the innocent people will be forced to live the rest of their lives with the collateral consequences of criminal convictions if they have completed a term of imprisonment or probation for the crimes they were wrongfully convicted of.

The collateral consequences of a criminal conviction include the loss of many rights such as the right to vote, bear arms, hold public office, serve on a jury, work in certain fields, and travel abroad. Black’s Law Dictionary. Although the wrongfully convicted people are no longer incarcerated or serving sentences of probation their punishment continues for the rest of their lives. After they have completed their sentences of incarceration or probation, they continue to face disenfranchisement and the stigma of a convicted felon. This creates many difficulties such as their ability to gain employment and housing. Many employers require applicants to check a box if convicted of a felony and will not hire applicants who have a felony conviction on their record. U.S. Equal Employment Opportunity Commission, *Pre-Employment Inquiries and Arrest & Conviction*.

http://www.eeog.gov/laws/practice/inquires/_arrest_conviction.cfm. Some landlords require potential tenants to check a box on applications and in many cases, will not rent to convicted felons. Tenant Resource Center, *Renting with a Criminal Conviction or Arrest Record*.

http://www.tenantresourcecenter.org/renting_with_a_criminal_conviction. The obstacles of the limited employment and housing opportunities in some cases can lead to the wrongfully convicted people engaging in illegal activities to make a quick buck so they have money for rent, food, clothes, and other necessities. Also in some cases the stigma of a criminal conviction has led to substance abuse and mental health issues both of which can result with a return to prison. *Joan Petersilia, When Prisoners Return to the Community: Political, Economic, and Social Consequences*, U.S. Department of Justice Office of Justice Programs National Institute of Justice, Nov. 2000, at 4,5.

Therefore, the collateral consequences of wrongful convictions support claims made by wrongfully convicted people in Pennsylvania that the Pennsylvania’s Post-Conviction Relief Act is unfair and deprives wrongfully convicted people of their constitutional rights.

The Pennsylvania's Post-Conviction Relief Act eligibility requirements not only result in the unjust loss of rights suffered by wrongfully convicted people in Pennsylvania, but can also have a negative effect on Pennsylvania communities. Many Pennsylvania communities can be denied all the potential contributions wrongfully convicted people could offer but are currently prevented from doing so due to restrictions placed on them by wrongful convictions. Furthermore, the PCRA Act may allow cases of judicial misconduct, Prosecutorial misconduct, Police misconduct, and cases of ineffective counsel to go unnoticed. The collateral consequences suffered by wrongfully convicted people of Pennsylvania and the potential of numerous harms that can occur to the communities and people of Pennsylvania, is not a price the people of Pennsylvania should be forced to pay. Therefore, it is in the best interest of the people of Pennsylvania that immediate actions are taken to change the PCRA eligibility requirements that prevent innocent people from having their convictions overturned.

The eligibility requirements in the PCRA have been interpreted by the Pennsylvania courts to exclude petitioners from attacking a conviction when they are no longer serving the sentence imposed by the court. The standard of review for cases where the petitioner has been released from prison before the review of a PCRA has been established in *Commonwealth v. Ahlborn* 453 Pa. Super. 124, (1996).

In *Ahlborn*, he was seeking to challenge his conviction based on a misunderstood plea agreement for a DUI offence. Due to delays in the courts and a short sentence, his PCRA was not reviewed because he was unconditionally released from prison. Despite the argument that *Ahlborn* would suffer the collateral consequences of the conviction, the court found that the case was moot. The court held that "The Post-Conviction Relief Act, when read as a whole and in conjunction with its predecessor, the Post-Conviction Hearing Act and the law pertaining to federal habeas corpus relief, leads us to conclude that to be eligible for post-conviction relief a petitioner must be serving a sentence of incarceration or parole." *Commonwealth v. Ahlborn*, 453 Pa. Super. 124, (1996). This means that wrongfully convicted people in Pennsylvania must suffer the collateral consequences listed above as well as many other collateral consequences of being a convicted felon if they have completed the sentence imposed for the crime they were wrongly convicted of and any evidence that proves their innocence will not be reviewed by the court. This does not seem fair but unfortunately it is the case in Pennsylvania.

There have been dissenting opinions by Pennsylvania Justices in these types of matters. In *Ahlborn*, Justice Cavanaugh offered this dissent. "In *Commonwealth v. Hayes*, I dissented and took the position that the 1988 amendment of the Post-Conviction Hearing Act did not intend to eradicate the employment of the collateral consequences doctrine as a basis for invoking the benefits of the PCRA. In the interest of consistency and at the risk of engaging in tautology, I dissent and would reverse. *Commonwealth v. Hayes*, 408 Pa. Super. 68, at 77, 596 A.2d 195 at 200 (1991)" *Commonwealth v. Ahlborn*, 453 Pa. Super. 133, (1996).

Justice Cavanaugh was not the only Justice who saw the injustice of Pennsylvania's abandonment of the collateral consequences doctrine. Justices Cirillo, P.J.E. and Johnson, J., joined in the dissent. "In these cases, both *McGuire* and *Ahlborn* were convicted of crimes. Unlike the majority, I cannot regard their PCRA petitions as "moot;" the potential for harm under the enhancing statutes and the sentencing guidelines still exists. To cause these defendants to potentially suffer the heightened consequences on a subsequent conviction, based upon the present convictions which may have been reversed due to meritorious claims presented in their unreviewed PCRA petitions, is against basic principles of justice and the rights conferred under our state and federal constitutions." *Commonwealth v. Ahlborn*, 453 Pa. Super. 134, (1996). Despite these dissents there have been no changes in the laws and wrongfully convicted people who have completed their sentences are prevented from having evidence that proves their innocence reviewed by the courts.

There have been numerous attempts by other petitioners to challenge wrongful convictions after they have completed serving the full sentence. The Pennsylvania Supreme Court has continued to uphold the decision in Ahlborn and Pennsylvania lawmakers to date have not corrected this matter. In *Descardes*, David Richman of the Pennsylvania Innocence Project, argued that “Claims of innocence in challenges to the Constitutional validity of a conviction or to the legality of a sentence should not be denied collateral review merely because the person seeking is no longer undergoing a sentence. In balancing the interests of justice and avoidance of bifurcated collateral review, the court should as it has done in several other instances either brought in the construction of the PCRA to accommodate claims by persons whose sentence has expired or it should recognize the availability of collateral review of such claims by the alternative means of an appropriate common law rich or post-sentence motions nunc Pro tunc. Failure to do either will result in the harm of a wrongful conviction, something that is especially intolerable in the case of persons able to prove if given the opportunity they were convicted of crimes they did not commit.” *Commonwealth v. Descardes*, 101 A.3d 105, (2015). However, the Supreme Court of Pennsylvania Eastern District did not agree with this argument and upheld the decision from Ahlborn.

In *Descardes*, the defendant was faced with the collateral consequence of deportation resulting from his criminal conviction. However, the court found “Deportation is not a sentence and *Descardes* is not in custody. Therefore, he is not eligible for PCRA relief. The PCRA court's reliance upon *Padilla* for the assertion that deportation constitutes a sentence for purposes of the PCRA eligibility provisions, although understandably sympathetic, is misplaced.” *Commonwealth v. Descardes*, 101 A.3d 105, (2015). In this decision, it appears that Pennsylvania has chosen to continue to allow wrongfully convicted people to suffer collateral consequences simply because they are not serving a sentence of imprisonment or probation.

Before the Post-Conviction Relief Act was created, Pennsylvania did recognize the collateral consequences of a wrongful conviction. It was held in *Mimms* “in determining that the appeal was not moot even though the respondent's sentence had been served, relied upon the fact that, “[i]n any future state criminal proceedings against [the] respondent, [his] conviction may be relevant to setting bail and length of sentence, and to the availability of probation.... Since [the] respondent, having fully served his state sentence, is presently incarcerated in the federal penitentiary ... we cannot say that such considerations are unduly speculative even if a determination of mootness depended on a case-by-case analysis. The United States Supreme Court has relied upon collateral consequences that would arise in the event of future criminal behavior to conclude that an otherwise moot judgment of conviction merits review”. *Pennsylvania v. Mimms*, 434 U.S. 106, 108-109 n. 3, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). The same approach in *Mimms* should be applied to all other collateral consequences of a criminal conviction. In *Evitts*, the court looked to collateral consequences of the respondent's conviction, “including the possibility that the conviction would be used to impeach testimony he might give in a future proceeding and the possibility that it would be used to subject him to persistent felony offender prosecution if he should go to trial on any other felony charges in the future.” *Evitts v. Lucey*, *supra*, 469 U.S. at 391, n. 4, 105 S.Ct. 830. Here the court recognizes the collateral consequence of being impeached in addition to the possibility of an increased sentence in the event of a subsequent prosecution. These findings by the court demonstrates that a wrongfully convicted person should be allowed to challenge a conviction so they may be spared the collateral consequences of a criminal conviction. A case is not moot just because a petitioner is no longer in custody. The incarceration of an innocent person is just a small portion of the harm done and there is much more relief that needs to be granted to correct a wrongful conviction.

Many courts have recognized that serving the sentence of imprisonment is not the only harm caused by a wrongful conviction. “The mere release of the prisoner does not mechanically foreclose consideration of the merits by this Court.” *Fiswick v. United States*, 329 U.S. 211, 67 S.Ct. 224, 91 L.Ed. 196 (1946). However, despite the many findings by Pennsylvania judges that cases are moot when innocent people are not in custody, they offer no arguments claiming it is fair that a wrongfully convicted person should live the rest of their life with the collateral consequences of a wrongful conviction. Yet, that has been the results of the Pennsylvania courts findings. The Pennsylvania judges who have found cases moot when petitioners are no longer in custody have denied many innocent people the right to end the harm they are forced to suffer due to a wrongful conviction. It was held in *Morris* “Convictions nearly always carry continuing consequences that are imposed as a matter of either state or federal law, such as limits on a person's ability to vote, “engage in certain businesses, or serve on a jury.” *Duran v. Morris*, 635 P.2d 43, 45 (Utah 1981). In *Rice* it was held that “in a criminal conviction, the presumption of significant collateral consequences is likely to comport with reality.... [I]t is an ‘obvious fact of life that most criminal convictions do in fact entail adverse collateral legal consequences.” *North Carolina v. Rice*, 404 U.S. 244, 247 & n.1, 92 S.Ct. 402, 30 L.Ed.2d 413.

Pennsylvania is the only state that does not recognize the collateral consequences of a wrongful conviction. Other states have found that the collateral consequences of a criminal conviction will prevent a case from being found moot. “In its simplest form, the collateral consequences exception permits an appeal to survive dismissal on mootness grounds if, notwithstanding the fact that the direct and immediate consequences of a lower court decision have already occurred and cannot be directly remedied by an appellate decision, there are adverse collateral legal consequences [that] will be imposed based on the challenged issue on appeal.” *Duran v. Morris*, 635 P.2d 43, 45 (Utah 1981). Despite the view of the collateral consequences of a wrongful conviction by the other states, Pennsylvania has not acted to remedy this matter. In Illinois, an individual who has been wrongfully convicted can still have their case reviewed by the court when newly discovered evidence is found. It was held in *Washington* that “Constitutionally, a newly discovered evidence claim has to be evaluated in the light of the previous proceedings in which guilt or innocence was determined. In terms of procedural due process, to ignore a claim of newly discovered evidence of innocence would be fundamentally unfair.” *The People of Illinois v. Washington*, 171 Ill. 2d 475. The court’s holding in *Washington* finds that restrictions preventing innocent individuals with newly discovered evidence from having their convictions overturned is unconstitutional. Yet, the Pennsylvania courts have continued to uphold the decision in *Ahlborn* and dismiss cases of innocent people as moot.

In North Carolina, a separate division has been created to deal with wrongful convictions. ARTICLE 92. NORTH CAROLINA INNOCENCE INQUIRY COMMISSION. “Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim. (a) A claim of factual innocence for any conviction may be referred to the Commission by any court, a state or local agency, or a claimant's counsel. A claim of factual innocence for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E felony may be made directly by the claimant. ART. 92. NC. INNOCENCE INQUIRY COMMISSION.

The PCRA Violates the Right to Equal Protection and Due Process Guaranteed by the Constitution. A post-conviction proceeding is the only procedure available to defendants to challenge the effectiveness of trial counsel or newly discovered evidence. Petitioners with longer sentences have their petitions reviewed while petitioners with short sentences are denied a review. By refusing to recognize an

exception to the eligibility requirements that would permit petitioners with short sentences appellate review, the PCRA violates equal protection and due process guaranteed by the Constitution by arbitrarily leaving such petitioners without a remedy to have their convictions overturned.

The argument that it is unconstitutional to deprive petitioners who receive sentences of short duration a forum to challenge wrongful convictions rests primarily upon the principles of fairness and equal treatment that govern direct appeal. The PCRA denies defendants who have are not currently serving a sentence their due process guarantee of fundamental fairness by denying them an opportunity to have their claims of innocence reviewed. “An essential guarantee of due process is the opportunity to be heard. It is fundamentally unfair to obstruct an innocent person from a review on their claims of innocence. Due process cannot be abolished to achieve judicial efficiency and convenience.” *Boyle v. O'Bannon*, 500 Pa. 495 (Pa. 1983). By leaving defendants who have completed their sentence no procedure to present their innocence claims “violates the basic due process obligation to provide each defendant a fair opportunity to obtain an adjudication on the merits of his or her claim and denying wrongfully convicted people, who have completed their sentences, violates the equal protection principle that a system of reviewing convictions be “free of unreasoned distinctions.” *Griffin v. Illinois*, 351 U.S. 12, 17-20, 76 S. Ct. 585, 100 L. Ed. 891 (1956).

The PCRA petitioners that are still serving a sentence of incarceration have a right to have their claims of innocence reviewed. It is an unreasoned distinction for Pennsylvania courts to deny defendants who served their sentence during direct appeal or before the collateral process is complete a review of their claims of innocence, while providing review of such claims for those receiving marginally longer sentences. The PCRA denies wrongfully convicted people their rights to due process and rights to pursuit of happiness. In many cases, it is the delays by the courts to review the petitioners claims before being released that renders their actions moot. “Many deep and abiding constitutional problems are encountered primarily at a level of ‘low visibility’ in the criminal process—in the context of prosecutions for ‘minor’ offenses which carry only short sentences. In *Sibron*, the court held “a State may not effectively deny a convict access to its appellate courts until he has been released and then argue that his case has been mooted by his failure to do what it alone prevented him from doing.” *Sibron v. New York*, 392 U.S. 40, 57, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968).

These findings and many others conflict with the holdings in Pennsylvania courts concerning innocent people who are not in custody. Pennsylvania should follow the approaches of other states to collateral consequences of criminal convictions. In other states the loss of important rights due to a wrongful conviction such as the right to vote and hold public office are enough to overcome their case being dismissed as moot. It was held in *Carafas* that “a petitioner’s case does not become moot upon his unconditional release from custody because his conviction had given rise to certain repercussions. In consequence of his conviction, petitioner could not vote, serve as a juror, or engage in certain businesses. Moreover, the federal habeas corpus statute, 28 U.S.C.S. § 2243, provided relief beyond the discharge of petitioner from physical custody. Thus, the Court held that petitioner was entitled to a hearing on the merits, and, accordingly, remanded the case”. *Carafas v. LaVallee*, 391 U.S. 234. These findings show how the other states view the same collateral consequences as reasons not to find a Post-Conviction matter moot. Contradicting conclusions like this by other states are evidence of the flaws of the PCRA in Pennsylvania.

There are different views by courts concerning the collateral consequences of a wrongfully convicted person. The different approaches to viewing collateral consequences in a court’s finding a case to be moot are seen in *Gural*. “The Supreme Court of Delaware, has recently stated that there are three prevalent views relating to the doctrine of mootness as applied to sentences already served: (1) the

"traditional" view that satisfaction of the contested sentence, per se, renders the case moot; (2) the "liberal" view that the petitioner's interest in clearing his name, per se, permits review of or attack upon the conviction; and (3) the modified traditional view that the satisfaction of the sentence renders a case moot unless, in consequence of the conviction and sentence, the petitioner suffers collateral legal disabilities or burdens, surviving the satisfaction of the sentence, sufficient to give petitioner standing to attack his conviction. *Gural v. State*, 251 A. 2d 344 (1969).

The liberal view that a petitioner is seeking to clear his name should be applied to overcome mootness. This is because there is so much that accompanies the clearing of one's name. For example, expungement of an arrest would usually follow. This will allow a petitioner to regain all their constitutional rights back such as voting rights and right to bear arms. A wrongfully convicted person can pursue their position that required a felony free background check or even wishes to pursue holding a public office position.

The PCRA can be found to interfere with the pursuit of happiness of innocent people by condemning them to live the rest of their lives with the collateral consequences of a wrongful conviction. The importance of fair laws to protect the right to pursuit of happiness is discussed in *Yick Wo*. "The fundamental rights to life, liberty, and the pursuit of happiness as individual possessions are secured by those maxims of constitutional law which are the monuments, showing the victorious progress of the race in securing to man the blessings of civilization under the reign of just and equal laws." *Yick Wo v. Hopkins*, 118 U.S. 356, 369.

Although the constitution does not speak of a wrongfully convicted person specifically it should be implied they have the same rights to the pursuit of happiness as everyone else. To deny an innocent person the right to clear their name so that they may pursue repairing their lives that have already been unjustly damaged, should be viewed as the denial of one's rights to the pursuit of happiness.

The state of the Pennsylvania courts and legislators need to recognize that the PCRA restrictions are responsible for causing constitutional violations and other harms to wrongfully convicted people that have completed their sentences. The legislators of Pennsylvania have the power to change The Post-Conviction Relief Act to include eligibility for those who are no longer serving a sentence. This would prevent innocent people from being subjected to numerous constitutional right violations such as the unfair denial of the right to vote, own fire arms, the loss of parental rights (in some cases), and all the other harms caused by a wrongful criminal conviction.