

No. 1988-47

AN ACT

SB 646

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for substitute bail commissioners and for mandatory sentencing for offenses committed while impersonating a law enforcement officer; precluding actions for wrongful birth and wrongful life; precluding a defense against claims for injuries sustained in utero; providing for the dismissal of certain criminal charges; and further providing for postconviction relief.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 722(4) of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 722. Direct appeals from courts of common pleas.

The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following classes of cases:

* * *

(4) Automatic review of sentences as provided by 42 Pa.C.S. §§ 9546(d) (relating to relief and order) and 9711(h) (relating to review of death sentence).

* * *

Section 2. Title 42 is amended by adding sections to read:

§ 1125. *Substitute bail commissioners.*

The President Judge of the Philadelphia Municipal Court may appoint qualified attorneys who are court employees to act as substitute bail commissioners during an emergency upon a written finding by the president judge that an emergency exists.

§ 8305. *Actions for wrongful birth and wrongful life.*

(a) *Wrongful birth.*—*There shall be no cause of action or award of damages on behalf of any person based on a claim that, but for an act or omission of the defendant, a person once conceived would not or should not have been born. Nothing contained in this subsection shall be construed to prohibit any cause of action or award of damages for the wrongful death of a woman, or on account of physical injury suffered by a woman or a child, as a result of an attempted abortion. Nothing contained in this subsection shall be construed to provide a defense against any proceeding charging a health care practitioner with intentional misrepresentation under the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or any other act regulating the professional practices of health care practitioners.*

(b) *Wrongful life.*—*There shall be no cause of action on behalf of any person based on a claim of that person that, but for an act or omission of the*

defendant, the person would not have been conceived or, once conceived, would or should have been aborted.

(c) *Conception.*—*A person shall be deemed to be conceived at the moment of fertilization.*

§ 8306. *Defense against claim for injury sustained in utero barred.*

Where a person has, by reason of the wrongful act or negligence of another, sustained injury while in utero, it shall not be a defense to any action brought to recover damages for the injury, or a factor in mitigation of damages, that the person could or should have been aborted.

§ 8933. *Dismissal of criminal cases.*

(a) *General rule.*—*In a felony case where no attorney appears on behalf of the Commonwealth at a preliminary hearing or where the victim fails to appear, the issuing authority shall not discharge the defendant for this reason until the issuing authority makes a reasonable attempt to locate the attorney or victim and provides him an opportunity to appear.*

(b) *Definition.*—*As used in this section, the term “reasonable attempt” means requiring court personnel to attempt to locate the attorney or victim within the courthouse, office or place of residence.*

Section 3. The heading of Subchapter B of Chapter 95 and sections 9541, 9542, 9543, 9544, 9545 and 9546 of Title 42 are amended to read:

CHAPTER 95
POST-TRIAL MATTERS

* * *

SUBCHAPTER B
POST CONVICTION [HEARINGS] RELIEF

§ 9541. Short title of subchapter.

This subchapter shall be known and may be cited as the [“**Post Conviction Hearing Act.**”] *Post Conviction Relief Act.*

§ 9542. Scope of subchapter.

[This subchapter establishes a post conviction procedure for providing relief from convictions obtained and sentences imposed without due process of law. The procedure established in this subchapter shall encompass all common law and statutory procedures for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. However, nothing in this subchapter limits the availability of remedies in the trial court or on direct appeal.]

This subchapter provides for an action by which persons convicted of crimes they did not commit or serving unlawful sentences may obtain collateral relief and for an action by which persons can raise claims which are properly a basis for Federal habeas corpus relief. The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence,

nor is this subchapter intended to provide a means for raising issues waived in prior proceedings.

§ 9543. Eligibility for relief.

[To be eligible for relief under this subchapter, a person must initiate a proceeding by filing a petition under section 9545 (relating to filing and content of petition) and must prove the following:

(1) That he has been convicted of a crime.

(2) That he is incarcerated in this Commonwealth under a sentence of death or imprisonment or on parole or probation.

(3) That his conviction or sentence resulted from one or more of the following reasons:

(i) The introduction of evidence obtained pursuant to an unlawful arrest.

(ii) The introduction of evidence obtained by an unconstitutional search and seizure.

(iii) The introduction of a coerced confession into evidence.

(iv) The introduction into evidence of a statement obtained in the absence of counsel at a time when representation is constitutionally required.

(v) The infringement of his privilege against self-incrimination under either Federal or State law.

(vi) The denial of his constitutional right to representation by competent counsel.

(vii) A plea of guilty unlawfully induced.

(viii) The unconstitutional suppression of evidence by the Commonwealth.

(ix) The unconstitutional use by the Commonwealth of perjured testimony.

(x) The obstruction by Commonwealth officials of petitioner's right of appeal.

(xi) His being twice placed in jeopardy.

(xii) The abridgment in any other way of any right guaranteed by the constitutions or laws of this Commonwealth or of the United States, including a right that was not recognized as existing at the time of the trial if the constitution requires retrospective application of that right.

(xiii) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced.

(4) That the error resulting in his conviction and sentence has not been finally litigated or waived.]

(a) General rule.—To be eligible for relief under this subchapter, a person must plead and prove by a preponderance of the evidence all of the following:

(1) That the person has been convicted of a crime under the laws of this Commonwealth and is:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) *awaiting execution of a sentence of death for the crime; or*

(iii) *servng a sentence which must expire before the person may commence serving the disputed sentence.*

(2) *That the conviction or sentence resulted from one or more of the following:*

(i) *A violation of the Constitution of Pennsylvania or laws of this Commonwealth or the Constitution of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.*

(ii) *Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.*

(iii) *A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused an individual to plead guilty.*

(iv) *The improper obstruction by Commonwealth officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.*

(v) *A violation of the provisions of the Constitution, law or treaties of the United States which would require the granting of Federal habeas corpus relief to a State prisoner.*

(vi) *The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced.*

(vii) *The imposition of a sentence greater than the lawful maximum.*

(viii) *A proceeding in a tribunal without jurisdiction.*

(3) *That the allegation of error has not been previously litigated and one of the following applies:*

(i) *The allegation of error has not been waived.*

(ii) *If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmance of sentence of an innocent individual.*

(iii) *If the allegation of error has been waived, the waiver of the allegation of error during pretrial, trial, post-trial or direct appeal proceedings does not constitute a State procedural default barring Federal habeas corpus relief.*

(4) *That the failure to litigate the issue prior to or during trial or on direct appeal could not have been the result of any rational strategic or tactical decision by counsel.*

(b) *Exception.—Even if the petitioner meets the requirements of subsection (a), the petition shall be dismissed if it appears that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.*

§ 9544. [When an issue is finally litigated or waived] *Previous litigation and waiver.*

(a) **Issues finally litigated.**—For the purpose of this subchapter, an issue is finally litigated if:

(1) It has been raised in the trial court, the trial court has ruled on the merits of the issue and the petitioner has knowingly and understandingly failed to appeal the trial court's ruling.

(2) The Superior Court has ruled on the merits of the issue and the petitioner has knowingly and understandingly failed to avail himself of further appeals.

(3) The Supreme Court has ruled on the merits of the issue.

(b) **Issues waived.**—For the purposes of this subchapter, an issue is waived if:

(1) The petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted or in a prior proceeding actually initiated under this subchapter.

(2) The petitioner is unable to prove the existence of extraordinary circumstances to justify his failure to raise the issue.

(c) **Presumption.**—There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.]

(a) *Previous litigation.*—For the purpose of this subchapter, an issue has been previously litigated if:

(1) it has been raised in the trial court, the trial court has ruled on the merits of the issue and the petitioner did not appeal;

(2) the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or

(3) it has been raised and decided in a proceeding collaterally attacking the conviction or sentence.

(b) *Issues waived.*—For the purposes of this subchapter, an issue is waived if the petitioner failed to raise it and if it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or other proceeding actually conducted or in a prior proceeding actually initiated under this subchapter.

§ 9545. [Filing and content of petition] *Jurisdiction and proceedings.*

(a) **Filing.**—Any person who desires to obtain relief under this subchapter may initiate a post conviction proceeding by filing a petition (together with three copies thereof), verified by affidavit, with the clerk of the court in which he was convicted and sentenced which court is hereby granted jurisdiction to hear and determine the petition. Subject to the provisions of subsection (c), he may file a petition at any time.

(b) **Content.**—A petition shall be in the following forms:

(1) The petition must state that it is a Post Conviction Hearing Act petition and must include the name of the petitioner, his place of confinement, an identification of the proceedings in which the petitioner was convicted and the place of conviction, the date of the entry of judgment, the sentence imposed, all facts in support of the alleged error on which the

petition is based, the relief desired and an identification of all previous proceedings that the petitioner has taken to secure relief from his conviction or sentence.

(2) The petition must either include affidavits, records and other supporting evidence or state why they are not included.

(3) The petition shall not include argument or citation and discussion of authorities.

(4) All facts within the personal knowledge of the petitioner must be set forth separately from other allegations of fact.

(c) All available grounds to be set forth.—Any person desiring to obtain relief under this subchapter shall set forth in the petition all of his then available grounds for such relief for any particular sentence he is currently serving and he shall be entitled to only one petition for each crime. The failure to raise any issue in the petition shall be deemed a waiver of any right to future presentation of another petition containing grounds for relief that were available and could have been presented.]

(a) *Original jurisdiction.*—*Original jurisdiction over a proceeding under this subchapter shall be in the court in which the conviction was obtained.*

(b) *Rules governing proceedings.*—*The Supreme Court may, by general rule, prescribe procedures to implement the action established under this subchapter but shall not expand, contract or modify the grounds for relief set forth in this subchapter.*

§ 9546. [Docketing and service of petition] *Relief and order.*

(a) *General rule.*—*Upon receipt of a petition seeking relief under this subchapter, the clerk of the court in which the indictment upon which sentence was imposed shall immediately docket the petition to the same term and number as the original proceedings and promptly notify the court and serve a copy upon the district attorney.*

(b) *Multiple indictments and sentences.*—*In the event the petitioner's incarceration is by virtue of multiple indictments and sentences, the case shall be docketed to the same term and number as the indictment upon which the first unexpired sentence was imposed, but the court may take judicial notice of all proceedings had upon the multiple indictments.]*

(a) *General rule.*—*If the court finds in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.*

(b) *Grounds to be stated.*—*The order finally disposing of the petition shall state grounds on which the case was determined.*

(c) *Status of order.*—*The order constitutes a final judgment for purposes of review.*

(d) *Review of order in death penalty cases.*—*A final court order under this subchapter in a case in which the death penalty has been imposed shall be directly appealable only to the Supreme Court pursuant to its rules.*

Section 4. Sections 9547, 9548, 9549, 9550 and 9551 of Title 42 are repealed.

Section 5. Title 42 is amended by adding a section to read:

§ 9719. Sentences for offenses committed while impersonating a law enforcement officer.

(a) **Mandatory sentence.**—A person convicted of murder of the third degree, voluntary manslaughter, rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery) or kidnapping or who is convicted of attempt to commit any of these crimes shall, if the person was impersonating a law enforcement officer during the commission of the offense, be sentenced to a minimum sentence of at least three years of total confinement notwithstanding any other provision of this title or other statute to the contrary.

(b) **Proof at sentencing.**—Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall ~~not be required~~ prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court shall consider evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(c) **Authority of court in sentencing.**—There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(d) **Appeal by Commonwealth.**—If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(e) **Definition.**—As used in this section, the term "law enforcement officer" means a law enforcement officer or employee of the United States, a state, a political subdivision of a state or the District of Columbia.

Section 6. The following sections of this act shall apply to all actions for collateral relief, whether statutory or common law, instituted on or after the effective date of this act, irrespective of the date of conviction or sentence:

- (1) Section 1 (section 722(4)).
- (2) Section 3 (sections 9541, 9542, 9543, 9544, 9545 and 9546).
- (3) Section 4 (sections 9547, 9548, 9549, 9550 and 9551).

Section 7. Sections 8305 and 8306 shall not apply to any case in which a final award of damages has been made and with regard to which the time to take an appeal has expired without an appeal being taken.

Section 8. Except as provided in section 2, sections 8305 and 8306 shall have retroactive effect, including application to any case pending or on appeal.

Section 9. This act shall take effect as follows:

- (1) Section 9719 shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 13th day of April, A. D. 1988.

ROBERT P. CASEY