

No. 32784 – Shawn Pethel, aka Shawn Pethel v. Thomas McBride, Warden, Mount Olive Correctional Complex

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Maynard, Justice, concurring:

Despite the assertions of the dissenting opinion to the contrary, I believe that the majority opinion is well grounded in the law.

I disagree with the dissenting opinion's contention that the United States Supreme Court's decision in *Alabama v. Bozeman*, 533 U.S. 146, 121 S.Ct. 2079, 150 L.Ed.2d 188 (2001), controls the outcome of the instant case. As explained in the majority opinion, *Bozeman* involved the direct appeal of a criminal conviction. In contrast, the instant case involves a post-conviction habeas proceeding. As correctly determined by the majority opinion, a violation of the *Interstate Agreement on Detainers Act* (IAD) is not cognizable in a post-conviction habeas action because the IAD does not pre-date the habeas statute, and does not involve illegal sentencing, constitutional protections or jurisdictional matters.

The dissenting opinion, however, disputes the majority's reasoning that a violation of the IAD is not cognizable in a post-conviction habeas action because the IAD post-dates the habeas statute. According to the dissenting opinion, such reasoning is illogical and contrary to what the Legislature intended. Nevertheless, the plain language of the post-

conviction habeas statute, W.Va. Code § 53-4A-1(a) (1967), appears to indicate that this is exactly what the Legislature intended. This language provides that,

Any person convicted of a crime and incarcerated under sentence of imprisonment therefor who contends that . . . the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error *heretofore* available under the common-law or any statutory provision of this State, may, without paying a filing fee, file a petition for a writ of habeas corpus ad subjiciendum[.] (Emphasis added).

Thus, as found in the majority opinion based on this language, because the IAD's anti-shuttling provision was not heretofore available under the common law or statute, it is not subject to collateral attack under the post-conviction habeas statute.

In conclusion, the majority opinion is not result-oriented. Rather, it is a careful and thorough legal analysis, and its holdings and conclusions are supported by the law. Therefore, I concur.