LACKAWANNA COUNTY DISTRICT ATTORNEY'S OFFICE

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January 9, 2018

Supreme Court of Pennsylvania
Pennsylvania Judicial Center
P.O. Box 62575
601 Commonwealth Avenue, Suite 4500
Harrisburg, PA 17106-2435

RE: Commonwealth vs. Joseph Petrick
47 MAP 2018

Dear Sir or Madam,

Enclosed please find an original and fifteen (15) copies of Appellee's Brief as regards the above-captioned appeal, which was filed through PAC file on this date. I have also served two copies of this Brief upon all counsel of record by copy of this letter.

If you have any questions regarding this matter please do not hesitate to contact the undersigned.

Sincerely,

Lisa A. Swift
Deputy District Attorney

LAS/lah
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IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

47 MAP 2018

COMMONWEALTH OF PENNSYLVANIA,

Appellee

VS.

JOSEPH PETRICK,

Appellant

BRIEF OF APPELLEE

Appeal from the Order of the Superior Court (619 MDA 2017) dated February 20, 2018 per the Honorable Gantman, P.J., Shogun, J., and Ott, J. affirming the Judgment of the Court of Common Pleas of Lackawanna County per the Honorable Vito Geroulo entered on December 12, 2016

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COUNTERSTATEMENT OF THE CASE

On December 12, 2016, the trial court found the Appellant, Joseph Petrick, guilty of theft by deception following a non-jury trial in Lackawanna County. On March 8, 2017, the court sentenced Appellant to three to 18 months imprisonment and ordered payment in the amount of $6700 as restitution. On February 20, 2018, the Superior Court affirmed the judgment of sentence.

Appellant's conviction of theft by deception arose out of the following set of facts:

The Appellant, Joseph Petrick, entered into a contract with the homeowner, Donna Sabia, on April 14, 2015 to do remodeling work on her home. On that date, the homeowner gave Appellant a check for $1750 as a deposit and an additional check for $300 for permits. (N.T., 12/12/16 Nonjury Trial, pp. 46-48). On April 18, 2015, the homeowner gave Appellant another check for $1750, which she had noted was for labor. (N.T., 12/12/16 at 49). On that same date, she issued yet another check for $3300 to her son, Carmen Fazio, $2300 of which was given to Appellant in cash. (N.T., 12/12/16 at 50).

Also on April 18, 2015, Appellant started work on the house pursuant to the aforementioned contract. (N.T., 12/12/16 at 10). That day, when he was at Lowe's picking up materials, Appellant contacted Mr. Fazio and said there was a miter saw there that he liked and that was on sale, and that he would do a paint job the two

had discussed in return for Mr. Fazio purchasing the saw for him. (N.T., 12/12/16 at 11-14). Mr. Fazio paid $539.10 plus tax for the saw. (N.T., 12/12/16 at 14). The next day, Mr. Fazio paid Appellant the $2300 in cash for new siding materials. (N.T., 12/12/16 at16-17).

By the end of Sunday, April 19, 2015, the homeowners had paid Appellant a total of $6100 in checks and cash. (N.T., 12/12/16 at 17-18). Mr. Fazio explained that $300 was for permits from the City to do the work, which Appellant represented would be roughly $300. (N.T., 12/12/16 at 18-19). Appellant, however, never obtained any building permits. (N.T., 12/12/16 at 19). Appellant never returned after that to do any work. *Id.* He took his tools with him, including the new saw, when he left on Sunday. (N.T., 12/12/16 at 20).

Mr. Fazio attempted to contact Appellant multiple times. *Id.* Appellant told him multiple times that he would return to finish the job. (N.T., 12/12/16 at 22). On May 22, 2015, Appellant misrepresented in a text that he was almost at the house, but failed to show up. (N.T., 12/12/16 at 23-24). On May 26, 2016, Appellant texted Mr. Fazio and said he would not be able to finish the job. (N.T., 12/12/16 at 25). Appellant stated he would refund $4950, and that he would send a money order within a week. (N.T., 12/12/16 at 25-26). Mr. Fazio never received the refund, and Appellant performed no more work at the house. (N.T., 12/12/16 at 26-27).

Appellant admitted that he neither finished the job in question nor refunded the money. (N.T., 12/12/16 at 62). He advised the court he was put in a bad financial situation because of issues he was having when he took the job. *Id.* He admitted that he had been contemplating bankruptcy prior to him even taking the job. (N.T., 12/12/16 at 62-63). He said that he decided not to declare bankruptcy but to struggle through it and try to make it through. (N.T., 12/12/16 at 63). Appellant testified that he used the money he obtained from the victims for other jobs. (N.T., 12/12/16 at 63).

Appellant acknowledged that he had problems with outstanding debts prior to and during the time he entered into a contract with the victims. (N.T., 12/12/16 at 68). He acknowledged purchasing the saw in exchange for painting work, but instead took the saw from the premises and never started the painting work. (N.T., 12/12/16 at 69-70). Appellant additionally admitted taking a check for $300 for building permits but never obtained the permits. (N.T., 12/1/2/16 at 70). Appellant agreed that he owes the victims a minimum of $4950. (N.T., 12/12/16 at 72). He further agreed that he had taken a total of $6700 in the course of working with them, and started the work but never completed it. (N.T., 12/12/16 at 72-74).

Appellant testified that he began to fill out the paperwork for claiming bankruptcy around July. (N.T., 12/12/16 at 64). Mr. Fazio, and later Mrs. Sabia, the homeowner, was listed as a creditor. (N.T., 12/12/16 at 65). Although

Appellant's debts were since discharged in bankruptcy, the bankruptcy judge subsequently ordered that criminal restitution is not dischargeable in bankruptcy and that Appellant was liable for any restitution that a state court might order if Appellant was convicted of a crime. *In re Petrick,* 16ap207 (Bankr. E. D. Pa. Aug. 31, 2016) (Exhibit 1); *In re Petrick,* 16ap207 (Bankr. E. D. Pa. Dec. 6, 2016) (Exhibit 2); *In re Petrick,* 16ap318 (Bankr. E. D. Pa. Dec. 15, 2016) (Exhibit 3).[1]

When Appellant was convicted of theft by deception and ordered to pay restitution, he challenged the trial court's right to order restitution as part of his sentence. The Superior Court affirmed the trial court's order. This appeal follows.

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[1] The Commonwealth acknowledges that it had filed a motion to preclude the defendant from introducing evidence regarding bankruptcy proceedings at the time of Appellant's trial. The Commonwealth argued and maintains the documents were irrelevant to a determination of guilt. The Commonwealth asks this Court to review the bankruptcy court's opinions in order to advise the Court of the accuracy of the bankruptcy proceedings and what the court actually concluded in its opinions.

SUMMARY OF ARGUMENT

The Superior Court did not err in finding that the trial court's restitution order was not an illegal sentence. *Commonwealth v. Shotwell,* 717 A.2d 1039 (Pa. Super. 1998), *appeal denied,* 1999 Pa. LEXIS 1043, 867 M.D.A. 1998 (Apr. 3, 1998), Appellant's discharge in bankruptcy did not affect the trial court's authority to order restitution as part of Appellant's judgment of sentence.

Pursuant to 11 U.S.C. § 523(a)(7), state criminal restitution is not dischargeable in bankruptcy. The bankruptcy court, in the present case, specifically indicated that should Appellant be convicted of a crime and restitution ordered by the state court, Appellant was responsible, as a matter of law, to pay the amount ordered. The doctrine of collateral estoppel precludes Appellant from relitigating this issue in State court.

The Commonwealth asserts that, despite Appellant's argument that the debt at issue here was discharged in bankruptcy, Appellant's restitution obligation was never discharged. The bankruptcy court's order is unequivocally clear.

An examination of the United States Supreme Court decision in *Kelly v. Robinson*, 479 U.S. 36 (1986) supports the decision by the Superior Court in *Shotwell.* There, the Supreme Court of the United States determined that state criminal restitution is not dischargeable in bankruptcy. Although Appellant argues that *Kelly* is inapplicable to this case because restitution in Pennsylvania is

compensatory rather than rehabilitative, Pennsylvania jurisprudence clearly demonstrates that the primary purpose of restitution in Pennsylvania continues to be rehabilitation. In fact, contrary to Appellant's assertion that because restitution is now mandatory it is compensatory, this Court has found that the mandatory nature of restitution reinforces the notion that it is, in fact, rehabilitative. Therefore, *Kelly*'s holding as examined in *Shotwell* continues to be the law of this Commonwealth.

Additionally, the *Shotwell* Court found it irrelevant that the order of restitution there was entered subsequent to the bankruptcy discharge. A debtor should not be allowed to avoid criminal restitution when he filed for bankruptcy "while he was in the midst of a scheme to defraud his creditors." That Court, as well as the *Kelly* Court, also found it insignificant that the victims/creditors did not contest the discharge of the appellant's debt in bankruptcy.

Finally, Amici's suggestion that the Commonwealth failed to conduct an independent investigation of the criminal charges against Appellant simply has no support in the record.

ARGUMENT

The trial court did not impose an illegal sentence when it ordered restitution to the homeowners where the order of restitution against Appellant was neither discharged nor dischargeable in bankruptcy.

1. Appellant's reliance on 11 U.S.C. § 362(a)(6) and *Johnson v. Lindsey* is misplaced.

The Appellant, Joseph Petrick, contends that the trial court committed an error of law and imposed an illegal sentence when it ordered that he pay restitution of the full amount paid to him by the homeowners. Appellant relies in large part on 11 U.S.C. § 362(a)(6), the case of *Johnson v. Lindsey*, 16 B.R. 211 (Bankr. M.D. Fla. 1981), and other bankruptcy cases outside this jurisdiction, arguing that the Commonwealth cannot use a criminal prosecution for the sole purpose of collecting a debt dischargeable in bankruptcy.

Section 362 provides that the filing of a bankruptcy petition operates as a stay of "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6). It does not, however, specifically speak to restitution ordered in a criminal matter.

In *Johnson v. Lindsey,* the Bankruptcy Court for the Middle District of Florida issued an order on a request for a permanent injunction prohibiting the prosecution of any criminal proceedings against the Debtor. *Johnson*, 16 B.R. at 212. The Court concluded that it would be improvident to interfere with the

criminal prosecution by the State, but found that the State Attorney cannot request a criminal court to order restitution as part of the sentence of the Debtor. *Id.* at 213. However, this 1981 Florida bankruptcy case is contradicted by a later decision of the Supreme Court of the United States as well as Pennsylvania jurisprudence.

2. The Superior Court correctly followed the decision in *Commonwealth v. Shotwell.*

In Pennsylvania, our own Superior Court previously considered the question presented here – whether the trial court erred in imposing restitution as part of a sentence because any debt owed to the victim/creditor had been discharged in the defendant/debtor's bankruptcy proceedings. *Commonwealth v. Shotwell*, 717 A.2d 1039 (Pa. Super. 1998), *appeal denied,* 1999 Pa. LEXIS 1043, 867 M.D.A. 1998 (Apr. 13, 1998). Following a well-reasoned discussion, the Superior Court upheld the order of restitution.

First of all, the Superior Court in *Shotwell* addressed the issue as a challenge to the legality of the appellant's sentence. *Shotwell*, 717 A.2d at 1045. Second, the Court noted that a debt owed pursuant to a restitution order arising out of a criminal conviction is non-dischargeable under bankruptcy law, as criminal proceedings operate primarily for the benefit of the State. *Id.* (citing *Kelly v. Robinson,* 479 U.S. 36, 52 (1986)). Third, where the appellant had filed a bankruptcy petition while he was in the midst of a scheme to defraud his creditor, the Court held that the appellant's discharge in bankruptcy did not affect the trial

court's authority to order restitution as part of the appellant's judgment of sentence. *Id.* at 1045-46.

Contrary to Appellant's assertion, the conclusion in *Shotwell* held true despite the fact that the creditor did not contest the discharge of the disputed debt. *Id.* at 1046. Although Appellant argues that the victim had the opportunity to object to the discharge of Appellant's debt, the *Shotwell* Court found this irrelevant when it comes to restitution ordered as the result of a criminal conviction.

In support of its holding that the restitution order was proper, the *Shotwell* Court found that an order of restitution entered subsequent to a bankruptcy discharge is separate and distinct from any discharge involving a civil debt. The Court explained:

> Here, the trial court's order of restitution arose out of the traditional responsibility of the Commonwealth to protect its citizens by enforcing its criminal statutes and to rehabilitate offenders by imposing a criminal sanction intended for that purpose. Neither the Bankruptcy Code nor Pennsylvania law will allow Appellant to avoid the consequences of his criminal scheme, as the decision to impose restitution turns on the penal goals of the State and the situation of the offender. A condition of restitution in a criminal sentence simply does not recreate the civil debtor-creditor relationship that existed in the bankruptcy proceedings.

Shotwell, 717 A.2d at 1046. Accordingly, the Court upheld the trial court's restitution order in the criminal case.

In the present case, the Superior Court did not err in following the Pennsylvania case of *Commonwealth v. Shotwell* in concluding that the trial court's

restitution order was not an illegal sentence. (2/20/18 Memorandum Decision at 10-11). The *Shotwell* decision is supported by decisions of the federal and state courts in this case and in other similar cases.

3. The bankruptcy court ruled that Appellant's obligation to pay restitution is not dischargeable under 11 U.S.C. § 523(a)(7).

Initially, it should be observed, the Bankruptcy Code itself is consistent with the *Shotwell* decision. Under 11 U.S.C. §523, a discharge under Section 727 (and others) does not discharge an individual debtor from any debt "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss…." 11 U.S.C. §523(a)(7). Although this clause may be and has been subject to differing interpretations, it is clear that the proper interpretation as it applies to this case is that the clause includes state restitution ordered as the result of a state criminal conviction.

In the present case, the bankruptcy court, on three occasions, dismissed Appellant Joseph Petrick's complaints against the officer who filed the charges against him, the assistant district attorney who prosecuted this matter, and the victims. As a part of those complaints, Appellant sought damages for an alleged violation of his discharge order where the defendants sought to collect criminal restitution. The bankruptcy court found that attempting to seek criminal restitution does not violate the discharge order because a debtor's obligation to pay criminal

restitution is not dischargeable under 11 U.S.C. § 523(a)(7) and is excepted from the discharge order. *In re Petrick,* 16ap207 (Bankr. E. D. Pa. Aug. 31, 2016) (Exhibit 1); *In re Petrick,* 16ap207 (Bankr. E. D. Pa. Dec. 6, 2016) (Exhibit 2). In the bankruptcy court's final Statement Supporting its Order dismissing Appellant's final complaint, the Court concluded that "Defendants are permitted to pursue and collect criminal restitution against Plaintiff if he is convicted of a crime as a result of his actions involving Defendants and restitution is ordered by the state court." *In re Petrick,* 16ap318 (Bankr. E. D. Pa. Dec. 15, 2016) (Exhibit 3).

Pursuant to Pennsylvania Rule of Evidence 201, the Commonwealth requests that this Court take judicial notice of the fact that the bankruptcy court did not discharge Appellant's restitution in bankruptcy. See Pa.R.E. 201(b)(2) (The court may judicially notice a fact that is not subject to reasonable dispute because it...can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned). Although the Commonwealth failed to locate any published opinion wherein a Pennsylvania appellate court took judicial notice of a fact regarding a bankruptcy proceeding, the Superior Court did so in *Straker v. Wells Fargo Bank, NA,* 2014 Pa. Super. Unpub. LEXIS 214, p. 3, n. 1 (July 9, 2014). Although the Commonwealth is aware that this is a non-precedential decision (I.O.P. 65.37), it is cited strictly for purposes of argument. In *Straker*, the trial court had stated that the bankruptcy court dismissed the appellant's

bankruptcy petition, when in fact the appellant was granted a Chapter 7 discharge. *Id.* (citing *In re Straker,* 09bk1295 (Bankr. M. D. Pa. Sept 20, 2013)). The Superior Court took judicial notice that the bankruptcy petition was not dismissed. *Id.* The Commonwealth requests that this Court do the same here with regard to the fact that the bankruptcy court in fact did not discharge Appellant's restitution obligation.

4. **Appellant is barred by the doctrine of collateral estoppel from relitigating the validity of his restitution obligation.**

Despite the bankruptcy court's order in the instant case that restitution is not to be discharged, Appellant filed an appeal in state court from the order of restitution that the trial court made part of the sentence for Appellant's criminal conviction.

The Commonwealth asserts that Appellant is barred by the doctrine of collateral estoppel from relitigating the issue of whether he is required to pay the restitution that was ordered by the trial court. This Court has applied the collateral estoppel doctrine where the following requirements were met: (1) the issues in the two actions are sufficiently similar and sufficiently material to justify invoking the doctrine; (2) the issue was actually litigated in the first action; and (3) a final judgment on the specific issue in question was issued in the first action. *Commonwealth v. Holder*, 805 A.2d 499, 502 (Pa. 2002).

It is also well-settled that state courts are required to give full faith and credit to proceedings of federal courts. *Atiyeh v. Bear,* 690 A.2d 1245, 1249 (Pa. Super. 1997). Therefore, since the normal rules of collateral estoppel apply to decisions of bankruptcy courts, the final order of the bankruptcy court precludes relitigation of the same issue in this Court. *Id.*

In the instant case, both the action in federal bankruptcy court and the issue raised on this appeal involve the right of the Commonwealth and/or the victims to receive restitution from Appellant. The bankruptcy court finally determined that Appellant is required to pay restitution despite the fact that his other debts were discharged in bankruptcy. This finding precludes this Court from reviewing the merits of the arguments presented by Appellant that his restitution obligation was discharged in bankruptcy and that he is therefore not required to pay it.

The Commonwealth will, however, address the issue accepted by this Court on the merits and explain why Appellant's restitution was neither discharged nor dischargeable in bankruptcy.

5. Appellant's restitution obligation was never discharged in bankruptcy.

Despite Appellant's claim that the debt at issue here was discharged in bankruptcy, the Appellee, Commonwealth of Pennsylvania, contends that the restitution at stake here never was discharged in bankruptcy. The order of discharge signed by the bankruptcy judge specifically provides that "Not

dischargeable are...debts that the bankruptcy court has decided or *will decide* are not discharged in this bankruptcy case." *In re Petrick,* 15bk16355 (Bankr. E.D. Pa. March 17, 2016). (Exhibit 4). Here, as stated above, the bankruptcy court, subsequent to the discharge order, ordered that any restitution that might be ordered by the state court would *not* be dischargeable. Therefore, contrary to Appellant's assertion, the restitution that was ordered in the present case never was *discharged* in bankruptcy.

6. Appellant's restitution obligation was not dischargeable in bankruptcy.

Other case law also supports *Shotwell*'s holding that the restitution was not *dischargeable* in bankruptcy. In *Kelly v. Robinson,* 479 U.S. 36 (1986), the United States Supreme Court granted review to decide whether restitution obligations, imposed as conditions of probation in state criminal proceedings, are dischargeable under Chapter 7 of the Bankruptcy Code. *Kelly*, 479 U.S. at 38. The Court concluded that state restitution is not dischargeable.

The *Kelly* Court acknowledged its previous decision where the Court had recognized "that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief." *Younger v. Harris*,

401 U.S. 37, 44-45 (1971)[2]. The *Kelly* Court stated that this reflection of federalism also must influence its interpretation of the Bankruptcy Code in that case. *Id.*

In reading 11 U.S.C. § 523(a)(7), the *Kelly* Court observed that, on its face, the section creates a broad exception for all penal sanctions, whether they be denominated fines, penalties, or forfeitures. *Id.* at 51. Congress also included two qualifying phrases; the fines must be both "to and for the benefit of a government unit" and "not compensation for actual pecuniary loss." *Id.* In the *Kelly* Court's view, neither of these qualifying clauses allows the discharge of a criminal judgment that takes the form of restitution. *Id.* at 52.

The *Kelly* Court reasoned:

> The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment 'for the benefit of' the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to award restitution. Moreover, the decision to impose restitution generally does not turn on the victim's injury, but on the penal goals of the state and

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[2] In *Younger v. Harris,* the Supreme Court of the United States held that a district attorney from California could not be enjoined by a federal district court from prosecuting a case pursuant to California statutory law. 401 U.S. at 41. The Court found that the injunction violated the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances. *Id.* In arriving at this conclusion, the Supreme Court discussed the notion of federalism in some detail. The Court stated that, under the concept of federalism, there is a sensitivity to the legitimate interests of both State and National Governments and by which the National Government endeavors to protect federal rights and interests in a way that will not unduly interfere with the legitimate activities of the States. *Id.* at 44. *See also Commonwealth v. Morris, 575 A.2d* 582, 583 (Pa. Super. 1990) (same (quoting *Younger v. Harris*)).

> the situation of the defendant.... 'Unlike an obligation which arises out of contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose.' (Citation omitted).

Kelly, 479 U.S. at 52. See also *Commonwealth v. Shotwell,* 717 A.2d at 1045 (same). The *Kelly* Court concluded:

> Because criminal proceedings focus on the State's interests in rehabilitation and punishment rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings operate 'for the benefit of' the State. Similarly, they are not assessed 'for...compensation' of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State. Those interests are sufficient to place restitution orders within the meaning of Section 523(a)(7).

Kelly, 479 U.S. at 53. The Court explained this result best effectuates the will of Congress. *Id.* Therefore, the restitution ordered against Appellant was not dischargeable under 11 U.S.C. § 523(a)(7).

The United States District Court for the Eastern District of Pennsylvania and the Third Circuit Court of Appeals came to the same conclusion in *Thompson v. Hewitt*, 311 B.R. 415 (E.D. Pa. July 9, 2004) and *In re Thompson*, 418 F.3d 362 (3d Cir. 2005). In those cases, the appellant/debtor, Gerald Thompson, argued that the "payable to and for the benefit of a governmental unit" qualifier of § 523(a)(7) and the Third Circuit Court's interpretation of that clause in *Rashid v. Powel* (*In re Rashid*), 210 F.3d 201 (3d Cir. 2000) compelled the courts to prohibit the

collection, through the criminal restitution order, of his debt that had been discharged in bankruptcy. However, the District Court and the Third Circuit agreed with the bankruptcy court that *Kelly* excepted from discharge the debtor's obligations under the state court restitution order pursuant to 11 U.S.C. § 523(a)(7).

The District Court's discussion of *Kelly* included the observation that the Supreme Court there "primarily couched its opinion in federalism principles, holding that to empower federal bankruptcy courts to discharge state criminal sentences would undermine 'the right to formulate and enforce penal sanctions [that] is an important aspect of the sovereignty retained by the states.'" *Thompson v. Hewitt,* 311 B.R. at 420.

The District Court also discussed the *Rashid* case, explaining that the Third Circuit previously held that the debtor's obligation to pay restitution to his fraud victims was dischargeable in bankruptcy because it was "payable" to the benefit of his defrauded victims and not "to and for the benefit of a government unit." See *Thompson v. Hewitt*, 311 B.R. at 421. *Rashid*, however, was limited to federal criminal restitution orders; the applicability of the "payable" analysis to state criminal restitution orders remained an unsettled question. *Id.* at 424.

The District Court ultimately concluded that, absent a more definite holding from the Third Circuit applying the "payable" analysis to state court criminal

restitution orders, the bankruptcy court was correct to distinguish *Rashid* as applicable to only federal orders. 311 B.R. at 425, 426. The District Court further concluded that the bankruptcy court was correspondingly correct to conclude that the debt in question was rendered non-dischargeable by Section 523(a)(7). *Id.*

On Thompson's appeal to the Third Circuit, that Court considered for the first time the question presented here: "Whether a restitution order from a state criminal prosecution for theft by deception, which directs payment to the fraud victim, is exempt from a Chapter 7 bankruptcy discharge under 11 U.S.C. §523(a)(7)." *In re Thompson,* 418 F.3d at 363. The Court concluded that *Kelly* foreclosed Thompson's desired result. *Id.*

The Third Circuit Court particularly noted the *Kelly* Court's reasoning that "restitution orders are primarily intended to effectuate the State's penal and rehabilitative interest, and only incidentally assessed to compensate the victim." *In re Thompson,* 418 F.3d at 365 (citing *Kelly v. Robinson,* 479 U.S. 36, 53 (1986)). Accordingly, the Third Circuit Court found that "Thompson's restitution order fits § 523(a)(7)'s 'fine, penalty, or forfeiture' rubric, and was not compensation for Hewitt's actual pecuniary loss." 418 F.3d at 365.

The *Thompson* Court further observed that the only meaningful factual difference between that case and *Kelly* was the identity of the victim. 418 F.3d at 366. Whereas in *Kelly*, the state welfare agency was defrauded and the state itself

would receive the debtor's restitution payments, in *Thompson,* the victim/restitution recipient was an individual. *Id.* The *Thompson* Court found that, where state criminal restitution orders are implicated, this distinction "does not seem to matter under *Kelly.*" *Id.* The *Thompson* opinion instructs that *Kelly* strongly suggests that Section 523(a)(7) excepts from discharge *all* state criminal restitution orders, regardless of whether the payments are made to government units or individuals. *In re Thompson,* 418 F.3d at 366.

The Third Circuit Court explained that *Rashid*, which involved a federal restitution order, had distinguished itself from *Kelly* because the *Kelly* Court grounded its opinion on federalism concerns. *In re Thompson,* 418 A.3d at 367. *Rashid* invited a contrary result in the case of a state restitution order because, unlike *Rashid,* the federalism considerations repeatedly stressed in *Kelly* are implicated with full force in cases like *Thompson*. *Id.* Finally, in *Thompson*, the Court held that notwithstanding that in practical terms Thompson's restitution payments are "payable" to his victim, Robert Hewitt, *Kelly* dictates that the Court not interfere with the state criminal restitution order. *Id.* at 368. The Third Circuit Court thus affirmed the judgment of the District Court. *Id.*[3]

[3] Although Amici references the Third Circuit case of *In re Davis*, 691 F.2d 176 (3d Cir. 1982) for a concern that the Supremacy Clause may be implicated here, the Third Circuit in that case refused to issue an injunction precluding the State from bringing criminal charges against the debtors even though the state court would impose mandatory restitution if the debtors were convicted.

The instant matter is procedurally similar to *Thompson*. Even though, practically, Appellant's restitution payments are payable to the victim, *Kelly* requires that federal courts not interfere with a state court criminal restitution order. The bankruptcy court determined a future restitution order would not be and is not dischargeable, and the Superior Court agreed. This Supreme Court should not make a different determination.

7. The purpose of restitution in Pennsylvania continues to be rehabilitation, not compensation.

Although Appellant is correct that restitution is now mandated in Pennsylvania under 18 Pa.C.S.A. § 1106, he is incorrect that the purpose of that section since its 1995 amendments is compensation. To the contrary, the Pennsylvania Supreme Court has continued to find that the primary purpose of restitution is rehabilitation of the offender. *See, e.g., Commonwealth v. Brown,* 981 A.2d 893, 895, 901 (Pa. 2009). In *Brown*, the Court stated the following:

> It is well established that the primary purpose of restitution is rehabilitation of the offender by impressing upon him or her that his criminal conduct caused the victim's loss or personal injury and that it is his responsibility to repair the loss or injury as far as possible. *Commonwealth v. Runion*, 541 Pa. 202, 206, 662 A.2d 617, 618 (1995). Thus, recompense to the victim is only a secondary benefit, as restitution is not an award of damages. Although restitution is penal in nature, it is highly favored in the law and encouraged so that the criminal will understand the egregiousness of his or her conduct, be deterred from repeating the conduct, and be encouraged to live in a responsible way. *Commonwealth v. Harner*, 533 Pa. 14, 22, 617 A.2d 702, 706-07 (1992). Thus, restitution, at its core, involves concepts of rehabilitation and deterrence.

981 A.2d 895-896. Pennsylvania jurisprudence clearly reflects that the purpose of restitution in Pennsylvania is rehabilitation and deterrence, and not, as Appellant argues, compensation. This is so in light of the 1995 amendments to Section 1106 and not, as Appellant argues, despite those amendments. Appellant asserts that this Court should not have followed *Runion* because it was decided before the 1995 amendments to 18 Pa.C.S.A. § 1106 which made restitution mandatory.

In *Brown*, however, this Court specifically noted that the General Assembly extensively revised Section 1106 after the Court decided in *Runion* that the main purpose behind the statute is rehabilitation. 981 A.2d at 901, 902. In *Commonwealth v. Veon*, 150 A.3d 435 (Pa. 2016), this Court reemphasized that the primary purpose of restitution is rehabilitation of the offender and that recompense to the victim is only a secondary benefit, as restitution is not an award of damages. 150 A.3d at 451. The *Veon* Court further noted that this proposition – that the purpose of restitution is rehabilitation – was *reinforced* by the General Assembly's amendment of Section 1106 making restitution mandatory rather than discretionary. *Id.* (Emphasis added).

These statements by the Pennsylvania Supreme Court contradict Appellant's argument that *Runion* was decided in a different time and thus should not have been followed. They also specifically negate Appellant's argument that this Court has never addressed whether the post-1995 statute remains

rehabilitative. The Court *did* address this issue and found that the revisions to Section 1106 render it primarily rehabilitative and not compensatory.

The Superior Court of Pennsylvania has likewise found that the primary purpose of restitution is the rehabilitation of the offender. See, e.g, *Commonwealth v. Pleger,* 934 A.2d 715, 720 (Pa. Super. 2007) (citing *Commonwealth v. Fuqua,* 407 A.2d 24, 26 (Pa. Super. 1979)). The *Pleger* Court stated that while it is true that restitution helps the victim, this fact is secondary to the reality that restitution is an aspect of sentencing imposed by a court on an offender in order to facilitate the administration of criminal justice. *Id.*

The *Pleger* Court cited to a number of characteristics of restitution that illustrate that its true nature is that of a criminal sanction. "For example," the Court said, "while a crime victim can certainly ask the district attorney to seek restitution, it is the district attorney who has the authority to present that request to the court." *Id.* (citing 18 Pa.C.S.A. § 1106(c)(2)(i), (4)) (Based upon information received from the victim, it is the responsibility of the district attorney to recommend to the court the amount of restitution to be ordered). "Moreover," the Court continued, "an order of restitution does not create a creditor-debtor relationship between the victim and the offender." *Pleger*, 934 A.2d at 720. Unlike a civil judgment, the victim has no standing to enforce a restitution order; rather, restitution can only be enforced by the criminal court. *Id.* Also unlike a civil judgment, restitution cannot

include amounts for pain and suffering. "In the end," the Court stated, "restitution is simply not an award of damages but, rather, a sentence." *Id.*

The *Pleger* Court reiterated that, by its essential nature, restitution does not seek the compensation of the victim. *Id.* Although the *Pleger* Court noted that the dollar value of the injury suffered by the victim as a result of the crime assists the court in calculating the appropriate amount of restitution, this did not alter the Court's opinion that restitution is a criminal sanction and not compensation. Because Pennsylvania's appellate courts have found that restitution is rehabilitative and not compensatory, the holding of the United States Supreme Court in *Kelly* remains viable in Pennsylvania.

8. The timing of the restitution order and the failure of the victims/creditors to contest the discharge of Appellant's debt are irrelevant.

In the *Shotwell* case, as here, the order of restitution was entered subsequent to the bankruptcy discharge. Although Appellant argues that this fact differentiates the present case from *Kelly*, the Pennsylvania Superior Court found the distinction irrelevant. When Appellant began filling out the bankruptcy paperwork in July of 2015, he was aware that he could be found criminally liable for his failure to perform the work that he had been paid by the victims to perform. As the *Shotwell* Court stated, Appellant filed a bankruptcy petition "while he was in the midst of a

scheme to defraud his creditor[s]." Surely, as in *Shotwell*, Appellant should not be allowed to avoid criminal restitution under these circumstances.

Moreover, again, the Superior Court's decision in *Shotwell* also considered that the victim had not contested the discharge of the appellant's debt in bankruptcy. This fact is not relevant where a state criminal restitution order, which is separate from any civil debt, is at issue. The *Kelly* Court also found that the creditor's failure to object to the discharge order did not justify an interpretation of the Bankruptcy Code that contradicted the long-prevailing view that fines and penalties are not subject to discharge. *Kelly v. Robinson,* 479 U.S. at 47-48.

9. There is no basis for the suggestion that the Commonwealth failed to conduct an independent investigation of the criminal charges against Appellant.

Finally, Appellant, and more so Amici, suggests that the Commonwealth failed to conduct an independent investigation of the criminal charges against Appellant. The Commonwealth, however, asserts that there is absolutely no basis for this assertion. Appellant was found guilty of theft by deception by the factfinder following the testimony of both victims and the defendant. Appellant admitted to most of the accusations against him. He was ordered to jail as a result of the criminal conviction. Amici's allegation that the prosecution was merely a means to get the victims reimbursed is countered by the fact that Appellant faced a term of imprisonment as a result of the charges brought against him. Any

suggestion that the Commonwealth failed to conduct an appropriate investigation and brought charges for inappropriate reasons is absurd as there is not a scintilla of evidence in the record supporting this assertion.

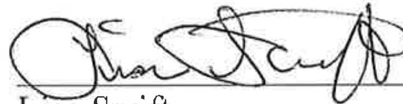
The trial court did not impose an illegal sentence when it ordered Appellant to pay restitution as a component of his sentence. Restitution against Appellant was never discharged in bankruptcy. Restitution is also not dischargeable under the Bankruptcy Code as interpreted by the bankruptcy court in this case and by other relevant case law.

CONCLUSION

For the foregoing reasons, this Court should uphold the decision of the Superior Court and deny Appellant's appeal.

Respectfully submitted,

Mark Powell
District Attorney
Atty. ID No. 59346



Lisa Swift
Deputy District Attorney
Atty. ID No. 69785

Lackawanna County
Office of District Attorney
415 Spruce Street
Scranton, PA 18503
(570) 963-6717

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JOSEPH PETRICK, Debtor	: :	Case No. 15-16355REF Chapter 7

JOSEPH PETRICK, Plaintiff vs. CARMEN FAZIO, Det. Jamie Barrett, City of Scranton Police Department, Lackawanna County Assistant District Attorney John Hart III, Defendants	: : : : : : : :	Adv. No. 16-207

ORDER

AND NOW, this 31 day of August, 2016, upon my consideration of pro se Plaintiff's complaint initiating this adversary proceeding, and upon Defendant Lackawanna County Assistant District Attorney John Hart, III, filing a motion to dismiss this adversary proceeding with his supporting brief, and upon Defendant, Lackawanna County Detective Jamie Barrett, filing a motion to dismiss this adversary proceeding with his supporting brief, and upon Defendant Carmen Fazio filing a response to the adversary proceeding, and upon the discussion above and in open Court on Tuesday, August 30, 2016,

IT IS HEREBY ORDERED that the motions to dismiss are GRANTED and the complaint is dismissed as against all defendants.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JOSEPH PETRICK, Debtor	: :	Case No. 15-16355REF Chapter 7

JOSEPH PETRICK, Plaintiff vs. CARMEN FAZIO, Det. Jamie Barrett, City of Scranton Police Department, Lackawanna County Assistant District Attorney John Hart III, Defendants	: : : : : : : :	Adv. No. 16-207

STATEMENT SUPPORTING ORDER DISMISSING COMPLAINT

I. INTRODUCTION

Plaintiff filed his pro se complaint initiating this adversary proceeding against an assistant district attorney, a police detective, and a citizen of Lackawanna County, Pennsylvania. After Plaintiff initiated his Chapter 7 bankruptcy case, Defendants are said to have filed and pursued criminal prosecution against him for theft by deception and deceptive business practices. The complaint requests relief based upon Defendants' actions during Plaintiff's Chapter 7 bankruptcy case – violation of the automatic stay of Section 362 (Count 1), violation of the discharge order (Count 2), and failure to ensure accuracy of pleading and accounts (Count 3). Defendants seek to dismiss the complaint on various bases, some of which are sound. I will dismiss the three counts in

Plaintiff's complaint and provide Plaintiff with the opportunity to prepare and file an amended complaint addressing the shortfalls in his original complaint.

II. PROCEDURAL BACKGROUND

Plaintiff filed his Chapter 7 bankruptcy case on September 3, 2015. On November 12, 2015, he filed a Motion for a preliminary injunction in the main case without starting an adversary proceeding. The motion explained that he was facing a possible criminal trial and incarceration and Plaintiff asked that any such action be enjoined. Giving Plaintiff every benefit of the doubt and construing his pro se pleadings as bringing an action for injunctive relief, I conducted a hearing via telephone on November 16, 2015, with representatives of the Scranton police and Lackawanna district attorney's office. I learned that no incarceration of Plaintiff and no trial of the criminal matter would proceed in the near future so I continued the hearing to November 25, 2015, and then to December 21, 2015, and then to January 11, 2016, and then to February 9, 2016, and finally to March 3, 2016, telling Plaintiff that he could resurrect his request for injunctive relief upon short notice.

On February 24, 2016, when it appeared that Plaintiff's case would soon be completed and closed, I ordered that the motion for preliminary injunction be denied on the ground that no expedited consideration of the criminal matters against Plaintiff was necessary. Plaintiff received his discharge order on March 17, 2016, and the case was closed on March 21, 2016.

Plaintiff filed the complaint presently before me on June 29, 2016, without reopening his underlying main case. On August 2, 2016, when I learned that Plaintiff had filed his complaint and one of the defendants had filed a pro se

answer (of sorts) and one of the defendants had filed a motion to dismiss with a brief, I entered a procedural order establishing dates for motions, briefs, and reopening the main case. I set dates for the filing of motions to dismiss and their briefs and set August 30, 2016, as the hearing date for re-opening the main bankruptcy case and argument on the motions to dismiss. Plaintiff filed his motion to re-open the case on August 22, 2016. At the hearing on August 30, 2016, I granted the motion to re-open the main case and heard argument on dismissal of the complaint.

After a colloquy with counsel and the pro se parties on August 30, I informed Plaintiff that his complaint was deficient in numerous ways. Following is the gist of the various topics discussed during argument.

First, the complaint fails to identify and to mention a single action of Defendant Hart or Defendant Fazio. The complaint will be dismissed as to those two defendants for that reason and for reasons set forth below.

Second, Count 1 is dismissed because the proceeding about which Plaintiff complains is a criminal action that is not bound by Section 362(a) because Section 362(b)(1) excepts criminal prosecutions from the stay.

Third, Count 2 is dismissed because the discharge order was not violated, that is, any criminal restitution that might be ordered is excepted from discharge pursuant to Section 523(a)(7).

Plaintiff voluntarily withdrew his Count 3 during the hearing on August 30, 2016.

III. DISCUSSION

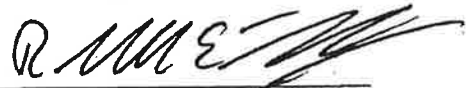
The Discussion for this Statement constitutes and incorporates by reference the colloquy among the Court, counsel, and the pro se parties.

IV. CONCLUSION

For all of the above reasons, this Statement supports the accompanying Order that dismisses the complaint and allows Plaintiff leave to file an amended complaint within 20 days.

Date: August 31, 2016

BY THE COURT



Richard E. Fehling, U.S.B.J.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JOSEPH PETRICK, Debtor(s)	: :	Case No. 15-16355REF Chapter 7

JOSEPH PETRICK, Plaintiff vs. CARMAN FAZIO, JAMIE BARRET, JOHN HART, et al., Defendants	: : : : : :	Adv. No. 16-0207

ORDER

AND NOW, this 6 day of December, 2016, upon my consideration of Defendants' Motions to Dismiss Plaintiff's Amended Complaint, Defendants' briefs in support of their Motions, and Plaintiff's Answer to Defendants' Motions,

AND it appearing that I granted Defendants' Motions to Dismiss Plaintiff's first Complaint in an Order and Statement Supporting Order, both of which were entered on August 31, 2016, finding that Plaintiff's first Complaint failed to state a claim against Defendants upon which relief could be granted,

AND it further appearing that the Amended Complaint is virtually identical to the first Complaint with the only differences being that: (1) The Amended Complaint inserts the names of some of the Defendants in certain paragraphs, which adds nothing of substance to the Amended Complaint and does

not cure the deficiencies I found to exist in the first Complaint; and (2) The Amended Complaint, unlike the first Complaint, does not contain a Count 3, but Plaintiff voluntarily withdrew Count 3 of his first Complaint at the August 30, 2016 hearing held on Defendants' Motions to Dismiss the first Complaint,

AND upon my findings that:

(1) Count 1 of the Amended Complaint, which seeks damages for Defendants' alleged violation of the automatic stay, fails to state a claim upon which relief can be granted because the actions of Defendants that form the basis of Count I involve prosecution of a criminal proceeding, and prosecutions of criminal proceedings are excepted from the reach of the automatic stay by 11 U.S.C. §362(b)(1); and

(2) Count 2 of the Amended Complaint, which seeks damages for Defendants' alleged violation of the discharge order, fails to state a claim upon which relief can be granted because the actions of Defendants that form the basis of Count 2 involve: (A) Prosecution of a criminal proceeding, and post-discharge prosecutions of criminal proceedings do not violate a discharge order, Branch v. 30th District Court City of Highland Park (In re Branch), 525 B.R. 388, 397-98 (Bankr. E.D. Mich. 2015); and (B) An attempt to seek or collect criminal restitution, and attempting to seek or collect criminal restitution does not violate

the discharge order because a debtor's obligation to pay criminal restitution is not dischargeable under 11 U.S.C. §523(a)(7) and is excepted from the discharge order; and

(3) for these reasons, Counts 1 and 2 of the Amended Complaint fail to state a claim upon which relief can be granted and Defendants' Motions to Dismiss the Amended Complaint must be granted.

IT IS HEREBY ORDERED that Defendants' Motions to Dismiss Plaintiff's Amended Complaint are GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Amended Complaint is HEREBY DISMISSED.

IT IS FURTHER ORDERED that the hearing presently scheduled to be held on December 7, 2016 on Defendants' Motions to Dismiss Plaintiff's Amended Complaint are HEREBY CANCELED AS UNNECESSARY AND MOOT in light of this Order granting Defendants' Motions and dismissing Plaintiff's Amended Complaint.

BY THE COURT

RICHARD E. FEHLING
United States Bankruptcy Judge

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JOSEPH PETRICK, Debtor	: :	Case No. 15-16355REF Chapter 7

JOSEPH PETRICK, Plaintiff vs. CARMAN FAZIO and DONNA SABIA, Defendants	: : : : :	Adv. No. 16-318

ORDER

AND NOW this 14 day of December, 2016, upon the bench order entered in court earlier today, and upon the explanation given on the record in open court, and based upon the accompanying Statement Supporting Order filed herewith,

IT IS HEREBY ORDERED that the bench order entered earlier today in court is HEREBY RATIFIED, RE-ENTERED, AND RESTATED by this written Order.

IT IS FURTHER ORDERED that the complaint in the above adversary proceeding is HEREBY DISMISSED.

BY THE COURT

RICHARD E. FEHLING, U.S.B.J.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JOSEPH PETRICK, Debtor	: :	Case No. 15-16355REF Chapter 7

JOSEPH PETRICK, Plaintiff vs. CARMAN FAZIO and DONNA SABIA, Defendants	: : : : :	Adv. No. 16-318

STATEMENT SUPPORTING ORDER

I. FACTS

The Complaint alleges that Plaintiff "entered into [a] contract with Defendants Donna Sabio/Carmen Fazio on or around 4/14/2015." The Complaint further alleges that delays were caused by Defendant Fazio having fired the electrician. The Complaint also alleges that during this period, Plaintiff was experiencing financial difficulties in his business venture due to reasons beyond his control. As a result, Plaintiff became insolvent during this period and could no longer operate his business. The Complaint further alleges that during this period, Plaintiff struggled to find a way to either complete the contract or refund money to Mr. Fazio and that talks began in 2015 about refunding money. Plaintiff was unable to refund any of the money to Defendants and filed his chapter 7 petition. The Complaint further alleges that as of the date the Complaint was filed, Plaintiff had not been found guilty of any crime relating to the transaction with Defendants

and no order of restitution had been entered. (I understand from the Defendants at the pre-trial conference held earlier today, that Plaintiff was convicted of some sort of fraud-related crime earlier this week, on Monday December 12, 2016.)

The Complaint contains one count, which is titled "Dischargeability of debt," paragraph 18 of which states as follows: "The defendants may contend that this obligation is excepted from discharge under 11 U.S.C. §523(a)(2). Plaintiff asserts that this debt does not fall under 523(a)(2) and [sic] is entitled to a determination that this debt is dischargeable." The Wherefore clause then states: "WHEREFORE, Plaintiffs [sic] respectfully request[s] that this court enter its order determining that none of the grounds for exempting the debt [from discharge] exist, determining that such debt is dischargeable, and entering its order discharging Plaintiff from liability for such debt."

The requested relief in the Wherefore clause is clearly broader than the request contained in Count I. Count I is limited by its terms to a request that the debt be deemed dischargeable under section 523(a)(2); while the Wherefore clause requests that an order be entered determining that none of the grounds for exempting the debt from discharge exist. I shall limit my consideration of the Complaint to Plaintiff's request in Count 1, which is that the debt should be found dischargeable under section 523(a)(2).

Defendants filed an answer to the Complaint in which they allege that the contract was solely between Plaintiff and Defendant Donna Sabia and that Defendant Carmen Fazio was not a party to the contract. Defendants further allege that Plaintiff was paid only for labor, not for materials, and that Plaintiff failed to start or complete the work. Defendants further allege that they were "scammed" by Plaintiff and that the debt should not be discharged.

II. DISCUSSION

As Colliers on Bankruptcy indicates, a complaint to determine dischargeability of a debt may be filed by either a creditor or a debtor. Collier on Bankruptcy, ¶523.04 at 523-18 (16th Edition). The deadline for filing a section 523(a)(2) complaint in this case was February 9, 2016. See Fed. R. Bankr. P. 4007(c) – the deadline for filing 523(a)(2) complaint is 60 days after the first date set for section 341 meeting. Plaintiff filed his complaint on September 21, 2016, more than seven months after the deadline for filing the complaint had expired and more than six months after the discharge order was entered on March 17, 2016. As a result, I find that the complaint is time-barred and the requested relief is moot because no timely section 523(a)(2) complaint was filed. The debt was therefore deemed discharged under section 523(a)(2) when the deadline for filing such complaints expired and the discharge order was entered.

I also note that Defendants never filed their own complaint requesting that the debt owed by Debtor be found nondischargeable. The time for doing so has also long expired. Neither Plaintiff nor Defendants are prejudiced by this ruling. I note that Fed. R. Bankr. P. 4007(a) provides that a complaint to determine dischargeability of a debt other than under section 523(a)(2), (4), or (6) may be filed at any time. This means, of course, that any action to determine the dischargeability of a restitution order under section 523(a)(7) may be filed at any time and would not be time barred.

III. ORDER ENTERED IN ADV. NO. 16-207 (PETRICK V FAZIO ET AL) HAS LIMITED IMPACT ON THIS ADVERSARY PROCEEDING

The Amended Complaint in Adv. No. 16-207 had 2 counts – the first count sought damages against the defendants for alleged violations of the automatic stay and the second count sought damages against defendants for alleged violations of the discharge order. Mr. Fazio was named as a defendant in the caption of the complaint and the amended complaint in 16-207. Ms. Sabia was not named as a defendant in the caption of either the complaint or amended complaint in 16-207, but she was named as a defendant in some of the paragraphs of the amended complaint in 16-207.

On December 6, 2016, I entered an order dismissing the Amended Complaint in 16-207 as follows:

(1) I dismissed Count 1 of the Amended Complaint, which sought damages for Defendants' alleged violation of the automatic stay, finding it failed to state a claim upon which relief could be granted because the actions of Defendants involved prosecution of a criminal proceeding, which is excepted from the reach of the automatic stay by 11 U.S.C. §362(b)(1); and

(2) I dismissed Count II of the Amended Complaint, which sought damages for Defendants' alleged violation of the discharge order, because it also failed to state a claim upon which relief could be granted. Defendants' actions that formed the basis of Count 2 involved: (a) Post-discharge prosecution of a criminal

proceeding, which does not violate a discharge order, Branch v. 30th District Court City of Highland Park (In re Branch), 525 B.R. 388, 397-98 (Bankr. E.D. Mich. 2015); and (b) an attempt to seek or collect criminal restitution, which does not violate the discharge order. A debtor's obligation to pay criminal restitution is not dischargeable under 11 U.S.C. §523(a)(7) and is excepted from the discharge order. Defendants therefore may seek or collect criminal restitution against Plaintiff without fear of violating the discharge order. Id.

IV. CONCLUSION

Adv. No. 16-318 (Petrick v Fazio and Sabia) is time barred and moot and should be dismissed.

Defendants are permitted to pursue and collect criminal restitution against Plaintiff if he is convicted of a crime as a result of his actions involving Defendants and restitution is ordered by the state court. See my December 6, 2016 Order in Petrick v. Fazio et al, Adv. No. 16-207. Criminal restitution is nondischargeable under section 523(a)(7). Id.

Plaintiff's unexcused failure to appear at the pre-trial conference earlier today is also grounds to dismiss his complaint.

My bench order dismissing this case for the above reasons was announced in open court today in the pre-trial conference scheduled to be heard today.

BY THE COURT

RICHARD E. FEHLING, U.S.B.J.

EXHIBIT 4

Information to identify the case:

Debtor 1	**Joseph Petrick** (First Name Middle Name Last Name)	Social Security number or ITIN	**xxx-xx-1644**
		EIN	__-_______
Debtor 2 (Spouse, if filing)	(First Name Middle Name Last Name)	Social Security number or ITIN	____
		EIN	__-_______
United States Bankruptcy Court	**Eastern District of Pennsylvania**		
Case number:	**15-16355-ref**		

Order of Discharge

12/15

IT IS ORDERED: A discharge under 11 U.S.C. § 727 is granted to:

Joseph Petrick

3/17/16

By the court: Richard E. Fehling
United States Bankruptcy Judge

Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Creditors cannot collect discharged debts

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

Most debts are discharged

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

For more information, see page 2 >

Some debts are not discharged

Examples of debts that are not discharged are:

- debts that are domestic support obligations;
- debts for most student loans;
- debts for most taxes;
- debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- some debts which the debtors did not properly list;
- debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.

Received 1/9/2019 1:28:54 PM Supreme Court Middle District

Filed 1/9/2019 1:28:00 PM Supreme Court Middle District
47 MAP 2018

IN THE SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Appellee	:	47 MAP 2018
v.	:	
Joseph Petrick, Appellant	:	

PROOF OF SERVICE

I hereby certify that this 9th day of January, 2019, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Donna M. DeVita
Service Method:	eService
Email:	d.devita.law@gmail.com
Service Date:	1/9/2019
Address:	1209 Marion St Dunmore, PA 18509
Phone:	570-343-9597
Representing:	Appellant Joseph Petrick

Served:	Donna M. DeVita
Service Method:	First Class Mail
Service Date:	1/9/2019
Address:	200 N Washington Ave Scranton, PA 18503
Phone:	570-963-6761
Representing:	Appellant Joseph Petrick

IN THE SUPREME COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served: Ethan D. Fogel
Service Method: eService
Email: efogel@dechert.com
Service Date: 1/9/2019
Address: Cira Centre
2929 Arch Street
Philadelphia, PA 19072
Phone: 215-.99-4.2965
Representing: Appellant Amicus Curiae The National Consumer Bankruptcy Rights Center, et al

Served: Ethan D. Fogel
Service Method: First Class Mail
Service Date: 1/9/2019
Address: 2929 Arch St
Philadelphia, PA 191042808
Phone: 215-994-2965
Representing: Appellant Amicus Curiae The National Consumer Bankruptcy Rights Center, et al

Served: Henry J. Sommer
Service Method: First Class Mail
Service Date: 1/9/2019
Address: 233 S 6TH St
Apt 1201
Philadelphia, PA 19106
Phone: 267-872-7141
Representing: Appellant Amicus Curiae The National Consumer Bankruptcy Rights Center, et al

/s/ Lisa Ann Swift

(Signature of Person Serving)

Person Serving: Swift, Lisa Ann
Attorney Registration No: 069785
Law Firm: Lackawanna County District Attorney's Office
Address: 200 N Washington Ave
Scranton, PA 18503
Representing: Appellee Commonwealth of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA