

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

SHAWN CABRERA APPLEBY,
Defendant-Appellant.

SUPREME COURT NO. 05-0018-GA
SUPERIOR COURT NO. 04-0200B & 96-0319

Cite as: 2007 MP 19

Decided September 20, 2007

Jeffery L. Warfield, Assistant Attorney General, Commonwealth Attorney General's Office, for Plaintiff-Appellee.
G. Anthony Long, Saipan, Commonwealth of the Northern Mariana Islands, for Defendant-Appellant.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice

DEMAPAN, C.J.:

¶ 1 Shawn C. Appleby appeals the trial court’s denial of his motion to clarify his sentence stemming from a 1996 robbery-murder conviction. The Commonwealth moved to dismiss his appeal on the basis that this Court lacks jurisdiction. We deny the Commonwealth’s motion to dismiss because we have jurisdiction to determine whether the trial court properly heard and denied a motion, so long as the appeal is not interlocutory. However, we hold that Appleby’s motion to clarify was improper and the trial court lacked jurisdiction to hear the motion. Through his motion to clarify, Appleby was essentially attempting to appeal the Commonwealth Board of Parole’s (“Parole Board”) decision concerning his robbery-murder conviction. In order to appeal, Appleby was required to bring a separate writ of habeas corpus to obtain relief, which he did not do. Accordingly, we AFFIRM the trial court’s denial of Appleby’s motion to clarify, although on other grounds.

I

¶ 2 Appleby was found guilty of committing a robbery-murder on November 11, 1996, at the age of sixteen. Pursuant to his plea agreement in Criminal Case No. 96-0319 (the “first case”), he was sentenced to forty years of imprisonment, with a minimum of ten years to be served.¹ The agreement contained no specific provision for parole.

¶ 3 On August 26, 2003, the Parole Board denied Appleby’s application for a parole hearing on the basis that he was not yet eligible for parole. Approximately three months later, Appleby allegedly escaped from prison and was subsequently apprehended. As a result of his escape, the Commonwealth charged Appleby with escape in Criminal Case No. 04-0200B (the “second case”). While the second case was pending, Appleby’s prior counsel filed a motion to clarify the sentence imposed in the first case, in an attempt to obtain a judicial determination of the date of Appleby’s parole eligibility.² After the trial court denied the motion, Appleby appealed, and the Commonwealth moved to dismiss for lack of jurisdiction.

¶ 4 There are two issues presented for review. First, we must determine whether we have jurisdiction to hear Appleby’s motion to clarify, which the trial court dismissed. Second, if we have jurisdiction to hear the appeal, we must determine whether the trial court properly dismissed Appleby’s motion to clarify. We will address each issue in turn.

II

¹ *CNMI v. Appleby*, Criminal Case No. 96-0319, *Judgment and Probation/Commitment Order*, March 25, 1997.

² In our May 31, 2006 order, we denied trial counsel’s request to represent Appleby on appeal and instead appointed current counsel.

Jurisdiction

¶ 5 The Constitution of the Commonwealth of the Northern Mariana Islands limits our jurisdiction to final judgments and final orders of the Commonwealth Superior Court. NMI Const. art. IX, § 3; *see, e.g., Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 4. Whether we have appellate jurisdiction is a question of law which must be resolved de novo before the merits of an appeal may be addressed. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 7.

¶ 6 A final judgment or order is a decision that fully informs a party of the extent of the remedy entered against it. *Id.* ¶ 9. The only appeals we may hear other than final judgments and orders are interlocutory appeals, which we may hear under the collateral order doctrine. “To fall within the doctrine, the appealed order must: (1) have conclusively determined the disputed questions; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment.” *Commonwealth v. Blas*, 2007 MP 17 ¶ 9 n.3 (quoting *Pacific Amusement*, 2005 MP 11 ¶ 19). For example, in the criminal context, a bail order is not a final judgment. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 2 n.1. Rather, a bail order may be immediately appealed under the collateral order doctrine because it determines a disputed issue; the bail is collateral to and separate from the principle issue of whether the accused is guilty of the crime. In such instances, the order involves rights that would be undermined if postponed until after conviction and sentencing. *See United States v. Harper*, 729 F.2d 1216, 1220 (9th Cir. 1984).

¶ 7 Since we typically only have jurisdiction over final judgments and orders, we must determine whether the trial court’s dismissal of Appleby’s motion to clarify was final. The motion Appleby’s prior counsel brought to “clarify” his sentence is unusual, and we are hard pressed to attach a procedural label to it. If the motion were brought in the course of Appleby’s second case, relating to his alleged escape from prison, and had anything to do with that case directly, then we may be inclined to treat his motion as an interlocutory appeal. It is clear, however, that the present motion does not directly relate to the second case, but rather to his first case, dealing with his robbery-murder conviction, which already has a final judgment and commitment order entered. Accordingly, we treat this appeal as an appeal of a final order. Because we have appellate jurisdiction over final orders, we deny the motion to dismiss the appeal for lack of jurisdiction.

¶ 8 Although we have jurisdiction to hear Appleby’s appeal, we acknowledge that his motion to clarify was improper, and by its abnormal nature did not confer jurisdiction on the trial court. However, we also recognize that it is not only within our jurisdiction, but it is often our inherent function to review decisions that may be void or otherwise erroneous. As such, we find it necessary to address these issues further in our discussion of the trial court’s decision to deny the motion.

Motion to Clarify

¶ 9 Finding that we have jurisdiction to hear Appleby’s appeal, we now turn to whether the trial court properly dismissed the motion to clarify. Commonwealth law expressly recognizes writs of habeas corpus. NMI Const. art. IV, §§ 2-3; 6 CMC § 7101 *et seq.* Habeas corpus furnishes an extraordinary remedy, namely securing the release of prisoners who are restrained of their liberty. *Bateman v. Smith*, 194 S.W.2d 336, 337 (Tenn. 1946). In the Commonwealth, a writ of habeas corpus is the proper procedural mechanism to challenge a prisoner’s post-conviction sentence or the computation of parole eligibility. *See* 6 CMC § 7101 *et seq.*; *Commonwealth v. Diaz*, 2003 MP 14 ¶ 13 (quoting *United States v. Smith*, 331 U.S. 469, 475 (1947)). As such, when a defendant challenges the lawfulness of a parole board’s actions, as opposed to the lawfulness of a sentence a court imposes, the defendant must file a petition for writ of habeas corpus. *Hajduk v. United States*, 764 F.2d 795, 796 (11th Cir. 1985). Prior to challenging a parole decision by seeking habeas corpus relief, a defendant must exhaust all available administrative remedies.³ *United States ex rel. Sanders v. Arnold*, 535 F.2d 848, 850 (3rd Cir. 1976). After exhausting all available remedies, a judicial review of a parole board’s decision may then be brought by a habeas corpus petition. *See United States v. Kennedy*, 851 F.2d 689, 691 (3rd Cir. 1988).

¶ 10 In applying for a writ of habeas corpus in the Commonwealth, a defendant must comply with several requirements. The defendant must apply for the writ of habeas corpus to the court, and set forth facts concerning the imprisonment. 6 CMC § 7102. The application for the writ must also name the defendant’s “custodian,” usually either the warden of the facility or the parole board, who is administering the unlawful confinement. *Id.* § 7102.

¶ 11 Turning to the present case, the trial court lacked jurisdiction to hear Appleby’s motion to clarify, and it was therefore improper for the trial court to even consider the motion on its merits. In filing his motion to clarify, Appleby was essentially attempting to appeal the Parole Board’s decision denying parole for his robbery-murder conviction. In the process, Appleby challenged the lawfulness of the Parole Board’s actions, and not the lawfulness of the sentence the court imposed. Rather than bring a writ of habeas corpus to challenge the Parole Board’s actions, Appleby’s prior counsel filed a motion to clarify Appleby’s sentence. However, both the relevant case law and the Commonwealth Code require that any challenge to a defendant’s incarceration as a result of the Parole Board’s refusal to conduct a parole hearing must be brought by a writ of habeas corpus. In fact, Appleby acknowledged in his brief that habeas corpus was the proper procedural mechanism to challenge the Parole Board’s actions. Specifically, Appleby’s brief correctly states that the trial court lacks jurisdiction to entertain actions or appeals to clarify a sentence unless such action is brought as a writ of habeas corpus. It is clear, however,

³ In certain circumstances, such as where the issue the parole board considers is strictly a matter of statutory construction, a court may immediately consider a writ of habeas corpus without the defendant exhausting his or her administrative remedies. *Bradshaw v. Carlson*, 682 F.2d 1050, 1052-53 (3rd Cir. 1981).

that Appleby never applied for a writ of habeas corpus.

¶ 12 To obtain a writ, Appleby was required to include in his supporting papers the status of any administrative appeals, as well as whether he would be precluded from obtaining a writ because of his alleged escape from prison. Appleby was also required to serve the custodian with the writ of habeas corpus. None of these requirements were met. Furthermore, even if Appleby complied with the administrative requirements associated with a writ of habeas corpus, he still has at least one additional legal roadblock to overcome. In filing a motion to clarify, Appleby was essentially appealing his sentence. As such, Appleby only had a small window of time to file an appeal. *See* 6 CMC § 4114; Com. R. App. P. 4(b). The time for Appleby's appeal, however, has long since expired. Therefore, we find that the trial court should have dismissed Appleby's appeal at the outset for lack of jurisdiction.

III

¶ 13 For the foregoing reasons, we AFFIRM the trial court's denial of the motion for clarification on other grounds.

Concurring:
Castro, Manglona, JJ.