

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
TRIAL DIVISION – CIVIL SECTION**

IN RE:	:	Election Matter
NOMINATION PETITION OF	:	
WILLIE SINGLETARY	:	MARCH TERM, 2019
AS DEMOCRATIC CANDIDATE	:	No. 1338
FOR OFFICE OF CITY COUNCIL	:	(190301338)
	:	
APPEAL OF WILLIE SINGLETARY	:	382 CD 2019

OPINION

Tsai, J.

I. Introduction

Willie Singletary (“Candidate”) has taken an appeal from our order of March 25, 2019 granting Ryan Raiker’s (“Objector”) Amended Petition to Set Aside the Candidate’s Nomination Petition and removing Candidate from the ballot. In the Amended Petition, Objector argued that Candidate was ineligible for the office of At-Large City Councilperson under Article II, Section 7 of the Pennsylvania Constitution because of prior federal criminal convictions.

Primary elections will be held in Pennsylvania on Tuesday, May 21, 2019. Willie Singletary is a Democratic candidate for At-Large City Councilperson. Objector Ryan Raiker timely filed a petition to set aside Mr. Singletary’s nomination petition on March 12, 2019. The Objector filed an amended petition to set aside the nomination petition on March 15, 2019 (“Amended Petition”).

A hearing on the Amended Petition was held before the undersigned on March 22, 2019. Objector was represented by Kevin Greenberg, Esquire. The Candidate represented himself. Candidate argued that the amended petition to set aside his nomination petition was not properly served as set forth in President Judge

Administrative Order 03 of 2019 and should be dismissed. We deferred ruling on the question of service and proceeded to hear testimony relating to the merits of Objector's amended petition to set aside the nomination petition.

In Objection No. 1 of the Amended Petition, Objector claims that Candidate had been convicted of violating 18 U.S.C. § 1001, therefore the Candidate's affidavit stating that Candidate was eligible for the office of City Councilperson was false. In Objection No. 2, Objector argues that Article II, Section 7 of the Pennsylvania Constitution bars Candidate from holding the office of City Councilperson.

For the reasons that follow, we granted the Amended Petition and order that Candidate Willie Singletary be removed from the ballot.

II. Factual Findings

Candidate Willie Singletary once served as a judge of the Philadelphia Traffic Court and resigned from the bench in February of 2012. The Candidate was later indicted on charges relating to corruption that had occurred while he was in office. Following a trial in the United States District Court for the Eastern District of Pennsylvania, Candidate was found guilty of two counts of making false statements to the FBI, in violation of 18 U.S.C. § 1001. Candidate was acquitted of all other charges. Candidate was then sentenced on March 19, 2015 to a term of incarceration of twenty (20) months followed by one year of supervised release. On appeal to the Court of Appeals for the Third Circuit, his sentence was vacated and remanded to the District Court for resentencing. Candidate's new sentence was substantially similar or identical to his previous sentence. Having served the full term of the original sentence, Candidate

did not have to serve any additional period of incarceration.¹ On March 12, 2019, Candidate filed his nomination petition which included an executed candidate affidavit in which he swore, among other things, that he was eligible for the office of At-Large City Councilperson.

The amended petition to set aside the nomination petition was filed on Friday March 15, 2019 and timestamped at 1:59 PM. According to the Affidavit of Service submitted by the Objector at the hearing, Candidate was served with the amended petition via UPS on Monday March 18, 2019 at approximately 12:05 PM.

III. Discussion

A. Adequacy of Service of the Amended Petition to Set Aside

As a threshold issue, Candidate argues that Objector did not timely serve the Amended Petition to Set Aside upon him within 48 hours of its filing as required by President Judge Idee Fox's Order to Show Cause of March 15, 2019. Objector contends that service was timely as the Amended Petition to Set Aside it was turned over to UPS within 48 hours of it being filed and that service was effectuated before March 21, 2019 at 4:00 PM.

Candidate cited *In re Morgan*, 59 Pa.Cmwlth. 161, 428 A.2d 1055 (1981) and *In re Bringham*, No. 511 C.D. 2014, 2014 WL 1512757 (Pa.Cmwlth. Apr. 15, 2014) (unpublished memorandum) in support of his position that defective service is fatal to the Objector's Amended Petition. Before discussing these cases, we recite the relevant portions of Section 977 of the Election Code:

¹ Candidate has appealed his new sentence as disproportionate to the sentences imposed on the other former Traffic Court judges who were convicted under the same indictment.

All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed. ***Upon the presentation of such a petition, the court shall make an order fixing a time for hearing which shall not be later than ten days after the last day for filing said nomination petition or paper, and specifying the time and manner of notice that shall be given to the candidate or candidates named in the nomination petition or paper sought to be set aside.***

25 P.S. § 2937 (emphasis added).

In *Morgan*, the Commonwealth Court affirmed the Montgomery County Court of Common Pleas' dismissal of five petitions to strike the nomination petitions of several candidates for failure to serve the candidates. The President Judge of Montgomery County had issued an order stating that personal service of the petition had to be made on the respondent. 428 A.2d at 1056. The objectors did not personally serve any of the candidates, but rather left the petition with an adult at the candidate's home or at the front door of the candidate's home. The Commonwealth Court declined to interpret the Montgomery County order as allowing service to be made on any person other than the candidate, holding that the Rules of Civil Procedure regarding service did not apply to petitions under the Election Code. *Id.* at 1057-58. In doing so, the Court stated "under Section 977, the lower court, has complete control to regulate the time and manner of giving notice and the fixing of hearings." *Id.* at 1058 (citations, quotation marks, and brackets omitted). The failure of the objectors to personally serve the candidates violated the President Judge's order and dismissal of the petitions to strike were properly dismissed.

The Commonwealth Court concluded an order requiring personal service was appropriate because “[t]he short time allowed under Section 977 of the Election Code for the hearing and disposition of challenges to nomination petitions suggests that persons whose petitions are challenged should be quickly and surely notified.” *Id.* See also *In re Johnson*, 509 Pa. 347, 502 A.2d 142, 145 (1985) (holding that “[t]he overriding consideration embodied in section 977 of the Election Code is the expeditious resolution of objections to a prospective candidate’s filings” and “to encumber the election process ... by incorporating the rules of civil procedure ... would frustrate the carefully designed time frame ... for the expeditious disposition of these objections.”)

The *Bringhurst* case involved the appeals of the Philadelphia Court of Common Pleas’ dismissal of thirty-seven Petitions to Set Aside nominations for various candidates running in Philadelphia’s 36th Ward. 2014 WL 1512757 at *1 (unpublished memorandum).² Ten of those thirty-seven petitions to set aside were dismissed for failure to serve the petitions within the time allotted for service. *Id.* Administrative Order No. 2014–01 governed service of Petitions to Set Aside for that election; the Administrative Order required that service be made on or before March 20, 2014 at 4:00 PM, and scheduled the hearing for March 21, 2014. None of the candidates were served before this deadline and objectors did not seek nor receive the trial court’s permission to extend the time period to make service. *Id.* at *2. The hearing was continued to March 24, 2014, and at that hearing the objectors argued that candidates had not suffered any prejudice as the hearing was continued from its original date. *Id.*

² Unreported decisions of the Commonwealth Court have persuasive value but are not precedential. *Duke Energy Fayette II, LLC v. Fayette Cty. Bd. of Assessment Appeals*, 116 A.3d 1176, 1182 (Pa.Cmwlt. 2015) (citing Commonwealth Court Internal Operating Procedures § 414, 210 Pa. Code § 69.414).

The trial court rejected this argument and dismissed the Petitions to Set Aside. *Id.* On appeal, the Commonwealth Court affirmed in a non-precedential opinion, holding that “[t]he failure to comply with a trial court’s order directing the manner of service may be a fatal defect that would require the denial of a petition to set aside.” *Id.* (citing *Morgan, supra*).

Candidate also referenced *In re Petition of Acosta*, 525 Pa. 135, 578 A.2d 407 (1990). In *Acosta*, the Supreme Court found that a petition to set aside may be served on Secretary of the Commonwealth by mail, but if the Secretary does not receive the petition before the time set in the Election Code, the petition is not in compliance with the Election Code and cannot be granted. 578 A.2d at 409. *Acosta* is not relevant as it relates to the Election Code’s statutory deadlines and not court-ordered deadlines in election matters.

The March 15, 2019 Order to Show Cause states, in relevant part,

A copy of the Petition to Set Aside Nomination Petition ... must be served by the Petitioner on the Candidate within 48 hours of the filing date and time, but no later than March 21, 2019 at 4:00 PM. Service shall be accomplished as provided in Section 7 of President Judge Administrative Order No. 02 of 2019....

Id. at p.1, ¶4.³

Section 7 of the President Judge Administrative Order No. 03 of 2019 states:

A copy of the Petition and Order to Show Cause must be served by the Petitioner on the Candidate within 48 hours of the filing date and time, but no later than March 21, 2019 at 4:00 PM. Service may be accomplished by any of the below methods:

³ This Order should have cited President Judge Administrative Order No. **03** of 2019 as opposed to Order No. 02. Administrative Order No. 03 governs Objections to Nomination Petitions for the May 21, 2019 Primary Election. Administrative Order No. **02** of 2019 relates to the Special Election for the 190th Legislative District held on March 12, 2019.

- (i) personal service on the Candidate;
- (ii) personal service on any adult person at the Candidate's residence address as shown on the Candidate's affidavit; or
- (iii) by delivery by nationally recognized overnight service to the Candidate's residence address shown as the Candidate's affidavit provided that:
 - (A) delivery is attempted before March 21, 2019, at 4 pm, and
 - (B) the package be sent with instructions to leave the Service Packet at said address if no one answers the door.

Id. at p. 2, ¶ 7. Unlike other provisions of the Election Code that set deadlines for filing of nomination petitions⁴ and objections to nomination petitions⁵ which this Court has no power to alter,⁶ the deadline for service here is set by an order of this Court and we have the discretion to extend it. The Commonwealth Court has stated that strict compliance with the service requirements of the order can be waived when the candidate received actual notice of the hearing date and time. *See, e.g., In re Wilson*, 728 A.2d 1025, 1028–29 (Pa.Cmwlth. 1999); and *Bringhurst, supra* (acknowledging that the trial court had the power to grant an extension on the deadline set in its order).

The primary purpose of the court's order is to ensure that the candidates whose petitions are challenged should be "quickly and surely notified" of the hearing challenging their petitions. Here the Objector attempted to complete service on the

⁴ 25 P.S. § 2873(d), (f).

⁵ 25 P.S. § 2937.

⁶ *In re Petition of Hall*, 26 Pa.Cmwlth. 54, 362 A.2d 475, 477 (1976) ("Generally speaking, of course, a nomination petition not timely filed is invalid and must, therefore, be set aside."); *In re James*, 596 Pa. 442, 944 A.2d 69, 73 (2008) ("The deadlines set by Section 2937 are mandatory, and a court has no authority to waive them.")

Candidate as contemplated under Section 7(iii) of Administrative Order No. 3 by delivering the petition to UPS on the same day it was filed. Section 7(iii) could be read, however, to require delivery by the nationally recognized courier to the Candidate's home address within the 48-hour time frame, which UPS instead accomplished at approximately 12:05 PM on March 18, 2019, prior to the absolute deadline of March 21, 2019 at 4:00 PM. Although the Amended Petition was not delivered to the Candidate within 48 hours of its filing, the Candidate was quickly notified of the hearing several days before March 21, the absolute deadline set forth in both the Order to Show Cause and the President Judge Administrative Order No. 03 of 2019. Having found that Candidate received quick and sure notice of the hearing date and time before the absolute deadline, we proceed to address Objector's claims on the merits.

B. Accuracy of Candidate's Affidavit

Objector claims that Mr. Singletary's candidate affidavit is defective for two reasons (1) because the Candidate's declaration that he is eligible for the office he is seeking is false, and (2) Article II, Section 7 of the Pennsylvania Constitution bars Mr. Singletary holding a seat on the Philadelphia City Council.

Candidate testified that he concluded that he was eligible to run for the Office of At-Large City Councilperson because he meets the basic criteria outlined on the City Commissioner's website: he is at least 25 years old, he has been a resident of the City of Philadelphia for more than one year, and he is a United States citizen. He did not consider anything else.

We find that Mr. Singletary was credible with respect to his belief that he met the eligibility criteria for the office of City Councilperson and he did not knowingly falsify his candidate affidavit. Objector is not entitled to relief on Objection number 1.

C. Candidate's Eligibility for Office Under the Pennsylvania Constitution

In his second objection, Objector argues that Candidate is constitutionally barred from holding a seat on the Philadelphia City Council. Article II, Section 7 of the Pennsylvania Constitution states “[n]o person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime, shall be ... capable of holding any office of trust or profit in this Commonwealth.”

Candidate first contends that Article II, Section 7 only applies to statewide offices but not local offices such as City Councilperson. The case law leads us to the opposite conclusion. Multiple times the courts of this Commonwealth have applied Article II, Section 7 to local offices, not just statewide offices. *See e.g., Com. ex rel. Kearney v. Rambler*, 613 Pa. 32, 32 A.3d 658 (2011) (mayor subject to Article II, Section 7); *Com. ex rel. Baldwin v. Richard*, 561 Pa. 489, 751 A.2d 647 (2000) (borough councilman subject to Article II, Section 7, but Pennsylvania Supreme Court found none of his convictions constituted infamous crimes); *In re Petition of Hughes*, 105 Pa.Cmwlth. 508, 525 A.2d 10 (1987) (stating there is no dispute that “a member of Philadelphia City Council is an “office of trust or profit in this Commonwealth”), *aff'd*, 516 Pa. 89, 532 A.2d 298 (1987). The office of City Councilperson is subject to Article II, Section 7 of the Pennsylvania Constitution, therefore, we proceed to determine whether the Candidate's convictions for constitute an “infamous crime” for the purposes of Article II, Section 7.

The Pennsylvania Supreme Court has held that “a crime is infamous for purposes of Article II, Section 7, if its underlying facts establish a felony, a *crimen falsi* offense, or a like offense involving the charge of falsehood that affects the public administration of justice.” *Richard*, 751 A.2d at 653. *See also Com. ex rel. Corbett v. Griffin*, 596 Pa. 549,

946 A.2d 668, 673–74 (2008); *Commonwealth v. Shaver*, 3 Watts & Serg. 338, 1842 WL 4918 (Pa. 1842)).

Crimen falsi is typically defined as those crimes “in the nature of perjury or subornation of perjury, false statement, criminal fraud, embezzlement, false pretense or any other offense which involves some element of deceitfulness, untruthfulness or falsification bearing on a witness’ propensity to testify truthfully.” *Bolus v. Fisher*, 785 A.2d 174, 178 (Pa.Cmwlth. 2001) (citing *Black’s Law Dictionary* at p. 335 (5th ed. 1979)), *aff’d without opinion*, 568 Pa. 600, 798 A.2d 1277 (2002). *See also* *Commonwealth v. Jones*, 334 Pa. 321, 5 A.2d 804, 805 (1939) (“The term [*crimen falsi*] involves the element of falsehood, and includes everything which has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud.”) (citation omitted). Not every felony, however, is considered *crimen falsi*. *See, e.g., Commonwealth v. Hall*, 867 A.2d 619, 638–39 (2005) (aggravated assault is not a crime involving dishonesty or false statement); *and Commonwealth v. Vitale*, 445 Pa. Super. 43, 664 A.2d 999, 1003 (1995) (comparing felonies which are and are not considered *crimen falsi*).

Offenses affecting the public administration of justice include witness tampering;⁷ using a false social security number on a credit card application;⁸ conspiracy to obstruct interstate commerce in violation of the Hobbs Act;⁹ and accepting money in exchange for official favors in violation of the State Ethics Act.¹⁰

⁷ *Schuylkill County v. Copley*, 67 Pa. 386, 390 (1871).

⁸ *Griffin*, 946 A.2d at 675.

⁹ *In re Petition of Hughes*, 516 Pa. 90, 532 A.2d 298, 301 (1987).

¹⁰ *Commonwealth ex. rel. Corbett v. Desiderio*, 698 A.2d 134, 138–39 (Pa.Cmwlth. 1997).

Candidate was found guilty of two counts of making false statements to the FBI, in violation of 18 U.S.C. § 1001. The offense of 18 U.S.C. § 1001, carries a maximum possible sentences of five years of imprisonment, which makes it a Class E felony under federal law. 18 U.S.C. §§ 1001(a); 3359(a)(5). We disagree with Objector that the federal classification of this offense as a “felony” ends our inquiry into whether it should be considered an “infamous crime” under the Pennsylvania Constitution.

The Pennsylvania Supreme Court rejected a bright line rule that all extra-jurisdictional felony convictions should be considered “infamous crimes” for the purposes of Article II, Section 7. *Rambler*, 32 A.3d at 665–66. Instead the Supreme Court held that such determination should be made on a case-by-case basis, stating:

when analyzing the state constitutional implications of a federal felony conviction, it is appropriate to consider the character of the underlying conduct, rather than simply looking to the federal label, or the categorization associated with a similar state offense. More particularly, ***reviewing courts should assess constitutional infamy by taking into consideration whether public officials who engage in such conduct may still command public confidence as concerns their honesty, decency, and good moral character.*** Such an inquiry aligns with the purposes underlying Section 7, pertaining to the trust that the public reposes in its governing officials. We therefore agree with the Illinois Supreme Court's rather concise formulation, when it explained that

any public officer convicted, in the Federal court or in the court of any sister State, of a felony which falls within the general classification of being inconsistent with commonly accepted principles of honesty and decency ... stands convicted of an infamous crime

Id. at 666–67 (citing, *inter alia*, *People ex rel. Taborski v. Illinois Appellate Court*, 50 Ill.2d 336, 278 N.E.2d 796, 798 (1972)) (emphasis added).

The elements of the offense of making false statements to the FBI are that the accused “in any matter within the jurisdiction of the executive, legislative, or judicial

branch of the Government of the United States, knowingly and willfully ... makes any materially false, fictitious, or fraudulent statement or representation” 18 U.S.C. § 1001(a)(2). This offense clearly includes “some element of deceitfulness, untruthfulness or falsification bearing on a witness’ propensity to testify truthfully” and the Candidate’s convictions for making false statements to the FBI also constitute a “falsehood that affect[ed] the public administration of justice.” We conclude that 18 U.S.C. § 1001 constitutes an “infamous crime” that disqualifies Candidate from serving public office under Section 7 of the Pennsylvania Constitution. *See Hughes, supra; Bolus, supra.*

IV. Conclusion

For the reasons stated above, we concluded that Objector’s made timely service of the Amended Petition on the Candidate and declined to grant the Candidate’s request to dismiss the Petition. We also find that the Candidate did not knowingly falsify the affidavit at to the terms of his eligibility and dismiss Objection No. 1. Finally, we concluded that the Candidate’s convictions under 18 U.S.C. § 1001 constitute an “infamous crime” that operate to bar Candidate from public service under Article II, Section 7 of the Pennsylvania Constitution and were compelled to order his removal from the Democratic primary ballot for At-Large City Councilperson. We respectfully request, based on the reasons set forth above, that our decision be affirmed.

BY THE COURT:

Stella Tsai, J.

April 4, 2019

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APPEAL OF WILLIE SINGLETARY	:	382 CD 2019

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Order upon the person(s), and in the manner indicated below, which service satisfies the requirements of Pa. R. Crim. P. 114:

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