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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MAR 27 2023

Deree Norman,	:	OFFICE OF OPEN RECORDS
Petitioner	:	
	:	
v.	:	951 C.D. 2022
	:	
City of Philadelphia (Office of Open	:	
Records),	:	
Respondent	:	

PER CURIAM

MEMORANDUM AND ORDER

NOW, March 23, 2023, upon consideration of the “Motion for Reconsideration” filed by Deree Norman, *pro se* (Petitioner), to which no response has been filed by the City of Philadelphia (Respondent), the Motion for Reconsideration is DENIED.

On January 31, 2023, this Court entered an Order granting Respondent’s “Application To Dismiss And/Or Transfer Appeal” (Application) and dismissing Petitioner’s Petition for Review as untimely.¹ Therein, we explained that on September 7, 2022, Petitioner filed a Petition for Review with this Court of a Final Determination of the Office of Open Records (OOR), issued and mailed on August 5, 2022.² Petitioner’s Petition for Review was not properly before this Court; his appeal should have been filed with the Court of Common Pleas of Philadelphia County (trial court). When an appeal is erroneously filed, we may transfer it to the appropriate tribunal. 42. Pa.C.S. §5013(a). However, we refused to transfer the matter because Petitioner’s appeal was untimely. *Smock v. Commonwealth*, 436

¹ Petitioner did not file a response to the Application.

² Petitioner requested copies of two 911 calls. Respondent advised that it conducted a search and has no records relating to the calls. OOR held Respondent met its burden of proving the calls were not in its possession, custody, or control.

A.2d 615, 617 (Pa. 1981). Specifically, Petitioner had until September 6, 2022, to file an appeal³ and failure to file a timely appeal divests a court of jurisdiction. *C.E. v. Dept of Public Welfare*, 97 A.3d 828, 832 (Pa. Cmwlth. 2014). Thus, we declined to transfer the matter because the trial court was without jurisdiction to grant Petitioner relief.

In his Motion for Reconsideration, Petitioner now claims to have attempted to file his Petition for Review electronically on September 6, 2022, but received an “error message.” In support, Petitioner has attached emails to his Motion for Reconsideration (Appendix A) from “Help Desk Common Pleas (helpdeskcommonpleas@pacourts.us)” and “PACMS Help Desk (pacmshelpdesk@pacourts.us)”. As such, Petitioner claims he made a good faith effort to file the Petition for Review in a timely manner and we should transfer his case to the trial court.

Under extraordinary circumstances an untimely appeal may be heard *nunc pro tunc*. *Criss v. Wise*, 781 A.2d 1156, 1159 (Pa. 2001). The exception for allowance of an appeal *nunc pro tunc* in non-negligent circumstances applies where unforeseeable and unavoidable events precluded a petitioner from filing in a timely manner. *Id.* at 1160. A breakdown in a court’s operating system may also warrant *nunc pro tunc* relief. *Borough of Duncansville v. Beard*, 919 A.2d 327, 331 (Pa. Cmwlth. 2007). However, Petitioner has not provided facts showing his filing issues were non-negligent or resulted from a technical problem with the filing system. The emails merely establish that Petitioner encountered a problem PACFiling the Petition for Review, seemingly compounded the problem by addressing his concerns

³ We note that 30 days from August 5, 2022, was September 4, 2022, a Sunday. The following Monday was Labor Day, a national holiday. Thus, Appellant’s appeal deadline was Tuesday, September 6, 2022.

to “Help Desk Common Pleas,” when he was attempting to file a Petition for Review to this Court, and then received an email from the “PACMS Help Desk” that guided him through the filing process, but did not indicate that there had been any problem with the filing system itself. As such, Petitioner has not established entitlement to *nunc pro tunc* relief and the Motion for Reconsideration is denied.