

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION - LAW

COMMONWEALTH OF PENNSYLVANIA, :
 :
 Appellee :
 :
 v. : No. CR-238-2021
 :
 DANIEL HOLLAN, :
 :
 Appellant :
 :
 Robert S. Frycklund, Esquire Counsel for Appellee
 Assistant District Attorney
 Joseph V. Sebelin, Jr., Esquire Counsel for Appellant

MEMORANDUM OPINION

Serfass, J. - November 1, 2022

Daniel Hollan (hereinafter "the Appellant") appeals from this Court's Order of September 1, 2022, pursuant to which he was sentenced to a period of incarceration of not less than twelve (12) months less one day nor more than twenty-four (24) months less one day. We file the following Memorandum Opinion in accordance with Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be dismissed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

Appellant was charged with Intentional Possession of a Controlled Substance by Person not Registered (35 P.S. §780-113 §§A16); Use/Possession of Drug Paraphernalia (35 P.S. §780-113 §§A32); Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver (35 P.S. §780-113 §§A30); Driver's License Suspended/Revoked (75 Pa.C.S.A. §1543 §§B1i); DUI: General Impairment

(75 Pa.C.S.A. §3802 §§A1); Reckless Driving (75 Pa.C.S.A. §3736 §§A); and Careless Driving (75 Pa.C.S.A. §3714 §§A) with regard to an incident that occurred on February 12, 2021 in Lehigh, Pennsylvania. On September 1, 2022, Appellant entered a guilty plea to Intentional Possession of a Controlled Substance by Person not Registered (35 P.S. §780-113 §§A16), Driver's License Suspended/Revoked (75 Pa.C.S.A. §1543 §§B1i), and DUI: General Impairment (75 Pa.C.S.A. §3802 §§A1). The remaining charges were dismissed. That same day, Appellant was sentenced to an aggregate period of incarceration in the Carbon County Correctional Facility of not less than twelve (12) months less one day nor more than twenty-four (24) months less one day on the possession and license suspension charges and six (6) months consecutive probation on the D.U.I. offense.

On September 30, 2022, Appellant filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's September 1, 2022 sentencing order. Simultaneous with the appeal, Joseph V. Sebelin, Jr., Esquire, Appellant's counsel, filed a "Motion to Withdraw as Counsel" as well as "Defendant's 1925(b) Statement of Matters Complained of on Appeal" indicating that he was unaware of the basis for appeal.¹

Pursuant to Pa.R.A.P. 1925(b), this Court entered an Order on October 5, 2022 directing Appellant to file of record and serve upon

¹ On October 7, 2022, we granted a rule upon Appellant to show cause why Attorney Sebelin's appearance should not be withdrawn. To date, no response has been filed.

the undersigned, within twenty-one (21) days, a concise statement of matters complained of on appeal. To date, Appellant has failed to comply with the Court's 1925(b) Order.

DISCUSSION

As to the basis for the instant appeal, we submit that no issues have been preserved for appellate review in this matter. Appellant has failed to comply with our October 5, 2022 Order directing him to file a concise statement of matters complained of on appeal within twenty-one (21) days. Specifically, our 1925(b) Order was entered on the docket on October 6, 2022. Therefore, Appellant had until October 27, 2022 to timely file a concise statement. To date, no such statement has been filed.

It is the well-settled law of this Commonwealth that "[i]n order to preserve their claims for appellate review, [a]ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925. Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived." Commonwealth v. Hill, 16 A.3d 484, 494 (Pa. 2011) (*citing* Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998)); Pa.R.A.P. 1925(b)(4)); Hess v. Fox Rothchild, LLP, 925 A.2d 798, 803 (Pa.Super. 2007); Commonwealth v. Real Property and Improvements Known as 2304 Cecil B. Moore Ave. Philadelphia, PA 19121-2927, No. 1635 C.D. 2011, 2012 WL 8685547, at *2-3 (Pa.Cmwlth. Nov. 14, 2012) (failure to comply with trial court's order to file concise statement of matters complained of on appeal will result in waiver of all issues).

In the event that Appellant files a concise statement of matters complained of on appeal after the filing of our Memorandum Opinion, we submit that such issues would be waived. The plain language of Pa.R.A.P. 1925 provides that "any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived." Pa.R.A.P. 1925(b)(3)(iv). It is well-settled that a failure to timely file a concise statement of errors complained of on appeal results in a waiver of all issues raised on appeal. *See Estate of Cherry*, 111 A.3d 1204 (Pa.Super. 2015); *see also Commonwealth v. Fransen*, 42 A.3d 1100 (Pa.Super. 2012) (wherein a defendant filed his concise statement three (3) days late and the Superior Court concluded that he had waived all claims by failing to file a 1925(b) statement).

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant matter be dismissed as no issues have been properly preserved for appellate review.

BY THE COURT:


Steven R. Serfass, J.