

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

COMMONWEALTH of PENNSYLVANIA, :

Appellee :

v. :

MATTHEW SCHUTTER, :

Appellant :

Robert Scott Frycklund, Esquire

No. SA-49-2020

Counsel for Appellee

Matthew Schutter

Pro Se

MEMORANDUM OPINION

Serfass, J.- April 19, 2021

Matthew Schutter (hereinafter "Appellant") appeals from this Court's Order of February 23, 2021, pursuant to which he was convicted of two (2) summary offenses involving violations of Carbon County Ordinance No. 1993-02. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the instant appeal be dismissed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

Appellant was charged with violating the Rules and Regulations of the Carbon County Parks and Recreation Department as set forth in Carbon County Ordinance No. 1993-02. Specifically, Appellant was cited for violations of Section 20(A) (Peddling and Soliciting), Section 23(A) (Park Rules/Parking), and Section 27(A)

FILED IN OFFICE  
2021 APR 19 A 8:55  
TYRA L. DONI  
CARBON COUNTY  
CLERK OF COURTS

(Personal Conduct) of the aforementioned ordinance with regard to an incident which occurred on July 15, 2020 at Mauch Chunk Lake Park. Appellant was convicted of all three (3) summary offenses on October 28, 2020 after failing to appear for an evidentiary hearing before the Honorable Joseph D. Homanko, Sr. of Carbon County Magisterial District Court 56-3-04.

Thereafter, Appellant filed a "Notice of Appeal from Summary Criminal Conviction" in the Court of Common Pleas of Carbon County. A trial de novo was held before the undersigned on February 23, 2021. At the conclusion of the de novo trial, Appellant was acquitted of the Peddling and Soliciting charge and convicted of the two remaining offenses. He was immediately sentenced to pay the costs of prosecution and separate fines of three hundred dollars (\$300.00) each on the Park Rules/Parking and Personal Conduct offenses. Appellant filed a Notice of Appeal to the Superior Court of Pennsylvania on March 22, 2021.

Pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), on March 23, 2021, this Court entered an Order directing the Appellant to file of record and serve upon 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. Instead, Appellant filed correspondence on April 9, 2021 stating that "[he] will be filing briefs in a timely manor [sic] according to Judge Serfass's orders."

## DISCUSSION

As a preliminary matter, we recognize that Appellant has filed his appeal in this case to the Superior Court of Pennsylvania. However, we believe that jurisdiction in this matter lies with the Commonwealth Court of Pennsylvania pursuant to 42 Pa. C.S.A. § 762(a).

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 March 23, 2021 Order directing him to file a concise statement of matters complained of on appeal within twenty-one (21) days. Specifically, our Pa.R.A.P. 1925(b) Order was entered on the docket on March 23, 2021. Therefore, Appellant had until April 13, 2021 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); see also Pa.R.A.P. 1925(b)(4)). See also Hess v. Fox Rothchild, L.P., 925 A.2d 798 (Pa. Super. 2007); Commonwealth v. Real Property and Improvements Known as 2304 Cecil B. Moore Avenue, Philadelphia,

PA 19121-2927, WL 8685547, \*2-3 (Pa. Cmwlth. 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 any 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, 1104 (Pa. Super. 2012) wherein 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:

A handwritten signature in black ink, appearing to read 'S.R. Serfass', written over a horizontal line.

Steven R. Serfass, J.