

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

COMMONWEALTH OF PENNSYLVANIA, :
:
Appellee :
:
v. : No. SA-26-2021
:
MATTHEW CHARLES SCHUTTER, :
:
Appellant :

Philip McCarthy, Esquire Counsel for Appellee
Deputy Attorney General

Matthew Charles Schutter Pro Se

MEMORANDUM OPINION

Serfass, J.- October 26, 2021

Matthew Charles Schutter (hereinafter "Appellant") appeals from this Court's Order of September 30, 2021, pursuant to which he was convicted of the summary offense of harassment. We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a) and recommend that the instant appeal be dismissed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

Appellant was charged with Disorderly Conduct (18 Pa.C.S.A. §5503 §§A3) and Harassment (18 Pa.C.S.A. §2709 §§A3) with regard to an incident which occurred on February 11, 2021 at the Carbon County Courthouse in Jim Thorpe, Pennsylvania. Appellant was convicted of both summary offenses on June 17, 2021 after failing

to appear for an evidentiary hearing before the Honorable Casimir T. Kosciolk of Carbon County Magisterial District Court 56-3-03.

Thereafter, Appellant filed a Notice of Appeal in the Court of Common Pleas of Carbon County. A trial *de novo* was held before the undersigned on September 30, 2021. At the conclusion of the *de novo* trial, Appellant was acquitted of the disorderly conduct charge and convicted of the harassment offense. He was immediately sentenced to pay the costs of prosecution and a separate fine of three hundred dollars (\$300.00). Appellant then filed a Notice of Appeal to the Superior Court of Pennsylvania on September 30, 2021.

Pursuant to Pa.R.A.P. 1925(b), this Court entered an Order on October 1, 2021 directing 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.

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 1, 2021 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 1, 2021. Therefore, Appellant had until October 22, 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, LLP, 925 A.2d 798 (Pa.Super. 2007); Commonwealth v. Real Property and Improvements Known as 2304 Cecil B. Moore Ave. Philadelphia, PA 19121-2927, 2012 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 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 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 on 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.