

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

PATRICIA E. GADALETA

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3501 EDA 2012

Appeal from the Judgment of Sentence November 30, 2012

In the Court of Common Pleas of Carbon County

Criminal Division at No(s): CP-13-CR-0000285-2011

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.*

JUDGMENT ORDER BY MUNDY, J.:

FILED NOVEMBER 06, 2013

Appellant, Patricia E. Gadaleta, appeals from the November 30, 2012 aggregate judgment of sentence of one and one-half to five years' imprisonment, entered after she was found guilty of one count of identity theft and two counts of forgery.¹ After careful review, we quash this appeal and remand for further proceedings.

On May 11, 2012, a jury found Appellant guilty of the aforementioned offenses. On November 30, 2012, the trial court imposed a sentence of one to four years' imprisonment for the identity theft charge, and six to 12 months' imprisonment for each forgery charge. The forgery counts were to

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 4120(a), 4101(a)(2), and 4101(a)(3), respectively.

run concurrently to each other, but consecutively to the identity theft count. The entire sentence in this case was to run consecutively to the sentence imposed at docket number CP-13-CR-975-2011, currently on appeal in this Court at 3502 EDA 2012. On December 10, 2012, Appellant filed a timely post-sentence motion. The trial court entered an order on December 11, 2012, scheduling a hearing on said post-sentence motion for February 22, 2013. Before said motion was disposed of, Appellant filed a notice of appeal on December 14, 2012.² On January 11, 2013, the trial court entered an order canceling the hearing on Appellant's post-sentence motion.

In its Rule 1925(a) opinion, the trial court requests this Court quash this appeal and remand the case so it may consider Appellant's timely post-sentence motion. Trial Court Opinion, 2/27/13, at 5. In ***Commonwealth v. Borrero***, 692 A.2d 158 (Pa. Super. 1997), this Court held, "[i]f post-sentencing motions are timely filed ... the judgment of sentence does not become final ... until the trial court disposes of the motion, or the motion is denied by operation of law." ***Id.*** at 159. In such circumstances, any notice of appeal is premature and subject to quashal. ***Id.*** at 160, 161; ***see also*** Pa.R.Crim.P. 720 *cmt.* (stating, "[n]o direct appeal may be taken by a defendant while his or her post-sentence motion is pending[']").

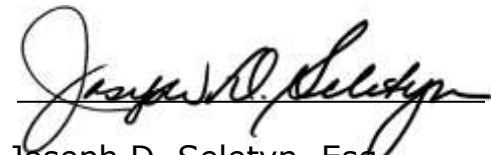
² Appellant and the trial court have complied with Pa.R.A.P. 1925.

In this case, Appellant timely filed a post-sentence motion within ten days of the imposition of sentence as required by Rule 720. **See id.** at 720(A)(1). As there was no order disposing of his post-sentence motion, nor any filing from Appellant withdrawing said motion, we agree with the trial court that Appellant's post-sentence motion is still pending.

Based on the foregoing, consistent with this Court's decision in **Borerro** and Rule 720, we conclude that Appellant's December 14, 2012 notice of appeal was premature. Nevertheless, the notice of appeal divested the trial court of jurisdiction. **See** Pa.R.A.P. 1701(a) (stating, "[a]fter an appeal ... the trial court ... may no longer proceed further in the matter[]"). Therefore, on remand the trial court shall consider the issues raised in Appellant's December 10, 2012 post-sentence motion. Accordingly, we quash this appeal and remand for further proceedings, consistent with this judgment order.

Appeal quashed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/6/2013