

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

COMMONWEALTH OF PENNSYLVANIA :
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 vs. : No. 483 CR 2011
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 BRADLEY R. JOHNSON, :
 Defendant :
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COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. : No. 484 CR 2011
 :
 BRADLEY R. JOHNSON, :
 Defendant :
 :

Cynthia Dyrda-Hatton, Esquire	Counsel for Commonwealth
	Assistant District Attorney
Bradley Ray Johnson	Pro Se

MEMORANDUM OPINION

Matika, J. - March , 2016

The Appellant, Bradley R. Johnson, (hereinafter "Johnson") has appealed from the Order of Court dated December 7, 2015 on the basis that this Court erred in denying his "Motion to Diss [sic] Based Upon Excessive Delay & Prejudicial & Untimely Sentencing Between The Entry Of A Guilty Plea".

The pertinent facts to this appeal began when Johnson pled guilty to a number of charges on September 9, 2013, including Indecent Assault, Corruption of Minors, and Open Lewdness. As a result of his plea to these charges, this Court ordered Johnson to

submit to an assessment by the Commonwealth Sexual Offender Assessment Board (hereinafter "SOAB"). While waiting for the SOAB's assessment, Johnson's sentencing was continued several times by his attorney at the time, George T. Dydynsky, Esquire. Once the report was received from the SOAB, Defendant was sentenced on January 14, 2014.

On May 15, 2015, Johnson filed the underlying motion for dismissal in this case. On August 20, 2015, this Court conducted a hearing on that motion and thereafter issued the December 7, 2015 Order which is the subject of this appeal.

On January 13, 2016, Johnson filed the instant appeal. Thereafter, on January 14, 2016, this Court, pursuant to Pennsylvania Rule of Appellate Procedure 1925, directed Johnson to file a concise statement of matters complained of on appeal.

In accordance with Pennsylvania Rule of Appellate Procedure 1925(b):

The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the Statement. Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed.

Pa.R.A.P. 1925(b)(2). "Appellant shall file of record the Statement and concurrently shall serve the judge[,] with service upon the judge to "be in person or by mail as provided in Pa.R.A.P. 121(a)". Pa.R.A.P. 1925(b)(1).

An examination of the docket entries in this matter establishes that this Court directed Johnson to file a concise statement which was dated and docketed on January 14, 2016. Additionally, the docket entries verify that said order was mailed to Johnson by the Carbon County Clerk of Courts by way of first class mail on January 14, 2016. The consequence of such was that Johnson had until February 4, 2016, that being the twenty-first day following the issuing, docketing, and mailing of this Court's Order directing Johnson to file a concise statement, and to serve upon the Court such statement of matters complained of. Johnson failed to file this statement by February 4, 2016.

As the Supreme Court of this Commonwealth has ruled, in order for an appellant to preserve his or her claims for appellate review, appellant must comply with a trial court's order requiring appellant to file a statement of matters complained of on appeal in a timely manner. *Commonwealth v. Castillo*, 888 A.2d 775, 780 (Pa. 2005). Any issues not raised in an appellant's concise statement will be deemed waived. See *Hess v. Fox Rothschild, LLP.*, 925 A.2d 798, 803 (Pa. Super. Ct. 2007). "Since the Rules of Appellate Procedure apply to criminal and civil cases alike, the principles enunciated in criminal cases construing those rules are equally applicable in civil cases." *Kanter v. Epstein*, 866 A.2d 394, 400 n.6 (Pa. Super. Ct. 2004), *appeal denied*, 880 A.2d 1239 (Pa. 2005).

However, there are caveats to a finding of a waiver as delineated in *Forest Highlands Community Association v. Hammer*, 879 A.2d 223 (Pa. Super. Ct. 2005). To determine that appellant has waived such issues, the *Hammer* Court ruled:

First, the trial court must issue a 1925(b) order directing an Appellant to file a response within [twenty-one] days of the order. Second, the 1925(b) order must be filed with the prothonotary. Third, the prothonotary must docket the Rule 1925(b) order and record in the docket the date it was made. Fourth, the prothonotary shall give written notice of the entry of the order to each party's attorney of record, and it shall be recorded in the docket the giving of notice. See Pa.R.C.P. 236. If any of the procedural steps set forth above are not complied with, Appellant's failure to act in accordance with Rule 1925(b) will not result in a waiver of the issues sought to be reviewed on appeal.

Id. at 227. "Because *Forest Highlands* was a civil case, it cited Pa. R.C.P. 236 in support of the requirement that notice of the order compelled the filing of a Pa.R.A.P.1925(b) statement be docketed. The Rules of Criminal Procedure also contain provisions governing a court's filing, service, and docketing of orders in criminal proceedings. Pa.R.Crim.P. 114." *Commonwealth v. Kovalcik*, 2014 WL 10790069, at *3 n.7 (Pa. Super. Ct. 2014).

In the case at bar, this Court issued an Order on January 14, 2016 directing Johnson to file a concise statement within twenty-one days from the date the Clerk of Courts docketed said order. The order was filed, docketed, and made of record in the dockets by the Carbon County Clerk of Courts on January 14, 2016. The docket entries make evident that the Clerk of Courts provided

notice of the Order to Johnson, via first class mail, on January 14, 2016. In view of the fact that Johnson has failed to timely file a concise statement as prescribed by this Court's order of January 14, 2016, Johnson thus has not complied with said order. Consequently, this Court believes Johnson has waived his right to appellate review. Accordingly, this Court respectfully recommends that the Honorable Superior Court quash Johnson's appeal.

Alternatively, in the event that Johnson does file his, albeit untimely, 1925(b) Statement, and the Superior Court does choose to allow the filing, this Court still believes affirmance is required. As this Court is without a Matters Complained of on Appeal Statement, it would otherwise be difficult to predict what his issue or issues may be. This Court still believes, since it was the sole issue raised before us, i.e. "delay in sentencing", that this would have been the only issue that Johnson could raise on appeal. Accordingly, this Court has attached its Order of Court of December 7, 2015 to provide the Superior Court with the rationale used in denying Defendant's Original Motion to Dismiss.

For the reasons stated in this Opinion, this Court respectfully requests that Johnson's Appeal can be quashed or alternatively, that our decision be affirmed.

BY THE COURT:

Joseph J. Matika, J.