

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

COMMONWEALTH OF PENNSYLVANIA, :  
: vs. : No. CR-763-2023  
: No. CR-495-2022  
SCOTT N. HAYDT, :  
: Defendant :  
:

Kara Beck, Esquire  
Assistant District Attorney  
George Dydynsky, Esquire

Michael Patrick Kelly, Esquire  
Scott Haydt

Counsel for Commonwealth

Counsel of Record (CR-495-2022 and  
CR-763-2023)

Counsel of Record (CR-763-2023)  
Pro Se

MEMORANDUM OPINION

Nanovic, P.J. – November 25, 2024

Defendant, Scott Haydt's, failure to file a court ordered 1925(b) Concise  
Statement results in the waiver of any issues he may have raised on appeal.

PROCEDURAL AND FACTUAL BACKGROUND

On September 17, 2024, Defendant was sentenced to a period of imprisonment of not less than forty-eight hours nor more than six months for a first offense driving under the influence charge in the case docketed to No. 495-CR-2022 and a concurrent period of imprisonment of no less than ninety days nor more than five years for a second offense driving under the influence charge, as well as a \$300.00 fine for a summary hit and run offense, in the case docketed to No. 763-CR-2023. In both cases, Defendant

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was represented by Attorney Paul Levy of the Carbon County Public Defender's Office at the time of sentencing. Defendant's guilty pleas in each case were entered on April 30, 2024.

On September 25, 2024, Attorney Michael P. Kelly, entered his appearance for Defendant as private counsel in the case docketed to No. 763-CR-2023. This same date, he filed a Motion for Reconsideration of Sentence. On September 26, 2024, Attorney George Dydynsky, Assistant Public Defender, filed a Motion to Reconsider Sentence to both cases, that is, Docket Nos. 495-CR-2022 and 763-CR-2023. Both Motions for Reconsideration were denied by Orders dated October 4, 2024, in which Defendant was advised of his right to appeal the Orders denying his post-sentence motions.

Prior to the filing of Defendant's post-sentence motions, Defendant, *pro se*, purported to file a notice of appeal on September 24, 2024, which document, at the bottom, listed both docket numbers. Defendant's handwritten "Notice of Appeal" contains no caption of either case and does not conform to the rule mandating the form for a notice of appeal set forth in Pa.R.A.P. 904. Critically, the document filed by Defendant does not identify the order appealed from or the date on which the order appealed from was entered. The document begins by stating Defendant wants to file an appeal and concludes with Defendant asking the Court to "grant bond and this appeal" for the reasons stated therein, which, if anything, appear to sound as a claim for ineffectiveness of counsel, rather than some defect in the entry of his plea or the sentence imposed by the court, an issue not typically raised in a direct appeal. Additionally, at the time Defendant filed his *pro se* "Notice of Appeal," Defendant was represented by counsel of record, namely the Public Defender's Office, and, as of

September 25, 2024, in the case docketed to No. 763-2023, by Attorney Kelly. A copy of Defendant's *pro se* "Notice of Appeal" was not served on the court by Defendant, counsel, or the Clerk of Courts Office, and the court was unaware of any appeal having been filed by Defendant prior to the filing of Defendant's counseled Motions for Reconsideration or our denial Orders dated October 4, 2024.

On October 30, 2024, the undersigned received notice of Defendant's appeal in both cases from the Superior Court. This is the first time the court received any notice of any appeal filed by Defendant in either case. On October 31, 2024, in accordance with Pa.R.A.P. 1925(b), the court directed Defendant and counsel on his behalf to file a concise statement of errors complained of on appeal within twenty-one days of the entry of our Order in each case. As of this date, Defendant has failed to comply with this Order.

### DISCUSSION

We submit that no issues have been preserved for appellate review in this matter. Defendant has failed to comply with the October 31, 2024, Order directing him to file a concise statement of matters complained of on appeal within twenty-one days. Our order was entered on October 31, 2024, therefore, Defendant had until Thursday, November 21, 2024, to timely file a concise statement. No such statement having been file, all issues Defendant may have raised on appeal are waived. Commonwealth v. Burton, 973 A.2d 428, 432 (Pa.Super. 2009) (*en banc*).

It is well settled law that "in 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 issue not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived.” Commonwealth v. Castillo, 888 A.2d 775, 780 (Pa. 2005) (quoting Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998)). 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). In interpreting Pa.R.A.P. 1925 courts have adopted a bright line rule that any issues not raised in a Pa. 1925(b) statement will be deemed waived. Commonwealth v. Kearney, 92 A.3d 51, 59 (Pa.Super 2014), appeal denied, 101 A.3d 102 (Pa. 2014) (citing Castillo, 888 A.2d at 780).<sup>1</sup> Based upon the failure to file a concise statement, Defendant has not preserved any issues for appellate review and the appeal should be dismissed.<sup>2</sup>

### CONCLUSION

Defendant filed a defective notice of appeal that does not identify the order appealed from or the date on which the order appealed from was entered. When the court directed Defendant to file a concise statement of matters complained of on appeal, he failed to do. Based on upon the foregoing, we respectfully recommend that the

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<sup>1</sup> Kearney also acknowledges Rule 1925 was revised to provide, in extraordinary circumstance, the judge to allow for the filing of a statement or amended or supplemental statement *nunc pro tunc*. Kearney, 92 A.3d at 59; Pa.R.A.P. 1925(b)(2). However, at this time, no late or amended concise statement has been filed.

<sup>2</sup> Outside of Defendant's failure to file a concise statement or even identify the order he was appealing from in his notice of appeal, Defendant filed a *pro se* notice despite being represented by counsel. There is no constitutional right to hybrid representation on appeal; however, we do not find it necessary to analyze whether this fact in and of itself would result in the dismissal or quashing of the appeal given whatever issues Defendant would have raised have been waived due to his failure to file a concise statement. See Commonwealth v. Ellis, 626 A.2d 1137, 1139 (Pa. 1993) (holding that there is no constitutional requirement to permit hybrid representation on appeal).

instant matter be dismissed as no issues have been properly preserved for appellate review.<sup>3</sup>

BY THE COURT:



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P.J.

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<sup>3</sup> As noted in our October 31, 2024, Order directing Defendant to file a concise statement, even as of now, we do not know what issues Defendant intends to raise in either case; whether the issues, whatever they may be, are proper issues in a direct appeal; whether the *pro se* statement filed by Defendant on September 25, 2024, in fact qualifies as a notice of appeal in either case, or in which case; and whether such statement was properly considered – if it was so considered – by the Clerk of Courts Office as a viable “*pro se*” independent notice of appeal given Defendant’s representation by counsel at the time of such filing. See Pa.R.Crim.P. 576(a)(4) (directing the clerk to file and docket a document filed *pro se* by a defendant who is represented by counsel, but to take no further action other than to place the document in the criminal case file and forward copies of the time stamped document to defendant’s counsel and the attorney for the Commonwealth within ten days of receipt).