

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. : NO. 009 SA 2011
 :
 GERALD F. STRUBINGER, :
 Defendant :
 :
 William E. McDonald, Esquire Counsel for Commonwealth
 Assistant District Attorney
 :
 Gerald F. Strubinger Pro se
 :
 Nanovic, P.J. - December 23, 2011

MEMORANDUM OPINION

The instant matter involves the appeal by the Defendant, Gerald F. Strubinger, from two orders of the Honorable Scott W. Naus, each dated June 20, 2011, finding the Defendant guilty of the summary offenses of stop signs and yield signs (75 Pa.C.S.A. §3323(b)) and disorderly conduct (18 Pa.C.S.A. §5503(a)(4)). Following the initial appeal of the Defendant, the Superior Court remanded the record to this Court to determine whether the Defendant was properly served with notice of our Pa.R.A.P. 1925(b) order. If not, the remand order provided that we direct the Defendant to file and serve a statement in accordance with Pa.R.A.P. 1925(b) and that we comply with Pa.R.A.P. 1925(a) upon the filing and service of Defendant's Rule 1925(b) statement.

Following a hearing held on November 10, 2011, we determined that although notice of our Pa.R.A.P. 1925(b) order was properly addressed to the Defendant and mailed to him by first class mail, the notice was not received. Accordingly, by order dated November 10, 2011, we provided Defendant with an additional opportunity to file a Concise Statement of the Matters Complained of on Appeal and directed that this be done within twenty-one days from the entry of the order. Defendant has complied with this order by filing his Concise Statement on November 28, 2011.

Consistent with the Superior Court's remand order we offer the following in response to the issues raised by Defendant in his Concise Statement. Preliminarily, we note that the undersigned was not the judge who entered the order giving rise to the notice of appeal. Instead, this matter was heard and decided by the Honorable Scott W. Naus, a senior judge specially presiding, who is not available to address the appeal.

As we understand Defendant's Concise Statement, two issues are raised: (1) that Defendant was entitled to a jury trial on his summary appeal and that he was denied this right by Judge Naus; and (2) that Judge Naus was not neutral and objective in evaluating the evidence and making a decision. The first issue is a question of law which we can dispose of summarily: there is no right to a jury trial under either the state or federal system for

summary offenses where there is no possibility of imprisonment for a period greater than six months. Commonwealth v. Mayberry, 327 A.2d 86 (Pa. 1974); Baldwin v. New York, 399 U.S. 66, 69 (1970). Under the Vehicle Code, the maximum penalty to which Defendant is subject for violation of Section 3323, the summary offense of stop signs and yield signs, is a fine of \$25.00. 75 Pa.C.S.A. §6502(a). Under the Crimes Codes, the maximum penalty to which Defendant is subject for violation of Section 5503, the summary offense of disorderly conduct, is a period of imprisonment not to exceed ninety days and a fine not to exceed \$300.00. 18 Pa.C.S.A. §§ 1101, 1105.

As to the second issue raised by Defendant in his Concise Statement, whether a judge should recuse himself from hearing any specific matter is primarily within the province of the sitting judge. Commonwealth v. White, 910 A.2d 648, 657 (Pa. 2006); see also Code of Judicial Conduct, Canon 3(C) (disqualification). The standard for recusal was recently stated by the Pennsylvania Supreme Court as follows:

It is the burden of the party requesting recusal to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially. As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged. In considering a recusal request, the jurist must first make a conscientious determination of his or her ability

to assess the case in an impartial manner. . . . The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. *This is a personal and unreviewable decision that only the jurist can make.* Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overturned on appeal but for an abuse of discretion.

White, 910 A.2d at 657 (emphasis added). We have no reason on the record before us to question Judge Naus' impartiality. Further, our review of the record reveals that the evidence presented was more than sufficient to sustain Judge Naus' findings of guilty on the two offenses Defendant has appealed.

In accordance with the foregoing, it is respectfully requested that Defendant's appeal be denied and that Judge Naus' orders of June 20, 2011 be affirmed.

BY THE COURT:

P. J.