

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

COMMONWEALTH OF PENNSYLVANIA, :
:
vs. :
: No. SA 009-2011
GERALD STRUBINGER :
Defendant :

William E. McDonald, Esquire Counsel for the Commonwealth
Assistant District Attorney

Gerald Strubinger Pro Se

MEMORANDUM OPINION

Nanovic, P.J. - August 30, 2011

Defendant has filed one appeal to the Pennsylvania Superior Court from two orders dated June 20, 2011, one finding the Defendant guilty of disorderly conduct and the other guilty of a stop sign violation.¹ The Orders imposed fines and the costs of prosecution upon Defendant. The fines were \$300.00 for the disorderly conduct violation and \$25.00 for violating duties at a stop sign. The separate orders are attached to Defendant's Notice of Appeal.

This matter was heard by the Honorable Scott W. Naus on summary appeal from Magisterial District Judge Joseph D. Homanko's finding that the Defendant was guilty of these

¹ 18 Pa.C.S. § 5503 and 75 Pa.C.S. § 3323.

offenses. Because Judge Naus who was serving as a Senior Judge at the time of hearing on the *de novo* appeal is not available to address Defendant's appeal, the undersigned has assumed responsibility for doing so. Defendant has at all times represented himself *pro se* in these proceedings.

Defendant filed his Notice of Appeal on July 20, 2011. On July 21, 2011, an Order was signed which directed the Defendant to file, within twenty-one days, a Concise Statement of the matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). The Order further provided that a copy of the Concise Statement be served upon the undersigned. The 1925(b) Order was entered on July 21, 2011. A copy of this Order is attached to this opinion and is incorporated by reference.

Rule 1925(b), states the following:

(b) Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.--If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement") .

(1) *Filing and service.* --Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service Form 3817, Certificate of Mailing,

or other similar United States Postal Service form from which the date of deposit can be verified, in compliance with the requirements set forth in Pa.R.A.P. 1112 (c) . Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121 (c) .

(2) *Time for filing and service*,--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. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement nunc pro tune.

(3) *Contents of order*.--The judge's order directing the filing and service of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;

(ii) that the Statement shall be filed of record;

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

The attached Order complies fully with Pa.R.A.P. 1925

(b) (3) . The Order clearly states that the Concise Statement is due within twenty-one days of the Order's entry and that any

matters not contained within the Concise Statement will be waived.

The period of twenty-one days began with the entry of our Order on July 21, 2011, which directed the Defendant to file a Concise Statement. The twenty-first day was August 11, 2011. However, no Concise Statement has been filed by the Defendant as of the date of filing of this Memorandum Opinion. Nor has a copy been served upon the undersigned.

Since the Defendant has failed to file his Concise Statement in a timely manner, this constitutes a waiver of the issues on appeal. See Commonwealth v. West, 883 A.2d 654, 656 (Pa.Super 2005); see also Commonwealth v. Kimble, 756 A.2d 78, 79-80 (Pa.Super. 2000), *appeal denied*, 782 A.2d 543 (holding that if no Concise Statement is filed, no issues are preserved for appeal) . Upon the Defendant's failure to file a Concise Statement within the twenty-one day period following the entry of the Order, it is our belief that the Defendant has waived his right to appellate review. Accordingly, it is respectfully requested that the Superior Court dismiss the Defendant's appeal.

BY THE COURT:


P.J. 

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COMMONWEALTH OF PENNSYLVANIA

VS .

No. 009-SA-2011

GERALD F. STRUBINGER,
Defendant

William E. McDonald, Esquire
Assistant District Attorney
Gerald F. Strubinger

Counsel for the Commonwealth
Pro Se

ORDER OF COURT

AND NOW, this 21st day of July, 2011, the Court being apprised of a Notice of Appeal in the above matter from the Court's Orders entered on June 20, 2011, and being uncertain as to the basis of the appeal, GERALD F. STRUBINGER is DIRECTED, within twenty-one (21) days from the date of this Order's entry on the docket, to file of record and serve upon the undersigned, a Concise Statement of the matters complained of in the appeal to the Superior Court pursuant to Pa. Rule of Appellate Procedure 1925(b). Any issue not properly included in the Concise Statement shall be deemed waived.

BY THE COURT:



Roger N. Nanovic, P.J.

AUG 1 - 2011 |