IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 1207 C.D. 2014
	:	Submitted: November 26, 2014
Laurence Halstead,	:	
Appellant	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED: February 25, 2015**

Appellant Laurence Halstead (Halstead) appeals from an order of the Court of Common Pleas of Carbon County (trial court). The trial court, in accordance with this Court's remand in *Commonwealth v. Halstead*, 79 A.3d 1240 (Pa. Cmwlth. 2013) (*Halstead I*), held a hearing regarding the amount of fines imposed upon Halstead for violations of the Property Maintenance Ordinance (PMO) of the Borough of Weatherly (Borough). Halstead did not appear at the hearing, and the trial court proceeded to conduct a hearing and ultimately issued a new order imposing lesser penalties upon Halstead. We affirm the trial court's order.

Our order in *Halstead I* affirmed all but one PMO violation issued against Halstead. We directed the trial court on remand "to reconsider the question of whether the fines are excessive, to accept additional evidence, as warranted, and

to issue a new adjudication." *Halstead I*, 79 A.3d at 1248. The trial court's docket indicates that the trial court conducted a teleconference with counsel for the Borough and Halstead on November 22, 2013, and scheduled a hearing for January 23, 2014, for the purpose of accepting additional evidence. On January 17, 2014, Halstead's counsel filed a motion to be removed as counsel and for a continuance of the hearing scheduled for January 23, 2014. On January 21, 2014, the trial court issued a rule to show cause why the motion to be removed as counsel should not be granted. The trial court also granted the motion for a continuance, rescheduling the hearing to March 17, 2014.

Halstead never filed a response to his counsel's motion for removal, and the trial court granted the motion on February 24, 2014. On March 17, 2014, after Halstead was no longer represented by counsel, the trial court issued an order granting Halstead's request for an additional continuance for health reasons, rescheduling the hearing to April 29, 2014. In that order, the trial court indicated that it would not grant any further continuances and that Halstead should "either make appropriate travel arrangements for the hearings or be prepared to participate in these proceedings via telephone." (Certified Record Item 27.) According to the docket, the trial court sent the notice granting the request for a continuance to Halstead by first class mail, which was the same method of notice the trial court used to advise Halstead that the trial court had granted his counsel's motion for removal.

The trial court held the hearing on April 29, 2014, but Halstead did not appear. On June 9, 2014, the trial court issued an order, revising downward the penalties it had imposed in its first order. The trial court again sent notice of its order to Halstead by first class mail. On July 9, 2014, Halstead filed a notice of

appeal of the trial court's order. On the same date, Halstead filed a motion for reconsideration and for a stay of execution of the judgment, which the trial court denied on July 10, 2014. On the same date, the trial court issued an order directing Halstead to file a concise statement of errors complained of on appeal. Again, the trial court sent this order to Halstead by first class mail. The primary complaint Halstead presented in the concise statement of errors complained of on appeal was that the trial court failed to serve notice of the April 29, 2014 hearing. In asserting that the trial court failed to provide notice of the hearing, Halstead complained that he had included a fax number and an email address, and that the trial court should have sent notice of the hearing via those forms of communication.

The trial court issued an opinion under Pa. R.A.P. 1925(a), rejecting Halstead's claims of error. The trial court concluded that Halstead had failed to present reviewable issues, except for Halstead's claim that the trial court did not provide notice of the April 29, 2014 hearing.

On appeal to this Court,[1] Halstead claims that the trial court failed to serve the notice of the hearing. The Pennsylvania Rules of Criminal Procedure apply to appeals from a trial court's order involving a summary conviction. Pa. R.Crim.P. 114 provides the method for serving an order of court on a defendant:

> **Orders and Court Notices; Filing; Service; and Docket Entries**
>
> . . .
>
> (B) Service

[1] Our review of a trial court order is limited to considering whether the trial court abused its discretion or erred as a matter of law. *Commonwealth v. Spontarelli*, 791 A.2d 1254, 1255 (Pa. Cmwlth. 2002).

> . . .
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> (3) Methods of Service . . . . [S]ervice shall be: in writing by
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> . . .
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> (v) sending a copy to an unrepresented party by . . . first class mail addressed to the party's place of residence . . . or
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> (vi) sending a copy by facsimile or other electronic means if the party . . . has filed a written request for this method of service as provided in paragraph (B)(3)(c).

In order to make an effective request for electronic service of orders, Pa. R.Crim.P. 114(B)(3)(c) requires a party to file

> a written request for this method of service in this case or [to] include[e] a facsimile number or an electronic address on a prior legal paper filed in the case; or
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> . . . a written request for this method of service to be performed in all cases, specifying a facsimile number or an electronic address to which these orders and notices may be sent.

Halstead argues that because he had submitted filings upon which he wrote his fax number and his email address, the provision regarding electronic service of orders *required* the trial court to serve him by facsimile. Because Halstead was represented by counsel up through February 24, 2014, the only legal paper that he personally had filed with the trial court preceding the April 29, 2014 hearing date would have been his own March 17, 2014 *pro se* request for a continuance of the hearing scheduled for that same day, which the trial court granted that day. Thus, that communication requesting a continuance appears to be the only pertinent communication between Halstead and the trial court that could have constituted a request to have service of any trial court order made through electronic means.

Halstead's March 17, 2014 request for a continuance of the March 17, 2014 hearing indicates that Halstead faxed to the trial court medical documentation supporting his claim that he had medical reasons why he could not attend the hearing.[2] It is apparent that Halstead never made a specific request for the trial court to send orders to his fax number or email address, rather than to his home address by first class mail.

We believe that Halstead has misconstrued the meaning of Pa. R.Crim.P. 114(B)(3). As indicated in the notes that accompany this rule, the trial court's option of serving an order on a party via electronic means is based upon the party *granting consent* to such service. The notes to Pa. R.Crim.P. 114(B)(3) provide as follows:

> Paragraph (B)(3)(c) provides two methods for *consenting* to the receipt of orders and notices electronically. The first method, added to this rule in 2004, permits electronic service on a case-by-case basis with an authorization for such service required to be filed in each case. A facsimile number of an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means . . . . The authorization for service by facsimile transmission or other electronic means . . . is valid only for the duration of the case . . . .
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> The second method was added in 2010 to provide the option of entering a "blanket consent" to electronic service in all cases. It is expected that this would be utilized by those offices that work frequently in the

[2] Halstead's March 17, 2014 motion for a continuance is not included in the certified record in violation of Pa. R.A.P. 2152. Although we cannot rely upon this document, we note that Halstead made no request in this form for the trial court to serve him orders via facsimile or email. *The bottom of the page lists Halstead's full name and address, a telephone number, a fax number, and an email address.*

> criminal justice system, such as a district attorney's office.

(Emphasis added.)

We believe that this rule does not command that a trial court provide notice by electronic means anytime a litigant happens to include a fax number in a motion or correspondence. As indicated in the notes quoted above, the decision of whether a court is permitted to send notice by facsimile is dependent upon a request of a party or upon an indication that the party *consents* to such service through the inclusion of a fax number or email address on documents filed with the trial court. The rule, however, does not mandate a trial court to make service in a particular manner. As noted in the rule, the purpose of filing a request for such service is to permit the court to make service in such a manner when a party has consented to the service.[3] There is nothing in the rule, however, which *requires* a court to do so or prohibits a court from using a more traditional means of service.

Halstead further argues in his reply brief that the method of providing notice through first class mailing by the United States Postal Service amounts to a violation of his due process rights. Halstead makes this argument based upon his assertion that he never received the order in his mail deliveries. In response, the Commonwealth, citing *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959), asserts that when a rule of law provides for service by first class mail, without a requirement

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[3] The corollary rule in the Pennsylvania Rules of Civil Procedure makes this point more clear. The note that accompanies Pa. R.C.P. No. 236 provides, in pertinent part, that "Rule 236 does not prescribe a particular method of giving notice. Methods of notice properly used by the prothonotary include, but are not limited to, service via United States Mail. Subdivision (d) governs facsimile transmission and other electronic means if the prothonotary chooses to use such a method."

for proof of receipt, posting an order in the mail, as authorized, is sufficient. Thus, in this matter, where the Pennsylvania Rules of Criminal Procedure authorize service by first class mail, the trial court satisfied due process by using first-class mail. In an early decision of this Court in an unemployment compensation matter, *Banks v. Unemployment Compensation Board of Review*, 370 A.2d 1234 (Pa. Cmwlth. 1977), this Court rejected a claimant's argument that the failure of the unemployment compensation authorities to send a referee's decision to the claimant without requiring some type of proof of receipt violated the claimant's due process rights.[4] In rejecting this claim, we reasoned:

> [The claimant] contends that providing for notification by means of regular mail does not satisfy due process requirements. He contends that such means do not adequately provide that notice will be received. The sending of notice by regular mail to his last known post office address is in full compliance with the provisions enacted by the Legislature for the giving of notice in such instances. Taking into consideration the type of hearing and rights adjudicated, this is a reasonable means of providing for service of notice. When the State Legislature prescribes a reasonable method of service, it is due process as to persons resident herein and as to parties to lawsuits in our State courts. *Nixon v. Nixon*, 198 A. 154, 160 (Pa. 1938).

Banks, 370 A.2d at 1237 (footnote omitted).

Moreover, due process is a "flexible [concept] and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the

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[4] The claimant in *Banks* raised the service issue in the context of his untimely appeal of a referee's decision, claiming that he would have appealed in a timely manner if he had received the decision.

United States Supreme Court explained that courts should consider three distinct factors in considering the appropriate process to be afforded: (1) the nature of the private interest at stake; (2) the risk of erroneous deprivation as a consequence of the process used and in light of other potential alternative or additional procedural safeguards; and (3) the governmental actor's interest, including the particular function at issue and the additional burdens that alternative requirements would impose upon the governmental actor. *Mathews*, 424 U.S. at 335.

In this remanded matter, the trial court's sole task was to consider the penalties to be imposed. Even though Halstead did not appear before the trial court to present evidence in his favor, the trial court amended its order by lowering the penalties to the minimal amount permitted under the law.[5] We are not persuaded by Halstead's claims that the interests at stake below rose to a level necessary to require the trial court to take unusual steps in order to ensure that its order was received by Halstead.

Halstead also argues that the record is insufficient to support the trial court's order because there is no evidence indicating that he ever received the notice of the April 29, 2014 hearing. We disagree. In *Blast Intermediate Unit #17 v. Unemployment Compensation Board of Review*, 645 A.2d 447 (Pa. Cmwlth. 1993), this Court recognized two component presumptions, both rebuttable, that arise when a party challenges a public official's claim to have placed an order in the mail: (1) the presumption of the regularity of the acts of public officials (which is used to establish that a public official placed an item into

[5] "[T]his Court directed [Halstead] to pay fines which represented the lowest end of the monetary range set forth at section 106.5 of the [PMO]." (Trial Court Opinion at 5.)

the mail); and (2) the presumption of receipt (*i.e.*, that a properly mailed letter to the last known address of the addressee which is not returned undelivered by the postal authorities was timely received by the addressee). *See Blast*, 645 A.2d at 449. We explained that the two presumptions are applied separately and that there must be some evidence to support the first presumption before the second presumption may be applied. In other words, "the presumption of receipt is 'inapplicable' in the absence of proof that the notice was mailed. '[U]ntil there is proof that a letter was mailed, there can be no presumption that it was received.'" *Id.* (quoting *Leight v. Unemployment Comp. Bd. of Review*, 410 A.2d 1307, 1309 (Pa. Cmwlth. 1980) (alteration in original)). We further explained that

> "the mere existence of a rule requiring an act to be performed by a public official" is not sufficient "to raise a presumption that the act was in fact performed," *i.e.*, the mailing of the notice. The presumption only comes into play when there is on record "some other indication that the act in question had been performed," such as "a notation to that effect made by a local bureau official" that the letter had been deposited in the mail.

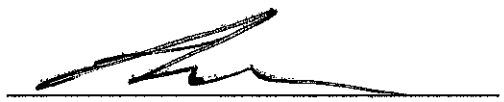
Blast, 645 A.2d at 449 (quoting *Mileski v. Unemployment Comp. Bd. of Review*, 379 A.2d 643 (Pa. Cmwlth. 1973)).

Here, the trial court's docket indicates that an employee within the court system placed the order in the mail. Halstead offered no evidence of rebuttal to this evidence. Because the Commonwealth is entitled to the evidentiary benefit of the first presumption, it is also entitled to the evidentiary benefit of the rebuttable presumption that letters that are placed in the mail establish proof of receipt where the letter is sent to the last known address of the addressee and not returned as undelivered by postal authorities. *See Blast*, 645 A.2d at 449. Halstead

offered no evidence to rebut the presumption, and, consequently, we conclude that the trial court mailed the order and Halstead received it.

Halstead's only reviewable claim relates to the fact that he included a fax number on his motion for a continuance.[6] Based upon our interpretation of Pa. R.Crim.P. 114(B)(3), we cannot agree with Halstead's claim that the trial court failed to provide him with service of the order granting his motion for a continuance.

Accordingly, we affirm the trial court's order.



P. KEVIN BROBSON, Judge

[6] We agree with the trial court's assessment that Halstead's statement of errors complained of on appeal was insufficient to preserve any other issues for review.

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ORDER

AND NOW, this 25th day of February, 2015, the order of the Court of Common Pleas of Carbon County is AFFIRMED.

P. KEVIN BROBSON, Judge