

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. 459-CR-2010
	:	
CHRISTINE M. SOSNAK,	:	
Defendant	:	
	:	
Michael S. Greek, Esquire		Counsel for the Commonwealth
Stephen P. Vlossak, Sr., Esquire		Standby Counsel for the
		Defendant
Christine M. Sosnak		Pro Se

**MEMORANDUM OPINION**

Serfass, J. - December 19, 2011

Here before the Court is the Defendant's Appeal of her convictions for one (1) count of Resisting Arrest (M2), one (1) count of Disorderly Conduct (M3) and one (1) count of Disorderly Conduct (S) following a jury trial held on September 13, 2011. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925 and further recommend that the Defendant's appeal be quashed for the reasons set forth in this Memorandum Opinion.

**FACTUAL AND PROCEDURAL BACKGROUND**

On September 13, 2011, following a jury trial in this matter, the Defendant was found guilty of one (1) count of Resisting Arrest (M2)<sup>1</sup>, one (1) count of Disorderly Conduct (M3)<sup>2</sup>

---

<sup>1</sup> 18 Pa. C.S.A. § 5104.

<sup>2</sup> 18 Pa. C.S.A. § 5503(a)(1).

and one (1) count of Disorderly Conduct (S)<sup>3</sup>. On October 24, 2011, the Defendant was sentenced to two (2) years probation on the charge of Resisting Arrest (M2), to one (1) year probation on the charge of Disorderly Conduct (M3), and to pay a fine of three hundred dollars (\$300.00) on the charge of Disorderly Conduct (S). The Defendant filed her Notice of Appeal in this case on November 17, 2011. On November 18, 2011, we entered an Order directing the Defendant to file, within twenty-one (21) days of that Order's entry on the docket, a Concise Statement of the matters complained of in the appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). The Defendant filed a *pro se* Concise Statement with the Clerk of Courts on December 14, 2011. The Concise Statement is dated December 12, 2011 and is signed by the Defendant. The Defendant did not attach a certificate of service to her Concise Statement.

### **DISCUSSION**

Pennsylvania Rule of Appellate Procedure 1925(b) provides, in relevant part, as follows:

**(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").

---

<sup>3</sup> 18 Pa. C.S.A. § 5503(a)(1).

(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 tunc*.

(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 docket entries in this case establish that the Order directing the Defendant to file a Concise Statement was docketed on November 18, 2011. The docket entries in this case also

establish that the Order was mailed to the standby counsel for the Defendant, as well as the Defendant, by first class mail by the Carbon County Clerk of Courts on November 18, 2011. The twenty-first (21<sup>st</sup>) day following the docketing of our Order directing the Defendant to file a Concise Statement was December 9, 2011. However, the Defendant filed her Concise Statement on December 14, 2011, five (5) days past the deadline imposed by our Order of November 18, 2011. The Concise Statement was also dated December 12, 2011, three (3) days past the deadline imposed by this Court. Additionally, the Defendant has not served a copy of her Concise Statement upon the undersigned to date, in direct contravention of our Order of November 18, 2011. There is also no certificate of service filed by the Defendant which indicates that she has done so.

Whenever a trial court orders an appellant to file a concise statement of matters complained of on appeal, the appellant must comply in a timely manner. Hess v. Fox Rothschild, LLP, 925 A.2d 798, 803 (Pa. Super. 2007); Commonwealth v. Castillo, 888 A.2d 775, 780 (Pa. 2005). The failure to file a 1925(b) Statement, after being directed to do so, is a waiver of all issues for the purposes of appellate review. Castillo, 888 A.2d at 780; Great Valley Sch. Dist. v. Zoning Hearing Bd. of East Whiteland Twp., 863 A.2d 74, 78 (Pa. Cmwlth. 2004). Also, the failure of a defendant to timely file a

concise statement results in a waiver of appellate review. Castillo, 888 A.2d at 780; Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998). See also Commonwealth v. Hooks, 921 A.2d 1199, 1201-1202 (Pa. Super. 2007) (noting that the defendant's statement of matters complained of on appeal, filed one week beyond the time allowed by the trial court's order directing the defendant to file a concise statement of matters complained of on appeal within fourteen days, was untimely).

Additionally, the failure of an appellant to serve the trial judge with a copy of the Concise Statement "constitutes a fatal defect which shall result in the issues being waived and the appeal being quashed." Commonwealth v. \$766.00 U.S. Currency (Commonwealth v. Agnew), 948 A.2d 912, 915 (Pa. Cmwlth. 2008). While this Court is cognizant of the Defendant's *pro se* status, this Court notes that a Defendant's "pro se status does not relieve him of the duty to follow the Rules of Appellate Procedure," Jiricko v. Geico Ins. Co., 947 A.2d 206, 213 n. 11 (Pa. Super. 2008). Therefore, even a *pro se* litigant must file a concise 1925(b) Statement. See Id.; Castillo, 888 A.2d at 780.

However, in order to find a waiver under the aforementioned circumstances, the trial court must issue a Rule 1925(b) order directing an Appellant to file a response within twenty-one (21) days of the order; the Rule 1925(b) order must be filed with the Clerk of Courts; the Clerk of Courts must docket the Rule

1925(b) order and record in the docket the date it was made; and the Clerk of Courts shall give written notice of the entry of the order to each party's attorney of record, and the giving of said notice shall be recorded in the docket. Hooks, 921 A.2d at 1202; Forest Highlands Cmty. Ass'n v. Hammer, 879 A.2d 223, 227 (Pa. Super. 2005). "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." Hooks, 921 A.2d at 1202.

In the present case, by this Court's Order of November 18, 2011, the Defendant was directed to file a Concise Statement within twenty-one (21) days of the docketing of said Order, the Order was filed with the Clerk of Courts, the Order was docketed, and the date the Order was made was recorded in the docket. The docket entries also reflect that the Clerk of Courts provided notice of the Order to the Defendant and her standby counsel by first class mail on November 18, 2011. Since the Defendant has failed to timely file a Concise Statement with the Clerk of Courts, and has also failed to serve the same upon the undersigned, she has not complied with the terms of this Court's Order of November 18, 2011. As a result, we believe that the Defendant has waived her right to appellate review. Accordingly,

we respectfully recommend that the Defendant's appeal be quashed.

**CONCLUSION**

Based upon the foregoing, we conclude that the Defendant has waived her right to appellate review of this matter. As a result, we respectfully request that the Defendant's appeal of her convictions be quashed.

**BY THE COURT:**

---

**Steven R. Serfass, J.**