

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

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. : No. SA-48-2021  
 :  
 ERIC T. WENZELBERGER, :  
 :  
 Appellant :  
 :

James R. Nanovic, Esquire Jim Thorpe Borough Solicitor  
Eric T. Wenzelberger Pro Se

MEMORANDUM OPINION

Serfass, J. - February 8, 2022

Eric T. Wenzelberger (hereinafter "Appellant") appeals from this Court's Order of December 2, 2021, pursuant to which he was sentenced to pay a series of fines in regard to his continued violations of the Jim Thorpe Borough Property Maintenance Code.<sup>1</sup> We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be dismissed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

Appellant is the owner of real property situated at 82 East Third Street, Jim Thorpe, Pennsylvania. On October 30, 2019, Appellant received seven (7) citations regarding property code violations at the 82 East Third Street property. Appellant was convicted of all

<sup>1</sup> Appellant's Notice of Appeal states that he is appealing from this Court's order entered on January 3, 2022. As no order was entered on January 3, 2022, we must conclude that Appellant is appealing the sentencing order entered on December 2, 2021. In light of Pa.R.A.P. Rule 105(a), we do not find that Appellant's mistake is a basis for dismissal of the instant appeal.

seven (7) summary offenses on August 9, 2021 following an evidentiary hearing before the Honorable Eric M. Schrantz of Carbon County Magisterial District Court 56-3-01.

On September 7, 2021, Appellant filed a "Notice of Appeal from Summary Criminal Conviction" in the Court of Common Pleas of Carbon County. Pursuant to Pa.R.Crim.P. 462(A), a trial *de novo* was held before the undersigned on December 2, 2021. At the conclusion of the *de novo* trial, Appellant was convicted of the aforesaid offenses. He was immediately sentenced to pay the costs of prosecution and seven (7) separate fines in the amount of three hundred dollars (\$300.00) each.

On December 15, 2021, Appellant filed "Post Trial Motions" seeking "a new trial" or, alternatively, "a modified sentence." Pursuant to Pa.R.Crim.P. 720(D), we note that

[t]here shall be no post-sentence motion in summary case appeals following a trial *de novo* in the court of common pleas. The imposition of sentence immediately following a determination of guilt at the conclusion of the trial *de novo* shall constitute a final order for the purposes of appeal.

Pa.R.Crim.P. 720(D).

Appellant then filed a Notice of Appeal to the Superior Court of Pennsylvania on January 3, 2022.<sup>2</sup>

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<sup>2</sup> We note that Appellant should have filed his appeal to the Commonwealth Court of Pennsylvania. See 42 Pa.C.S. §762(a)(4). The instant appeal should not be dismissed on this basis, but rather transferred to the proper court. See Pa.R.A.P. 751(a).

Pursuant to Pa.R.A.P. 1925(b), this Court entered an Order on January 11, 2022 directing Appellant to file of record and serve upon the undersigned, within twenty-one (21) days, a concise statement of matters complained of on appeal. To date, Appellant has failed to comply with the Court's 1925(b) Order.

#### DISCUSSION

As to the basis for the instant appeal, we submit that no issues have been preserved for appellate review in this matter. Appellant has failed to comply with our January 11, 2022 Order directing him to file a concise statement of matters complained of on appeal within twenty-one (21) days. Specifically, our 1925(b) Order was entered on the docket on January 11, 2022. Therefore, Appellant had until February 1, 2022 to timely file a concise statement. To date, no such statement has been filed.

It is the well-settled law of this Commonwealth that "[i]n 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 issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived." Commonwealth v. Hill, 16 A.3d 484, 494 (Pa. 2011) (citing Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998)); see also Pa.R.A.P. 1925(b)(4)). See also Hess v. Fox Rothchild, LLP, 925 A.2d 798 (Pa.Super. 2007); Commonwealth v. Real Property and Improvements Known as 2304 Cecil B. Moore Ave. Philadelphia, PA 19121-2927, 2012 WL 8685547, \*2-3 (Pa.Cmwltth. 2012) (failure to comply with trial

court's order to file concise statement of matters complained of on appeal will result in waiver of all issues).

In the event that Appellant files a concise statement of matters complained of on appeal after the filing of our Memorandum Opinion, we submit that such issues would be waived. 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). It is well-settled that a failure to timely file a concise statement of errors complained of on appeal results in a waiver of all issues raised on appeal. See Estate of Cherry, 111 A.3d 1204 (Pa.Super. 2015); see also Commonwealth v. Fransen, 42 A.3d 1100, 1104 (Pa.Super. 2012) (wherein a defendant filed his concise statement three (3) days late and the Superior Court concluded that he had waived all claims by failing to file a 1925(b) statement).

#### CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant matter be dismissed as no issues have been properly preserved for appellate review.

BY THE COURT:

  
Steven R. Serfass, J.

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