

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

| | | |
|-------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| YASIN SHARIF KENNEDY, | : | |
| | : | |
| Appellant | : | No. 1365 MDA 2013 |

Appeal from the Judgment of Sentence December 13, 2011,
Court of Common Pleas, Lackawanna County,
Criminal Division at No(s): CP-35-CR-0000304-2011,
CP-35-CR-0000306-2011 and CP-35-CR-0003242-2010

BEFORE: PANELLA, DONOHUE and MUNDY, JJ.

JUDGMENT ORDER BY DONOHUE, J.:

FILED MAY 20, 2014

Yasin Sharif Kennedy (“Kennedy”) appeals from the judgment of sentence entered on December 13, 2011. The record reveals that on January 5, 2012, Kennedy filed a timely notice of appeal. At the same time, his court-appointed counsel filed a petition to withdraw. The trial court granted this petition, and on February 15, 2012, the trial court appointed Kennedy’s current counsel, William Thompson, Esquire (“Counsel”) to represent him. On April 22, 2012, the trial court entered an order requiring Kennedy to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) (“Rule 1925(b) statement”). This order specified that the Rule 1925(b) statement must be filed of record and served upon the trial

court. Trial Court Opinion, 4/22/13.¹ Although Counsel appended a Rule 1925(b) statement to the brief filed on Kennedy's behalf, Counsel never filed a Rule 1925(b) statement of record.² The failure to file a Rule 1925(b) statement, when so ordered by the trial court, is *per se* ineffective assistance of counsel. ***Commonwealth v. Mitchell***, 986 A.2d 1241, 1244 n.4 (Pa. Super. 2009). Accordingly, we remand this case for Counsel to file the Rule 1925(b) statement appended to Kennedy's brief *nunc pro tunc*, to serve the Rule 1925(b) statement upon the trial court, and for the trial court to author an opinion in response thereto. ***See id.***; Pa.R.A.P. 1925(c)(3). Counsel shall file the Rule 1925(b) statement within five days of the date of this judgment order, and the trial court shall file its opinion within 45 days of the date upon which the Rule 1925(b) statement is filed. We further note that the record lacks all transcripts except for the very brief transcript from Kennedy's sentencing proceeding. Counsel shall ensure that all relevant transcripts, including all trial transcripts, are included in the certified record before its return to this Court.

Case remanded. Jurisdiction retained.

¹ This is in conformance with Pa.R.A.P. 1925(b)(1), which requires that the Rule 1925(b) statement be filed of record and served on the trial court.

² We question whether Counsel served the trial court with this Rule 1925(b) statement, as the trial court did not file an opinion addressing the issues Kennedy sought to raise on appeal. ***See*** Pa.R.A.P. 1925(a).