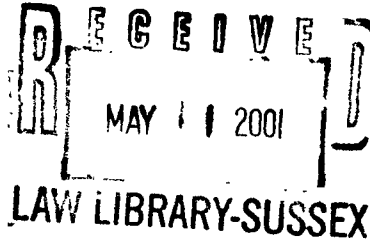


IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

CHRISTINA PAOLI, : Def. ID# 0005004552
Appellant, :
v. :
STATE OF DELAWARE, :
Appellee. :



DECISION REGARDING MOTION TO PROCEED IN FORMA PAUPERIS
AND DISMISSING APPEAL

DATE SUBMITTED: March 30, 2001

DATE DECIDED: April 16, 2001

Christina Paoli, 101 Loganberry Court, Rehoboth, DE 19971
Department of Justice, 114 E. Market Street, Georgetown, DE 19947
Court of Common Pleas, The Circle, Georgetown, DE 19947

Graves, J.

Appellant Christina Paoli ("appellant") has filed an appeal from convictions obtained in the Court of Common Pleas. She also has filed a motion to proceed in forma pauperis. I both consider her motion and review her appeal.

PROCEDURAL DISCUSSION

In 1996, legislation regarding in forma pauperis proceedings was enacted; that legislation is located in 10 Del. C., ch. 88. 10 Del. Laws, c. 411. The legislation clearly mandates what appellant must file in connection with her motion to proceed in forma pauperis: a sworn affidavit addressing her ability to pay court costs and filing fees and complete information as to her income. 10 Del. C. § 8802(b).¹ Once appellant has provided the threshold information, then the Court determines whether it should grant the motion to proceed in forma pauperis. 10 Del. C. § 8802(b).

If it does grant the motion, then the Court reviews the

¹In 10 Del. C. § 8802(b), it is provided:

(b) Before an individual shall be permitted to proceed in forma pauperis for the purposes of this chapter, the individual must submit a sworn affidavit sufficient to allow the court to determine the ability of the affiant to pay all or any portion of the court costs and fees associated with the filing of an action in that court. Such affidavit shall contain a statement that the affiant is unable to pay the costs and fees, and shall provide complete information as to the affiant's identity, the nature, source and amount of all of the affiant's income, the affiant's spouse's income, all real and personal property owned either individually or jointly, all cash or bank accounts held either individually or jointly, any dependents of the affiant and all debts and monthly expenses. The affiant shall further swear or affirm that the information in the affidavit is true and correct and made under penalty of perjury.

complaint to determine whether it is factually frivolous, malicious, or legally frivolous. 10 Del. C. § 8803(a), (b).² As explained in *Smith v. C.M.S. Medical System*, Del. Super., C.A. No. 98-02-248, Herlihy, J. (March 9, 1998) at 1:

This initial review is to determine whether service of process will issue or the complaint will be dismissed as factually frivolous, malicious or legally frivolous. All well-pled matters are accepted as true to determine whether ... [petitioner] can recover under any conceivable set of circumstances susceptible of proof under the complaint. [Footnotes omitted.]

If a complaint fails to state a claim upon which relief may be granted, then it is deemed legally frivolous. See *Gibbs v. Hewes*, Del. Super., C.A. No. 98C-03-294, Del Pesco, J. (April 16, 1998). If the Court determines the complaint is faulty because it is legally frivolous, malicious or factually frivolous, then the Court dismisses it. 10 Del. C. § 8803. If not, it allows service of process to issue. Id.

²In 10 Del. C. § 8803(a) and (b), it is provided:

(a) In all cases in which a court has granted an individual leave to proceed in forma pauperis, the court shall issue an order authorizing the filing of the complaint and establishing the amount of court costs and filing fees to be paid. The court may, in its discretion, establish a schedule for the payment of the costs and fees.

(b) Upon establishing the amount of fees and costs to be paid, the court shall review the complaint. Upon such review, the complaint shall be dismissed if the court finds the action is factually frivolous, malicious or, upon a court's finding that the action is legally frivolous and that even a pro se litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised. Any order of dismissal shall specifically identify whether the complaint was factually frivolous, legally frivolous and/or malicious. Service of process shall not issue unless and until the court grants leave following its review.

DISCUSSION REGARDING MOTION TO PROCEED IN FORMA PAUPERIS

The documentation which appellant provided shows she is indigent. Consequently, I grant the motion to proceed in forma pauperis. However, the matter does not end there as the Court is required to review the matter to determine if her appeal is legally frivolous, malicious or factually frivolous.

DISCUSSION REGARDING REVIEW OF THE APPEAL

In connection with the pending motion to proceed in forma pauperis, the Court has reviewed the file to determine if the appeal should proceed. 10 Del. C. § 8803(b).

On June 12, 2000, an information was filed in the Court of Common Pleas alleging two counts against appellant: disorderly conduct in violation of 11 Del. C. § 1301(1)(a) and criminal trespass in the second degree in violation of 11 Del. C. § 822. A trial in the matter took place on November 1, 2000. Appellant was found guilty as charged. On November 1, 2000, the Court sentenced appellant on the disorderly conduct conviction as follows. She was ordered to pay the costs. She was sentenced to thirty (30) days at Level V, with credit for time served; this thirty (30) day period of incarceration was suspended, followed by six (6) months of probation at Supervision Level III. As to the criminal trespass in the second degree conviction, appellant was sentenced to pay the costs and to fifteen (15) days at Level V, with credit for time served; the fifteen days (15) was suspended. This sentence was followed by probation at Level II for six (6) months; this

probation is to run consecutive to that imposed in the sentence for disorderly conduct. As a condition of probation, appellant was ordered to be evaluated for emotional and/or psychological problems and follow any directions for treatment or counseling made in the evaluation report.

The record evidences that this Court lacks jurisdiction to hear this appeal. In 11 Del. C. § 5301(c), it is provided:

From any order, rule, decision, judgment or sentence of the Court in a criminal action, the accused shall have the right of appeal to the Superior Court in and for the county wherein the information was filed as provided in § 28, article IV of the Constitution of the State. Such appeal to the Superior Court shall be reviewed on the record and shall not be tried de novo.

In Article IV, § 28 of Delaware's Constitution of 1897, it is provided in pertinent part as follows:

[T]here shall be an appeal to the Superior Court in all cases in which the sentence shall be imprisonment exceeding one (1) month, or a fine exceeding One Hundred Dollars (\$100.00).

In this case, the Court of Common Pleas did not sentence appellant to imprisonment for a term in excess of one month.³ Separate penalties imposed on "distinct convictions may not be aggregated so as to meet the jurisdictional threshold." *Harris v. State*, Del. Super., C.A. No. K94-05-0392AC and -0393AC, Ridgely, J. (December 2, 1994) at 3, citing to *Marker v. State*, Del. Supr., 450 A.2d 397, 399 (1982). Thus, appellant cannot appeal on the basis that a sentence imposed was greater than a month. *Ko v. State*, Del.

³A sentence of thirty (30) days imprisonment is a sentence of one month for purposes of interpreting Article IV, Section 28. See *Marker v. State*, Del. Supr., 450 A.2d 397, 399 n. 2 (1982).

Supr., 741 A.2d 1026 (1999); Shearin v. State, Del. Super., Def. ID# 9907017914, Goldstein, J. (May 12, 2000), aff'd, Del. Supr., 765 A.2d 953 (2000); Sinagra v. State, Del. Super., Cr.A. No. S94-08-0613, Graves, J. (January 30, 1995); Harris v. State, supra. The court below did not impose a fine, either. Thus, appellant has no right to appeal on the basis that a fine of greater than \$100.00 was imposed. In conclusion, appellant has no right to appeal pursuant to 11 Del. C. § 5301(c).

Because appellant cannot pursue this appeal, I dismiss it.

CONCLUSION

Upon a review of the file in this matter, I conclude that this Court lacks jurisdiction of the appeal. Consequently, the appeal is dismissed with prejudice.

IT IS SO ORDERED.