

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :  
 :  
 v. : No. 1203 C.D. 2008  
 : Submitted: October 10, 2008  
 Yan Jin, :  
 Appellant :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE McCLOSKEY

FILED: November 7, 2008

Yan Jin (Jin) appeals pro se from an order of the Court of Common Pleas of Allegheny County (trial court) dismissing his summary appeal after he failed to appear for a de novo hearing. Jin had filed a notice of appeal with the trial court following the imposition of a fine and costs by a local Magisterial District Judge with regard to a citation issued by the Borough of Etna (the Borough) for his failure to comply with a local ordinance requiring the listing of all rental units/tenants in the Borough and making such units available for inspection. We now affirm.<sup>1</sup>

We note at the outset that our review of this matter is hampered by (1) the inadequacy of the brief filed by Jin, (2) the inadequacy of the brief filed by the Borough and (3) the minimal reflection in the trial court's opinion of the underlying process in

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<sup>1</sup> Jin originally filed his appeal with our Superior Court. However, by order of the Superior Court dated May 20, 2008, the appeal was transferred to this Court.

this case. The procedural history as related in the trial court's docket and the original record can be best summarized as follows.

On April 25, 2007, the Borough's code enforcement officer cited Jin for failure to file listing of rental units/tenants and making such units available for inspection.<sup>2</sup> A hearing was scheduled and held with respect to this citation on August 21, 2007, before the local Magisterial District Judge. At the conclusion of the hearing, the Magisterial District Judge found that Jin had indeed violated the local ordinance and imposed a fine of \$3,000.00 and costs of \$57.50 against him.

Jin thereafter filed a notice of summary appeal with the trial court. The trial court scheduled a de novo hearing for November 27, 2007. While a copy of the order of the trial court scheduling the hearing is not included in the docket entries or the record below, Jin was obviously aware of the same as he sent a letter to the Clerk of Courts dated November 7, 2007, requesting a continuance. The record does not indicate a response to Jin's continuance request.<sup>3</sup> In addition, prior thereto, Jin had sent two separate letters to the Clerk of Courts requesting public legal assistance.<sup>4</sup> In a response letter dated October 18, 2007, the Office of the Clerk of Courts informed Jin that it does

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<sup>2</sup> Jin refers to Section 1272 of the local ordinance. However, as neither the citation issued by the code enforcement officer nor this ordinance are included in the original record, we cannot verify that this is the proper Section.

<sup>3</sup> Jin alleges in his brief to this Court that he sent a second letter, dated November 16, 2007, again requesting a continuance. However, neither this letter nor a response thereto is evident in the record. Moreover, we note that Pa. R. Crim. P. 106(A) essentially requires a party to file a motion requesting a continuance, which would thereby implicate service on the opposing party. In this case, Jin never filed a formal motion for continuance with the trial court, nor is there evidence in the record that Jin even provided the Borough with a copy of his letter requesting a continuance.

<sup>4</sup> These letters were dated September 24, 2007, and October 5, 2007.

not make decisions regarding eligibility for legal assistance, but that it was forwarding his requests to the Office of the Public Defender.

The hearing before the trial court proceeded as scheduled on November 27, 2007. Jin did not appear at this hearing. The trial court thereafter issued a form order dismissing Jin's appeal as a result of his failure to appear, in accordance with Pa. R. Crim. P. 462(D).<sup>5</sup> The trial court's order further directed Jin to pay a fine of \$3,000.00, plus costs. Jin then filed a notice of appeal with the trial court. This notice indicated that Jin was filing an appeal with our Superior Court. As noted above, the appeal was later transferred to this Court.

The trial court, by order dated January 25, 2008, directed Jin to file a concise statement of matters complained of on appeal. Jin complied with that order. On February 11, 2008, the trial court issued an opinion in support of its order. In this opinion, the trial court incorrectly identified the date of Jin's summary appeal hearing as January 25, 2008, and noted that Jin failed to appear without explanation.<sup>6</sup> Hence, the trial court indicated that it dismissed Jin's appeal pursuant to Pa. R. Crim. P. 462(D) and imposed a fine in the amount of \$3,000.00. The trial court also indicated that Jin failed to order the transcript of the proceedings necessary for post-trial consideration. Additionally, the trial court characterized Jin's concise statement of matters complained of on appeal as "rudimentary at best" and lacking any assertion of reversible error or any issue for appeal. (Trial Court Opinion at 1).

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<sup>5</sup> This Rule provides that "[i]f the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority." See also Commonwealth v. Lowe, 698 A.2d 607 (Pa. Super.), petition for allowance of appeal denied, 550 Pa. 690, 704 A.2d 1381 (1997).

<sup>6</sup> The trial court's summary appeal hearing in this matter was November 27, 2007.

In this appeal,<sup>7</sup> Jin alleges that the trial court erred by (1) not addressing or granting his pre-hearing request to reschedule the hearing; (2) not providing him with public legal assistance before the hearing date; (3) not providing him with notice of the summary appeal hearing date on January 25, 2008; and (4) delaying its response to his request for a transcript of the hearing.<sup>8</sup>

With respect to these issues, in his brief to this Court, Jin does nothing more than state the issue, providing little or no discussion of the same and citing to no legal authority for support. Thus, we are unable to conduct meaningful appellate review and we must conclude that Jin has waived these issues on appeal. See Commonwealth v. Spontarelli, 791 A.2d 1254 (Pa. Cmwlth. 2002) (where pro se party merely notes issue without providing discussion or legal analysis or citation, appellate review of the issue is not available).

We note, however, that even if these issues were not waived, Jin would not prevail. With regard to the failure of the trial court to act on his motion for continuance, we stress that a party is bound by a court order, especially an order scheduling a hearing.<sup>9</sup> A party cannot simply choose to disregard an order as a result of a court's

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<sup>7</sup> This Court's review is limited to determining whether the trial court erred as a matter of law and whether any factual findings are supported by competent evidence. Commonwealth v. Slomnicki, 773 A.2d 216 (Pa. Cmwlth. 2001). However, in this case, we note that the trial court made no factual findings, but instead simply entered a judgment of guilt based upon the judgment of the Magisterial District Judge. We are thus limited to determining whether the trial court committed an error of law.

<sup>8</sup> Jin attempts to characterize these alleged errors as violations of his right to due process.

<sup>9</sup> Moreover, we note that the decision to grant or deny a continuance is within the sound discretion of the trial court and the refusal to grant a continuance constitutes reversible error only where said refusal prejudices the moving party or constitutes a manifest abuse of that discretion. See Pa. R. Crim. P. 106; Commonwealth v. Roser, 914 A.2d 447 (Pa. Super. 2006), petition for allowance of appeal denied, 592 Pa. 788, 927 A.2d 624 (2007).

failure to act. The order of the trial court in the present case scheduling a hearing for November 27, 2007, remained intact, yet Jin still failed to appear. Furthermore, Pa. R. Crim. P. 106 provides that a court may grant a continuance upon the motion of either party. Jin cannot dispute that he failed to file a formal motion. Rather, he simply requested a continuance in a letter addressed to the Clerk of Courts. Additionally, the record lacks evidence that Jin ever provided a copy of his letter requesting a continuance to the Borough. Thus, it appears that the trial court properly proceeded with the November 27, 2007, hearing, and properly dismissed Jin's appeal in accordance with Pa. R. Crim. P. 462(D) as a result of his failure to appear.

With regard to Jin's request for public legal assistance, this might have been a valid issue he could have raised at the November 27, 2007, hearing. However, Jin failed to appear. Pa. R. Crim. P. 454(A)(2) provides for the right of counsel in situations where, "in the event of a conviction, there is a reasonable likelihood that a sentence of imprisonment or probation...." This Rule further provides that a right to counsel is available to a defendant who "is without financial resources or is otherwise unable to employ counsel...." Pa. R. Crim. P. 454(A)(2)(b).

Generally, there is no right to counsel when the only consequence of an ordinance violation is a fine and/or costs. See Commonwealth v. Smith, 868 A.2d 1253 (Pa. Super.), petition for allowance of appeal denied, 583 Pa. 682, 877 A.2d 462 (2005). However, if an ordinance imposes imprisonment as a consequence of not paying a fine, an impoverished defendant has a right to appointed counsel. Spontarelli. In his brief to this Court, Jin makes no mention of the possibility of imprisonment upon the failure to pay the imposed fine. The Magisterial District Judge order and the trial court order only direct the payment of a fine and costs, with no mention of imprisonment. Moreover, as noted above, the ordinance was not made part of the original record below. Thus, had

Jin appeared at the hearing and properly preserved this issue, it might have warranted further review, including an order directing the Borough to file a copy of the ordinance with this Court.

With regard to the failure to provide Jin with notice of a January 25, 2008, hearing, we indicated above that the reference to this date in the trial court's opinion appears to be a harmless error. The summary appeal hearing in this matter was conducted on November 27, 2007. Jin obviously had notice of said hearing as he filed at least one non-conforming request for a continuance on November 7, 2007.<sup>10</sup>

Finally, with regard to the delay in responding to Jin's request for a transcript of the November 27, 2007, hearing, we fail to see how such delay, which occurred after the hearing and the issuance of an opinion and order by the trial court, would constitute reversible error. Moreover, in his brief to this Court, Jin fails to explain how such delay prejudiced him in this matter.

Accordingly, the order of the trial court is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge

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<sup>10</sup> As noted above, Jin alleged that he made a second, non-conforming continuance request on November 16, 2007.

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Appellant	:	

**ORDER**

AND NOW, this 7<sup>th</sup> day of November, 2008, the order of the Court of Common Pleas of Allegheny County is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge