

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

|                               |   |                          |
|-------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
|                               | : | PENNSYLVANIA             |
| Appellee                      | : |                          |
|                               | : |                          |
| v.                            | : |                          |
|                               | : |                          |
| CHRISTOPHER KENNY,            | : |                          |
|                               | : |                          |
| Appellant                     | : | No. 1037 WDA 2012        |

Appeal from the Judgment of Sentence May 29, 2012,  
Court of Common Pleas, Erie County,  
Criminal Division at Nos. CP-25-CR-0001279-2010,  
CP-25-CR-0002526-2011, CP-25-CR-0002656-2011,  
and CP-25-CR-0002727-2011

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: January 24, 2013

Christopher Kenny ("Kenny") appeals from the May 29, 2012 judgment of sentence entered by the Court of Common Pleas, Erie County. After careful review, we affirm.

On February 21, 2012, Kenny pled guilty to the following: driving under the influence ("DUI")—highest rate of alcohol (75 P.S. § 3802(c)), failure to stop at a stop sign (75 P.S. § 3323(b)), accidents involving damage to attended vehicle (75 P.S. § 3743(a)), driving vehicle at a safe speed (75 P.S. § 3361), and careless driving (75 P.S. 3714(a)). Kenny also pled no contest to simple assault (18 P.S. § 2701(a)(1)) and public drunkenness (18 P.S. § 5505). In exchange for Kenny's plea, the Commonwealth *nolle prossed* all remaining charges. On April 11, 2012, the

trial court sentenced Kenny, but on April 24, 2012, the trial court granted Kenny's motion to reconsider his sentence.

On May 29, 2012, the trial court held a hearing, at which Kenny pled guilty to DUI—high rate of alcohol (75 P.S. § 3802(b)), and, in exchange, the Commonwealth *nolle prossed* his remaining charge. Following Kenny's plea, the trial court imposed a sentence for DUI-high rate of alcohol and re-sentenced Kenny on the above referenced crimes. On all counts, the trial court imposed a sentence in the aggravated range. **See** N.T., 5/29/2012, at 19-21.

Thereafter, Kenny filed a timely notice of appeal followed by a court-ordered Pa.R.A.P. 1925(b) statement. The trial court filed its Rule 1925(a) opinion on July 16, 2012.

On appeal, Kenny raises the following issue for our review: "Did the lower court violate the fundamental norms which underlie the sentencing code in sentencing [Kenny] in the aggravated range, without placing sufficient reasons on the record?" Appellant's Brief at 1.

Prior to reaching the merits of this issue, we must first determine if Kenny has properly preserved his claim for our review. Based upon our review of Kenny's Rule 1925(b) statement and the issue raised in his appellate brief, we are constrained to conclude that the issue raised in his brief has been waived. Our Supreme Court has made clear that Rule 1925(b)'s requirements are mandatory.

Our jurisprudence is clear and well-settled, and firmly establishes that: Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered; any issues not raised in a Rule 1925(b) statement will be deemed waived; the courts lack the authority to countenance deviations from the Rule's terms; the Rule's provisions are not subject to *ad hoc* exceptions or selective enforcement; appellants and their counsel are responsible for complying with the Rule's requirements; Rule 1925 violations may be raised by the appellate court *sua sponte*, and the Rule applies notwithstanding an appellee's request not to enforce it; and, if Rule 1925 is not clear as to what is required of an appellant, on-the-record actions taken by the appellant aimed at compliance may satisfy the Rule.

***Commonwealth v. Hill***, 609 Pa. 410, 427, 16 A.3d 484, 494 (2011).

In his Rule 1925(b) statement, Kenny solely alleges that “[t]he lower [c]ourt’s sentence is excessive in that [Kenny] was sentenced in the aggravated range on each count.” Kenny’s Rule 1925(b) statement, 7/13/2012, at ¶ 7. However, the issue raised in his appellate brief is significantly different; therein, Kenny asserts that the trial court erred by sentencing him in the aggravated range without placing sufficient reasons on the record. Appellant’s Brief, at 1. Kenny’s issue on appeal has nothing to do with the excessiveness of his sentence, which is central to the issue raised by Kenny in his Rule 1925(b) statement. Instead, Kenny’s issue on appeal focuses on the sufficiency of the trial court’s on-the-record reasons for imposing a sentence in the aggravated range. Appellant’s Brief at 5-8. Because Kenny has failed to preserve his issue on appeal by including it in

his court-ordered Rule 1925(b) statement, we do not reach the merits of his claim.

Judgment of sentence affirmed.

Ford Elliott, P.J.E. concurs in the result.