

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RYAN JOSEPH LYNN,	:	
	:	
Appellant	:	No. 1185 MDA 2012

Appeal from the Judgment of Sentence Entered July 19, 2010,
In the Court of Common Pleas of Lycoming County,
Criminal Division, at Nos. CP-41-CR-0000620-2008;
CP-41-CR-0000898-2010; CP-41-CR-0000899-2010.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: February 15, 2013

Appellant, Ryan Joseph Lynn, appeals *nunc pro tunc* from the judgment of sentence entered after he pled guilty to charges of unsworn falsifications, driving under suspension-DUI related, and false swearing. We affirm.

The trial court sentenced Appellant on July 19, 2010 to incarceration for an aggregate term of two to five years followed by five years of probation. Appellant did not file post-sentence motions or a direct appeal. Rather, Appellant filed a petition under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546, on June 2, 2011, seeking reinstatement of his appellate rights. Appointed counsel filed two amended petitions on August 24, 2011 and April 5, 2012. Following a PCRA

*Retired Senior Judge assigned to the Superior Court.

conference on June 12, 2012, the PCRA court reinstated Appellant's direct appeal rights. This appeal followed; both Appellant and the PCRA court complied with the requirements of Pennsylvania Rule of Appellate Procedure ("Pa.R.A.P.") 1925.

On appeal, Appellant presents a single issue for our consideration:

1. WHETHER DEFENDANT'S PLEA WAS NOT ENTERED KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY?

Appellant's Brief at 6. According to Appellant, "on the day of his plea, he was presented with a plea agreement that was different than the agreement [he] had previously negotiated, and that he was improperly coerced to accept and enter a plea under the new agreement." *Id.* at 8.¹

Upon review, we conclude that Appellant's issue is waived. "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). In order to preserve an issue related to the guilty plea, an appellant must either "object[] at the sentence colloquy or otherwise raise the issue at the sentencing hearing or through a post-sentence motion." *Commonwealth v. D'Collanfield*, 805 A.2d 1244, 1246 (Pa. Super. 2002). Where an appellant fails to challenge his guilty plea in the trial court, he may not do so on appeal. *Commonwealth v. Watson*, 835 A.2d 786, 791 (Pa. Super. 2003). Moreover, defendants who have been

¹ We note with disapproval the Commonwealth's choice to rely on the PCRA court's opinion rather than file an appellate brief. Lycoming County District Attorney's Letter, 11/13/12.

granted the right to file an appeal *nunc pro tunc* are not automatically granted an additional right to file post-sentence motions *nunc pro tunc*. ***Commonwealth v. Liston***, 602 Pa. 10, 977 A.2d 1089 (2009).

Our review of the record reveals that Appellant did not challenge his guilty plea at the sentence colloquy, at the sentencing hearing, or in post-sentence motions. Moreover, the record further indicates that Appellant filed PCRA petitions, in which he successfully pled counsel's failure to preserve his direct appeal *and* post-sentence rights, but he did not specifically request permission to file post-sentence motions *nunc pro tunc* in any of his PCRA petitions. PCRA Petition, 6/1/11, at 3; Amended Motion for Post Conviction Collateral Relief, 8/24/11, at ¶ 8; Second Amended Motion for Post Conviction Collateral Relief, 4/5/12, at ¶ 8(a). Consequently, the PCRA court did not reinstate Appellant's post-sentence rights, a prerequisite to preserving his guilty plea challenge.

Furthermore, assuming *arguendo* that Appellant's PCRA petition can be construed as requesting permission to file post-sentence motions *nunc pro tunc*, Appellant did not preserve a challenge to the PCRA court's failure to grant such relief either by filing a direct appeal of the PCRA court's order or by raising the issue in his current Pa.R.A.P. 1925(b) statement. Thus, his challenge is waived on both fronts. **See** Pa.R.A.P. 903 (**Time for Appeal**);

Commonwealth v. Lord, 553 Pa. 415, 719 A.2d 306 (1998) (holding that any issues not raised in a Rule 1925(b) statement are waived).

In sum, Appellant did not preserve his guilty plea challenge in the trial court, and, although the PCRA court reinstated Appellant's direct appeal rights, it did not authorize the filing of post-sentence motions; nor did Appellant challenge the lack of post-sentence relief. Thus, Appellant's guilty plea challenge is waived. Accordingly, we affirm the judgment of sentence. We do so without prejudice to Appellant's rights under the PCRA to challenge counsel's ineffectiveness with regard to preservation of Appellant's post-sentence rights.

Judgment of sentence affirmed.