

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
STEVEN RIGNEY,		No. 1240 EDA 2012
Appellant		

Appeal from the Order Entered February 28, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s):  
CP-51-CR-0219191-1985  
CP-51-CR-0433421-1988  
CP-51-CR-0644741-1992  
CP-51-CR-0835871-1987  
CP-51-CR-0914891-1986

BEFORE: FORD ELLIOTT, P.J.E., BENDER, J., and SHOGAN, J.

MEMORANDUM BY BENDER, J.:

Filed: January 15, 2013

Appellant, Steven Rigney, appeals *pro se* from the February 28, 2012 order denying his "Motion to Redact Charges." For the following reasons, we conclude that Appellant's issues are waived.<sup>1</sup> Thus, we affirm.

Appellant, who is currently incarcerated on unrelated cases, filed a document on January 24, 2012, entitled "Motion to Redact Charges," in which he apparently sought the "redaction" of charges filed against him in

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<sup>1</sup> The Commonwealth has not filed a brief in this case.

multiple cases from 1985 through 1992.<sup>2</sup> **See** Trial Court Opinion (T.C.O.), 6/18/12, at 1. A hearing was held on February 28, 2012, at which time the court denied Appellant's motion. Appellant filed a timely notice of appeal on March 29, 2012, and the trial court issued an order directing him to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). The court set the deadline for this filing as May 21, 2012.

On May 14, 2012, Appellant filed with this Court a "Motion for Relief Due to Breakdown of the Court System." Therein, he claimed that he never received a copy of the court's February 28, 2012 order denying his "Motion to Redact Charges," and that he made several requests to the Philadelphia Clerk of Courts for that document which were ignored. Appellant contended that because he did not have a copy of the February 28, 2012 order, he was unable to file a Rule 1925(b) statement.<sup>3</sup>

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<sup>2</sup> We are unable to ascertain what specific claims Appellant made in that motion, as for some reason it is not contained in the certified record.

<sup>3</sup> In addition, on May 16, 2012, Appellant filed a *pro se* "Motion for Extension of Time to File 1925(b) Concise Statement of Errors Complained of on Appeal." However, the court did not rule on that motion. While we chastise the trial court for this failure, we conclude that Appellant's motion did not show "good cause" warranting an extension of time. **See** Pa.R.A.P. 1925(b)(2) ("Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed."). In his motion, Appellant did not argue that the court's failure to provide him with a copy of the February 28, 2012 order prohibited him from filing a Rule 1925(b) statement. Rather, he stated only that he needed an extension of the filing deadline because he "has limited access to legal research material and is unlettered in the law." Motion for Extension of Time, 5/16/12, at 1 (*Footnote Continued Next Page*)

On June 12, 2012, this Court issued a *per curiam* order directing the trial court to dispose of Appellant's "Motion for Relief Due to the Breakdown of the Court System." On June 18, 2012, the trial court issued an order denying that motion. In an opinion accompanying its order, the trial court first noted that Appellant had not served the court with a copy of his "Motion for Relief Due to the Breakdown of the Court System." The court then concluded that the issue raised in Appellant's motion was moot, explaining that it had sent Appellant copies of the February 28, 2012 order on May 31, 2012.

Also on June 18, 2012, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a). In that opinion, the court explained all of the above-stated procedural history, ending with its May 31, 2012 mailing of the February 28, 2012 order to Appellant. The court then declared that "[t]o date Appellant has not filed a [Rule] 1925(b) [s]tatement." T.C.O. at 1. Consequently, the trial court concluded that all of Appellant's issues were waived pursuant to ***Commonwealth v. Lord***, 719 A.2d 306 (Pa. 1998)

(Footnote Continued) \_\_\_\_\_

(unnumbered pages). Unfortunately, we do not consider these assertions as "good cause" to extend the Rule 1925(b) filing deadline. The note to Rule 1925(b)(2) provides examples of reasons warranting an extension of the filing deadline for a concise statement, including "a serious delay in the transcription of the notes of testimony or in delivery of the order to appellate counsel," or "when new counsel is retained or appointed." Note to Pa.R.A.P. 1925(b)(2). Here, Appellant did not assert any ground for an extension other than his ignorance of the law and inability to conduct legal research, which we conclude are insufficient to constitute "good cause."

(establishing a bright-line rule for Rule 1925 compliance mandating a finding of waiver of all issues on appeal in the event of non-compliance with Rule 1925).

We are compelled to agree with the trial court that Appellant's failure to file any Rule 1925(b) statement waived his claims for our review.<sup>4</sup> We acknowledge that where *counsel* fails to file a Rule 1925(b) statement on behalf of his client, and this Court "is convinced that counsel has been *per se* ineffective" in this regard, Pa.R.A.P. 1925(c)(3) compels this Court to remand for the filing of a *nunc pro tunc* statement. However, in this case Appellant is proceeding *pro se*. Consequently, we cannot conclude that he ineffectively represented himself and remand on that basis.<sup>5</sup> **See *Commonwealth v. Fletcher***, 986 A.2d 759, 773 (Pa. 2009) (citations omitted) ("The law prohibits a defendant who chooses to represent himself

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<sup>4</sup> While Appellant has attached to his brief a Rule 1925(b) statement dated July 3, 2012, as well as a "Certificate of Service" for that document which is dated August 7, 2012, neither of these documents were included on the trial court docket or in the certified record. Therefore, we are unable to consider them in addressing this appeal. ***Commonwealth v. Preston***, 904 A.2d 1, 6 (Pa. Super. 2006) ("an appellate court is limited to considering only the materials in the certified record when resolving an issue").

<sup>5</sup> We also point out that in ***Commonwealth v. Burton***, 973 A.2d 428, 433 (Pa. Super. 2009), this Court held that "if there has been an untimely filing, this Court may decide the appeal on the merits if the trial court had adequate opportunity to prepare an opinion addressing the issues being raised on appeal." However, we emphasized that our holding in ***Burton*** only applied to late-filed Rule 1925(b) statements. ***Id.*** Because instantly, Appellant never filed a Rule 1925(b) statement, ***Burton*** is inapplicable.

from alleging his own ineffectiveness.”). Accordingly, Appellant has waived his issues by not filing a Rule 1925(b) statement as directed by the trial court.<sup>6</sup>

Order affirmed.

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<sup>6</sup> We are compelled to note that the trial court’s attention and diligence in this case was lacking. As pointed out *supra*, Appellant’s “Motion to Redact Charges” is not even included in the certified record. Moreover, the transcript of the hearing on his motion reveals that Appellant was not present, and the only discussion regarding the motion consisted of the following statements by the Commonwealth: “He has a number of cases, Your Honor, he is currently in custody. We would ask that the petition be denied on the pleadings,” after which the court denied the motion with no explanation. N.T. Hearing, 2/28/12, at 3. Appellant also claims that he was never afforded a copy of a written order denying his motion, and was repeatedly ignored by the Clerk of Court when he inquired into obtaining that document. Finally, the court’s total disregard for Appellant’s motion for an extension of time within which to file his Rule 1925(b) statement was inappropriate, even though that motion failed to show good cause warranting an extension of time. While we are prohibited from addressing any of these issues due to Appellant’s failure to file a Rule 1925(b) statement, we note that nothing in this decision prohibits him from filing another “Motion to Redact” raising similar claims.