

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

EDWARD XAVIER MARIN,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1355 WDA 2012

Appeal from the Order Entered July 31, 2012
In the Court of Common Pleas of Washington County
Criminal Division at No(s): CP-63-CR-0002020-2005

BEFORE: BENDER, P.J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY BENDER, P.J. FILED: November 27, 2013

Appellant, Edward Marin, appeals from the July 31, 2012 order imposing new conditions on the term of probation he was serving at the time of that order. Appellant contends that it was improper to impose sex offender conditions on a defendant who was not a convicted sex offender, and that their imposition violated the principle of coordinate jurisdiction. After careful review, we conclude that we are unable to address Appellant's claims in the instant appeal.

Appellant pled guilty to eleven counts at CP-63-CR-2020-2005 on January 17, 2006. None of these charges were "Sexual Offenses" as enumerated in 18 Pa.C.S. § 3101, *et. seq.* Appellant was sentenced to an aggregate term of two to four years' incarceration, and a consecutive term

of two years' probation. Appellant began serving his probation after his term of incarceration ended on March 13, 2012.

The Pennsylvania State Board of Probation and Parole supervised Appellant's probation, and petitioned the trial court to add sex offender conditions to his probationary sentence. A hearing was held on this matter on April 25, 2012, before the Honorable Paul Pozonsky. At the conclusion of the hearing, Judge Pozonsky stated on the record that he declined to add these new conditions to Appellant's probation. Judge Pozonsky did not issue a written order following the hearing.

The Board of Probation and Parole requested a second hearing regarding the same probation conditions on July 2, 2012. Because Judge Pozonsky retired from the bench in May 2012, the second hearing was held before the Honorable Debbie O'Dell Seneca on July 31, 2012. Following the hearing, Judge O'Dell Seneca issued a written order imposing the sex offender conditions as terms of Appellant's probation.

On August 17, 2012, the Board of Probation and Parole issued a report alleging that Appellant had violated a term of his probation. The term in question was not one of the new sex offender conditions. Appellant was taken into custody on August 24, 2012, his probation was revoked, and he was re-sentenced to two years' probation on October 4, 2012.

Meanwhile, on August 27, 2012, Appellant filed the instant notice of appeal from the trial court's July 31, 2012 order imposing additional conditions of his probation.

He now presents the following questions for our review:

- I. DID THE TRIAL COURT ERR IN OVERRULING THE RULING OF ANOTHER TRIAL COURT JUDGE ON THE ISSUE OF WHETHER [APPELLANT] SHOULD BE SUBJECTED TO SEX OFFENDER INSTRUCTIONS AND SPECIAL CONDITIONS?
- II. DID THE TRIAL COURT ERR IN GRANTING THE REQUEST OF THE PENNSYLVANIA STATE BOARD OF PROBATION AND PAROLE BY IMPOSING SEX OFFENDER INSTRUCTIONS ON A DEFENDANT WHO WAS NOT A CONVICTED SEX OFFENDER?

Appellant's Brief at 4.

We conclude we are unable to address Appellant's claims, because they have been rendered moot.

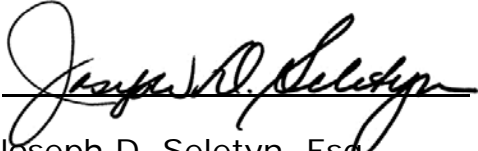
A case is "moot" when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. Stated differently, "[a]n issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect."

Commonwealth v. Nava, 966 A.2d 630, 632 – 633 (Pa. Super. 2009) (internal citations omitted).

Appellant asks us to address the legality of the terms of a probation that no longer exists, as it was revoked. The revocation of that probationary sentence renders moot Appellant's instant challenge to the court's July 31, 2012 order imposing conditions of that sentence. Appellant was resentenced, and has not filed a notice of appeal from the court's October 4, 2012 judgment of sentence. As such, this Court cannot issue an order that has any legal force or effect on the sentence Appellant is now serving, and, thus, we decline to reach the merits of Appellant's arguments.

Order *affirmed*.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/27/2013