

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JOSEPH SIMS,	:	
	:	
Appellant	:	No. 1543 EDA 2012

Appeal from the Judgment of Sentence April 26, 2012  
In the Court of Common Pleas of Montgomery County  
Criminal Division No(s): CP-46-SA-0000092-2012

BEFORE: STEVENS, P.J., BOWES, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.:

**FILED MAY 07, 2013**

Appellant, Joseph Sims, appeals *pro se* from the judgment of sentence entered in the Montgomery County Court of Common Pleas following his convictions for the summary offenses of harassment and disorderly conduct.<sup>1</sup> We find his *pro se* Pa.R.A.P. 1925(b) statement of errors

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. §§ 2709(a)(1), 5503(a)(2), (4). Appellant was also *pro se* before the trial court. Our Rules of Criminal Procedure provide: "Counsel shall be appointed . . . in all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel **when there is a likelihood that imprisonment will be imposed[.]**" Pa.R.Crim.P. 122(A)(1) (emphasis added). The summary offense charges each carried a maximum sentence of ninety days' imprisonment. 18 Pa.C.S. §§ 1105, 2709(c)(1), 5503(b). There was no on-the-record determination by the trial court of whether Appellant was entitled to counsel. **See**

complained on appeal is deficient, find all issues waived, and affirm.

Appellant received citations for harassment and disorderly conduct, respectively, on August 6 and November 22, 2011. The case proceeded to a non-jury trial *de novo* on April 26, 2012. The court found Appellant guilty of both offenses<sup>2</sup> and immediately imposed a sentence of ninety days' probation and \$600 in fines. Appellant did not file a post-sentence motion, but took this timely appeal.

On May 25, 2012, the court ordered Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal within twenty-one days. Accordingly, the 1925(b) statement was due on Friday, June 15th. Appellant filed a statement on Monday, June 18th. On July 19th, the court

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***Commonwealth v. Blackham***, 909 A.2d 315, 317 (Pa. Super. 2006) (holding indigent defendant, charged with summary offense punishable by imprisonment, is not entitled to counsel where court pre-determines that sentence of imprisonment is unlikely, and no term of imprisonment is imposed after conviction). Nevertheless, we note the record does not indicate that Appellant received a sentence of imprisonment before the magisterial district court, and—while not dispositive in itself—the trial court imposed a sentence of probation and fines only. Furthermore, there is no indication in the record that Appellant sought or was granted *in forma pauperis* status. Accordingly, we find no issue in Appellant's *pro se* status.

<sup>2</sup> While the certified record before us does not include a trial transcript, we note the trial court summarized its findings of facts as follows. On August 6, 2011, Appellant “yell[ed] ethnic slurs at the victim and [threw] a soda bottle at him, hitting the victim with the liquid.” Trial Ct. Op., 7/19/12, at 2-3. On November 22nd, on the same city block, Appellant “stood on the sidewalk and took pictures of the Hispanic children of [another] complainant with his cell phone[, and] screamed at the children, causing them to be frightened. When he was asked to desist, he became angry and [screamed] at the parents as well.” ***Id.*** at 2.

issued an opinion, opining that: (1) Appellant's issues should be found waived for an untimely, "incoherent, rambling and prolix" 1925(b) statement, from which the court was "unable to discern any arguably valid appellate issue;" (2) in the alternative, the appeal should be quashed for Appellant's failure to provide a trial transcript, which prevents effective appellate review; and (3) in the alternative, the evidence at trial "clearly established [his] guilt beyond a reasonable doubt," where the court "credited the testimony of the complaining victims." Trial Ct. Op. at 1-2.

We first consider the court's reasoning that Appellant's issues should be deemed waived for an untimely and incoherent 1925(b) statement. The untimely filing of a court-ordered 1925(b) statement waives all issues on appeal. **See Commonwealth v. Burton**, 973 A.2d 428, 432-33 (Pa. Super. 2009) (*en banc*).<sup>3</sup> Pennsylvania Rule of Criminal Procedure 114(C) provides that a docket entry for a court order shall contain:

- (a) the date of receipt in the clerk's office of the order or court notice;
- (b) the date appearing on the order or court notice; and
- (c) the date of service of the order or court notice.

Pa.R.Crim.P. 114(C)(2)(a)-(c).

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<sup>3</sup> **Burton** held that an **attorney's** untimely filing of a court-ordered 1925(b) statement for a criminal defendant is *per se* ineffectiveness, from which the defendant is entitled to prompt relief. **Burton**, 973 A.2d at 432-33. In the instant matter, Appellant's 1925(b) statement was filed *pro se*, and thus, the remand rules of **Burton** do not apply.

Furthermore, Rule 1925(b)(4) requires:

(i) The Statement shall set forth only those rulings or errors that the appellant intends to challenge.

(ii) The Statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge. . . .

Pa.R.A.P. 1925(b)(4)(i)-(ii). “[A] concise statement too vague to apprise the court of the issues raised is ‘the functional equivalent of no Concise Statement at all,’” and all issues could be found waived. **Commonwealth v. Dargan**, 897 A.2d 496, 502 n.5 (Pa. Super. 2006).

Finally, with respect to *pro se* filings, this Court has stated:

Although this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant. To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing.

**In re Ullman**, 995 A.2d 1207, 1211-12 (Pa. Super. 2010) (some citations omitted).

In the instant matter, the face of the 1925(b) order stated:

Copy of the above Order to the following on: May 25, 2012

[Name of attorney,] Chief, Appeals Division, District Attorney’s Office

[Name of attorney,] Asst. District Attorney

[Name], Deputy Court Administrator, Criminal Division

[Appellant’s name]

Order, 5/25/12. However, the docket entry for the order on the document entitled, “Filings Information,” does “not reveal whether notice of the Order

was provided to the parties, and we cannot glean from the certified record as a whole whether all elements for proper notice (i.e., manner of service, to whom and when) have been met.” **See Commonwealth v. Williams**, 959 A.2d 1252, 1256 (Pa. Super. 2008) (citation omitted). Accordingly, we decline to find waiver on the basis of an untimely 1925(b) statement. **See id.**

However, we agree with the trial court’s assessment of Appellant’s *pro se* 1925(b) statement as “incoherent, rambling and prolix.” **See** Trial Ct. Op. at 1. The nine-page statement raises three main claims, which are further divided into eighteen numbered sub-issues. It is comprised of disjointed, incomplete, and confusing statements, and is overall rambling in nature. The statement is beset with numerous, haphazard citations to exhibits, what appear to be 2009 and 2011 docket numbers, and statutes, which impede comprehension of the claims he wishes to pursue on appeal. For example, one section states, verbatim, under the heading “Appellant’s MOTIONS should be granted[:]”

(ii) the ‘errors’ complained of, procedural in **SA-1203-09**, 01/06/11 trial, **Jdg.** Carpenter, posed a Forum Non Conveniens and Improper Venue, sitting in **Jdg.** Smyth; **Jdg.** Smyth, intervened, for purposes of the court’s disruption, 01/03/11, and brought that trial to a close, 01/06/11, **Exhb.** F; the ‘errors’, **Mistrial**: a trial that the judge brings to an end, without a determination on the merits, because of procedural errors or misconduct during proceedings, and, ‘double jeopardy’ protection clause violations; **PA Consttn. Art. 1 § 10**, criminal proceedings, twice in jeopardy;

Appellant's Statement of Errors, 6/18/12, at 1-2 (unpaginated).

We discern fleeting references to the unrelated charges in 2009, and claims that the trial court "extended 'pregnancy rights' to [his] accusers" by allowing "m-Latino's girlfriend testify [sic]," the complaining witnesses are "immigrants undocumented and illegally employed," and "the Latino parents encouraged their children" to "break into" his mailbox and destroy his mail, and "'her' Middle school daughter ha[d] intercourse with this Chevy Avalanche driver[.]"<sup>4</sup> **Id.** at 1-5. Accordingly, we agree with the trial court that Appellant's 1925(b) statement, although peppered with incomplete citations to legal authority, fails to identify any issue for appellate review.<sup>5</sup> **See** Pa.R.A.P. 1925(b)(4)(i)-(ii), **Dargan**, 897 A.2d at 502 n.5; **see also In re Ullman**, 995 A.2d at 1211-12. We find all issues waived and accordingly affirm the judgment of sentence.

Judgment of sentence affirmed.

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<sup>4</sup> The trial court noted that the 1925(b) statement "reflects [A]ppellant's ethnic animus which led to the charges here and prior similar charges referenced in the 1925(b) statement[.]" Trial Ct. Op. at 2.

<sup>5</sup> Furthermore, Appellant's appellate brief is likewise incomprehensible. **See Commonwealth v. Johnson**, 985 A.2d 915, 924 (Pa. 2009) (holding claim is waived where appellate brief fails to provide any discussion with citation to relevant authority or fails to develop issue in any meaningful fashion capable of review).

J. S09039/13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/7/2013