

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
MICHAEL ALLAH,		
Appellant		No. 1713 EDA 2012

Appeal from the Order and Judgment of Sentence of June 6, 2012,
in the Court of Common Pleas of Delaware County,
Criminal Division at No. CP-23-CR-0007727-2009

BEFORE: OLSON, WECHT, and COLVILLE, JJ.*

MEMORANDUM BY COLVILLE, J.:

Filed: February 20, 2013

This is an appeal from the order revoking Appellant's parole and the judgment of sentence imposed following revocation of his probation. Appellant raises two issues for our review: (1) whether the revocations were improper due to delay; and (2) whether the revocations were improper due to the lack of a preliminary revocation hearing. As neither argument was properly preserved in the lower court, we find both to be waived and we affirm.

Generally, an appellant may not raise a claim for the first time on appeal; a claim first must be presented to the lower court. Pa.R.A.P.

* Retired Senior Judge assigned to the Superior Court.

302(a). Appellant did not raise his second issue to the lower court.¹ It is thus waived. As to his first issue, Appellant did challenge the delay leading to his revocation hearing at that hearing; however, his argument there differed from that presented on appeal. At the hearing, in an attempt to prove the requisite prejudice² resulting from the delay, Appellant argued:

[Appellant's counsel]: [Appellant] feels prejudice resulted was [sic] he could have negotiated to have the two cases heard at the same time at the time of the violation. And he felt that his probation officer at the time informed him that he was not going to be violated. And that's the reason he went ahead with the plea.^[3]

N.T., 06/06/12, at 9.

On appeal, Appellant offers this argument in support of his claim of prejudice:

. . . [w]hen Appellant was sentenced at his revocation hearing, he was sentenced^[4] to his full back time with parole after nine months and the sentence was to run concurrently with his sentence he was already serving. Because the effective date of the sentence is the date upon which it is imposed, the delay in the revocation hearing resulted in the appellant's sentence commencing nine months later than it should have. Thus, the delay resulted in an additional nine months of incarceration

¹ At the revocation hearing, Appellant's counsel alluded to a notice issue involving, in part, the lack of a preliminary revocation hearing; however, ultimately, counsel sought no relief from the lower court on a notice claim.

² *See Commonwealth v. Christmas*, 995 A.2d 1259, 1262-63 (Pa. Super. 2010).

³ The referenced plea involved the charge which was the basis for the instant revocations.

⁴ Revocation of parole does not result in the imposition of a sentence; rather, the defendant is recommitted to serve the balance of the sentence he was serving when he was paroled.

beyond what he would have served if he were promptly sentenced. Had the same sentence that was imposed immediately after his guilty plea on the more recent case, the effective date of the sentence would have been on that date and the appellant would have likely been paroled on both cases by the time he was ultimately resentenced on June 6, 2012. As a result, the delay in Appellant's revocation hearing resulted in substantially longer incarceration, thus, prejudicing him.

Appellant's Brief at 7.

Thus, although Appellant now speculates that his incarceration was lengthened by the delay, at the hearing he expressed only an unformed claim that the delay caused him to enter a plea he otherwise would not have entered. Appellant's first claim is thus also waived. Accordingly, he is entitled to no relief.

Order affirmed