

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

AMEER AZIZ

Appellant

No. 1716 EDA 2012

Appeal from the PCRA Order May 23, 2012
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0001823-2009

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY LAZARUS, J.

Filed: February 15, 2013

Ameer Aziz appeals, *pro se*, from the order of the Court of Common Pleas of Delaware County dismissing his petition filed under the Post Conviction Relief Act, 42 Pa.C.S.A. § 9541-46 ("PCRA"). Aziz failed to file a Pa.R.A.P. 1925(b) Statement of Errors Complained of on Appeal. He also failed to include a Pa.R.A.P. 2116(a) Statement of Questions Involved in his appellate brief. We conclude, therefore, that Aziz has not preserved any issues for our review. We, therefore, affirm the PCRA court's order dismissing Aziz's PCRA petition.

In the early morning hours of September 1, 2007, a police officer stopped Aziz on I-95. Aziz, a legal resident of Ghana, entered a negotiated

* Retired Senior Judge assigned to the Superior Court.

guilty plea to Driving Under the Influence (first offense/tier three)¹, and Driving While Operating Privilege is Suspended or Revoked- Non-DUI related.² Aziz, was informed by the court at the plea hearing that entry of the plea could have an adverse effect on his pending immigration matters, and that it could result in deportation. Aziz indicated that he understood the possible deportation consequences and stated that he had no questions. N.T. Guilty Plea Hearing, 10/12/2011, at 15-16.

Following entry of the plea, on October 12, 2011, the court sentenced Aziz to 72 hours to 6 months' incarceration in Delaware County Prison and ordered him to pay fines and costs in the amount of \$1,500.00. Aziz did not file a post-sentence motion under Pa.R.Crim.P. 720(B)(1)(a)(i), challenging his plea, nor did he file a direct appeal to this Court.

On January 4, 2012, Aziz filed a *pro se* PCRA petition. The PCRA court appointed counsel, and, thereafter, counsel filed a petition to withdraw and a no-merit letter pursuant to ***Commonwealth v. Turner***, 544 A.2d 927 (Pa. 1988) and ***Commonwealth v. Finley***, 550 A.2d 213 (Pa. Super. 1988).

On April 26, 2012, the PCRA court conducted an independent review of the case and determined that Aziz's guilty plea, which included a colloquy as to his risk of deportation, was knowingly, intelligently and voluntarily

¹ 75 Pa.C.S.A. § 3802(c).

² 75 Pa.C.S.A. § 1543(a).

entered. The PCRA court issued a Notice of Intent to Dismiss the petition, and Aziz filed a response, claiming “lawyer and court coercion” to plead guilty. Despite the fact that the colloquy at the plea hearing indicates otherwise, Aziz claims “he understood [the plea] would not affect [his] deportation.” Response to Notice of Intent to Dismiss, 5/14/2012, at ¶¶ 2-3. On May 23, 2012, the court denied Aziz’s PCRA petition and granted counsel’s petition to withdraw.

Aziz filed a notice of appeal. On June 14, 2012, the PCRA court ordered Aziz to file, within 21 days, a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). The docket indicates that the prothonotary issued notice of this order to Aziz by first class mail. **See** Docket Entry, 6/16/2012; Pa.R.C.P. 236; Pa.R.Crim.P. 114(B)(3)(a)(iii) (Methods of Service).

Aziz failed to file a Rule 1925(b) Statement. The court also noted that Aziz did not seek an enlargement of time to file the Statement. Trial Court Opinion, 8/2/2012, at 8, *citing* Pa.R.A.P. 1925(b)(2). The PCRA court determined, therefore, that Aziz had waived any challenges to the order. Trial Court Opinion, *supra* at 8. **See Commonwealth v. Lord**, 719 A.2d 306, 309 (Pa. 1998) (“In order to preserve their claims for appellate review, appellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Rule 1925. Any issues not raised in a 1925(b) statement will be deemed waived.”); **see also**

Commonwealth v. Butler, 812 A.2d 631, 633 (Pa. 2002) (Supreme Court expressly applied ***Lord*** to PCRA appeals). Nonetheless, in its opinion, the court addressed Aziz's guilty plea challenge.

Aziz states in his appellate brief that he had filed "a motion or Application for to [sic] refile a concise statement to the Superior court and Trial court." Appellant's Brief, at 9. The docket indicates that Aziz filed this application on September 11, 2012. On October 2, 2012, this Court entered a per curiam order, denying Aziz's *pro se* request without prejudice "to Appellant's right to raise the issue pertaining to Pa.R.A.P. 1925(b) waiver in his [appellate] brief . . ." Superior Court of Pennsylvania Docket Sheet, 9/2/2012, at 2. Although Aziz did address the issue of waiver in his brief, his argument merely reiterates the requirements of ***Lord*** and ***Butler***.

Our Supreme Court has recently reaffirmed that Rule 1925(b) is a bright-line rule.

*Our jurisprudence is clear and well-settled, and firmly establishes that: Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered; any issues not raised in a Rule 1925(b) statement will be deemed waived; the courts lack the authority to countenance deviations from the Rule's terms; the Rule's provisions are not subject to ad hoc exceptions or selective enforcement; appellants and their counsel are responsible for complying with the Rule's requirements; Rule 1925 violations may be raised by the appellate court sua sponte, and the Rule applies notwithstanding an appellee's request not to enforce it; and, if Rule 1925 is not clear as to what is required of an appellant, on-the-record actions taken by the appellant aimed at compliance may satisfy the Rule. We yet again repeat the principle first stated in [***Commonwealth v. Lord***] [553 Pa. 415, 719 A.2d 306 (1998)] that must be applied here: "[I]n*

order to preserve their claims for appellate review, [a]ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925. Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived." [*Id.*] at 309.

Commonwealth v. Hill, 16 A.3d 484, 494 (Pa. 2011) (emphasis added) (footnote omitted). The *Hill* Court pointed out that it had affirmed this Court's decision where we found defendant's issues waived for failure to file a Rule 1925(b) statement, notwithstanding that the PCRA court had issued an opinion addressing the claims set forth in defendant's petition. *See Butler*, 812 A.2d at 633 (reaffirmed *Lord* and "eliminated any discretion [in the lower courts] and established a bright-line rule for waiver under Rule 1925(b)[.]"

The *Hill* Court went on to state:

To emphasize the mandatory nature of the Rule, we made clear that even a finding that meaningful review could be conducted would not prevent application of the Rule's waiver provision. We also made clear that our holding in *Lord* regarding the mandatory obligations that Rule 1925(b) imposes applies in PCRA appeals, notwithstanding the recitation of issues within a PCRA petition. *Id.* at 633–34. Concluding that selective enforcement of Rule 1925(b)'s terms based on whether the appellee advocated waiver would subvert the Rule's purpose and effectiveness, we described waiver under the Rule as "automatic," and instructed that waiver for failure to comply with the Rule may be raised by an appellate court sua sponte. *Id.* at 634. Finally, in view of Rule 1925(b)'s plain language, which required appellants to " 'file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal[.]' " we rejected the argument that waiver of appellate issues was not the appropriate result, even if the defendant, as he alleged, had provided an unverified Rule 1925(b) statement to the PCRA court. *Id.* (quoting Pa.R.A.P. 1925(b)).

Hill, 16 A.3d at 491.

Additionally, the purpose of the remand procedure in Rule 1925(c)(3), a codification of this Court's decision in *Commonwealth v. West*, 883 A.2d 654 (Pa. Super. 2005), was to accelerate the process of restoring direct appellate rights through post-conviction claims of ineffectiveness of counsel. *See Hill, supra* at 496–97.³ Our Supreme Court cautioned that this rationale does not necessarily apply to PCRA petitioners because there is “no decisional law holding that Rule 1925 defaults by counsel at the PCRA appeal stage are available, and remediable, via a serial PCRA petition.” *Id.* at 497. Thus, the Court concluded that, in the context of the PCRA, the *West*-type remand procedure would not result in a more efficient process, but would

³ The *Hill* Court stated:

The remand procedure that the *West* case established for Superior Court direct criminal appeals was aimed at devising a more efficient way to implement Halley's restoration of direct appeal rights remedy to a defendant who established a per se claim of ineffectiveness for counsel's failure to comply with Rule 1925(b) on direct appeal. *West* attempted to promote judicial economy in cases where it is apparent that PCRA relief in the form of restoration of direct appeal rights would be a foregone conclusion. As the Note to amended Rule 1925(c) aptly describes *West*: “Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and per se, the court in *West* recognized that the more effective way to resolve such per se ineffectiveness is to remand for the filing of a Statement and opinion.

16 A.3d at 496.

instead result in a violation of the “PCRA's serial petition and time-bar restrictions.” *Id.* **See *Commonwealth v. Thompson***, 39 A.3d 335, n. 12 (Pa. Super. 2012).

Here, Aziz did not file a direct appeal. Rule 1925(b) and its accompanying Note do not address the circumstances before us, and we have found no case that is directly on point. Our Supreme Court’s tone, however, is clear, and we take our direction from ***Lord*** and its evolving jurisprudence, in particular ***Hill***, which was also a collateral appeal. **See *Hill***, 16 A.3d at 493 (“[A]ppellants and their counsel are responsible for complying with the Rule's requirements[.]”) Furthermore, we point out that Aziz’s appellate brief contains no Rule 2116 Statement of Questions Involved, the requirements of which are more stringent than Rule 1925. **See** Rule 2116(a) (“No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.”); **see also *Commonwealth v. Tielsch***, 934 A.2d 81 (Pa. Super. 2007).

For these reasons, we conclude that Aziz has waived his claims on appeal. **See** Pa.R.A.P. 1925(b)(iv); Pa.R.A.P. 2116(a).

Order affirmed.