

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: PRIVATE CRIMINAL COMPLAINT
OF JAY VAL YUNIK

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: JAY VAL YUNIK

No. 1989 WDA 2012

Appeal from the Order November 7, 2012
In the Court of Common Pleas of Crawford County
Criminal Division at No.: CP-20-MD-0000176-2012

BEFORE: SHOGAN, J., LAZARUS, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

FILED: May 29, 2013

Appellant, Jay Val Yunik, appeals *pro se* from the order of November 7, 2012 which denied his petition for approval of a private criminal complaint.¹ We affirm.

On April 23, 2012, Appellant appealed to the trial court following the Commonwealth's disapproval of his private criminal complaint, in which he alleged that Renee Yunik committed the crime of involuntary manslaughter by causing the suicide of Appellant's son, Brice Yunik. On November 5,

* Retired Senior Judge assigned to the Superior Court.

¹ Appellant is currently incarcerated on charges unrelated to the instant case. (**See Commonwealth v. Yunik**, 815 A.2d 1133 (Pa. Super. 2002) (unpublished memorandum), *appeal denied*, 921 A.2d 587 (Pa. 2003)). We have therefore changed the caption to avoid confusion.

2012, the trial court conducted a hearing to allow Appellant to present evidence to meet his burden of proof pursuant to Pennsylvania Rule of Criminal Procedure 506(B)(2).² Two days later, on November 7, 2012, the trial court entered an order denying Appellant's petition on the grounds that "at the time of the hearing[, Appellant] presented nothing that would go toward his heavy burden in this case and therefore we decline to reverse the District Attorney's decision[.]" (Memorandum Order, 11/07/12, at 2). Appellant filed a timely notice of appeal with a concise statement of errors complained of on appeal on November 28, 2012. **See** Pa.R.A.P. 1925.

On December 27, 2012, the trial court, apparently unaware that Appellant attached a concise statement to his notice of appeal, ordered Appellant to file a concise statement within twenty-one days, or January 17, 2013. (**See** Order, 12/27/12). On January 24, 2013, the trial court entered a Rule 1925(a) opinion, stating that Appellant failed to timely file a Rule 1925(b) statement and therefore waived any issues he wished to raise on

² Rule 506, Approval of Private Complaints, provides, in relevant part: "If the attorney for the Commonwealth . . . disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision." Pa.R.Crim.P. 506(B)(2).

appeal. (**See** Order, 1/24/13).³ The docket reflects that Appellant filed an additional concise statement on January 30, 2013.

Appellant raises two questions for our review:

- I. Was the District Attorney's response to [Appellant]'s private criminal complaint generic and [an] abuse of discretion?
- II. Was [Appellant] denied his right to present any evidence during his court hearing?

(Appellant's Brief, at 3).

Preliminarily, we must address the filing of Appellant's concise statement. It is well-settled 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[.]" **Commonwealth v. Hill**, 16 A.3d 484, 494 (Pa. 2011).

Because Appellant is incarcerated and acting *pro se*, we give him the benefit of the Prisoner Mailbox Rule:

The *pro se* prisoner's state of incarceration prohibits him from directly filing an appeal with the appellate court and prohibits any monitoring of the filing process. Therefore, . . . in the interest of fairness, a *pro se* prisoner's [statement] shall be deemed to be filed on the date that he delivers [it] to prison authorities and/or places [it] in the institutional mailbox.

³ The Commonwealth in its brief also argues that Appellant has waived his issues on appeal for failure to file a timely concise statement. (**See** Commonwealth's Brief, at 3-6).

Commonwealth v. Hockenberry, 689 A.2d 283, 288 (Pa. Super. 1997), *appeal denied*, 695 A.2d 784 (Pa. 1997); **see also Commonwealth v. Brandon**, 51 A.3d 231, 234 n.5 (Pa. Super. 2012). “[W]e are inclined to accept any reasonably verifiable evidence of the date that the prisoner deposits the [statement] with the prison authorities[,]” including a cash slip, a certificate of mailing, an affidavit attesting to the date of deposit with the prison officials, evidence of internal operating procedures regarding mail delivery, or other evidence. **Commonwealth v. Jones**, 700 A.2d 423, 426 (Pa. 1997).

Here, the docket indicates that on November 28, 2012, Appellant filed a “Notice of Appeal to the Superior Court and Concise Statement.” (**See** Notice of Appeal, 11/28/12, at unnumbered page 2). The trial court’s order of December 27, 2012 does not acknowledge its receipt; however, it was filed with the clerk of courts, and there is nothing to indicate that the trial court did not receive this statement as the second page of Appellant’s notice of appeal. Because the failure to acknowledge Appellant’s statement appears to be an oversight by the trial court, we give him the benefit of the doubt and deem it timely filed.⁴

⁴ Appellant’s concise statement challenges the District Attorney’s response as “generic” and an abuse of discretion, (**see** Notice of Appeal, 11/28/12, at unnumbered page 2 ¶¶ 1, 4), and alleges that he was denied his right to present testimony at the hearing, (**id.** at unnumbered page 2 ¶ 5), thus preserving these issues on appeal.

Appellant then filed a second concise statement purportedly dated January 10, 2013. (**See** Concise Statement, 1/30/13, at unnumbered page 1). However, Appellant also dated, signed, and filed the accompanying "Criminal Docketing Statement" in three places with the date of January 30, 2013. (**See** Concise Statement, 1/30/13; Criminal Docketing Statement, 1/30/13, at unnumbered page 3). Appellant proffers no evidence other than the single January 10, 2013 date at the bottom of the statement to indicate that it was timely filed pursuant to the December 27, 2012 order. (**See** Appellant's Brief, at 1-7); **see also Jones, supra** at 426. Therefore, even giving Appellant the benefit of the Prisoner Mailbox Rule, we must conclude that this second statement was untimely filed on January 30, 2013, thirteen days after the deadline set by the trial court. (**See** Order, 12/27/12). Accordingly, we find Appellant's second or supplemental statement waived on appeal. **See Hill, supra** at 494. Nonetheless, because Appellant's first concise statement adequately preserves the issues he wishes to raise, we will not quash the appeal. (**See** Appellant's Brief, at 3); **see also** Pa.R.A.P. 1925(b)(4)(vii).

A review of Appellant's *pro se* brief, however, reveals several fatal defects.⁵ Appellant's brief lacks a statement of jurisdiction, a statement of

⁵ "[A]lthough this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant. Accordingly, a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court." **Commonwealth v.** (Footnote Continued Next Page)

the order or other determination in question, a statement of both the scope of review and the standard of review, and most critically, an argument section. (**See** Appellant's Brief, at 1-7); **see also** Pa.R.A.P. 2111(a)(1), (2), (3), and (8). Furthermore, Appellant's "Summary of Argument" and "Conclusion" merely cite to general principles of law and make sweeping assessments of the facts of the case while failing to develop his arguments in any meaningful way. (**See** Appellant's Brief, at 5-7); **see also** Pa.R.A.P. 2111(a)(6), (9); Pa.R.A.P. 2119(a)-(c). Where an appellant's argument is deficient, "[i]t is not this Court's function or duty to become an advocate for [him]." **Commonwealth v. Birdseye**, 637 A.2d 1036, 1043 (Pa. Super. 1994), *affirmed*, 670 A.2d 1124 (Pa. 1996), *cert. denied*, 518 U.S. 1019 (1996); **see also Commonwealth v. Hakala**, 900 A.2d 404, 407 (Pa. Super. 2006), *appeal denied*, 909 A.2d 1288 (Pa. 2006) (deeming questions waived where appellant failed to offer analysis or relevant citation in support of relief sought). Accordingly, Appellant has waived his issues on appeal.

Moreover, even if we were to review the merits of the appeal, we would conclude that the trial court did not err in determining, after a hearing, that the District Attorney did not abuse his prosecutorial discretion in refusing to prosecute Appellant's criminal complaint.

(Footnote Continued) _____

Lyons, 833 A.2d 245, 251-52 (Pa. Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005) (citation omitted).

It is settled that following the receipt of a petition to review the Commonwealth's decision to disapprove a private criminal complaint, the court must determine whether the Commonwealth's rationale for disapproving the private criminal complaint **is for purely legal reasons or if it is based solely or in part on policy considerations.**

Braman v. Corbett, 19 A.3d 1151, 1157 (Pa. Super. 2011) (citation omitted) (emphasis added).

Here, after investigating Appellant's private criminal complaint, the District Attorney wrote him a letter informing him that he was disapproving the private criminal complaint because of:

insufficient evidence, insufficient probable cause, the allegations lacked prosecutorial merit, and the facts surrounding your son's death have already been investigated by the Pennsylvania State Police and the Crawford County Coroner's Office.

* * *

Your Private Criminal Complaint is also . . . disapproved because it is the policy of the Crawford County Office of District Attorney that a Private Criminal Complaint will not be approved after an incident has already been properly investigated by a police agency and no criminal conduct has been found.

(Memorandum and Order, 5/01/12, at 2 (quotation marks omitted)). Thus, the District Attorney's decision to disapprove the complaint involved both legal determinations and policy considerations. ***See Braman, supra*** at 1157.

[W]hen the district attorney's decision to disapprove a private criminal complaint involves policy considerations, the trial court's standard of review of the district attorney's decision is abuse of discretion. The private criminal complainant has the burden to prove the district attorney abused his discretion, and that burden is a heavy one. The complainant must do more than merely

assert the district attorney's decision is flawed in these regards. The complainant must show the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore not in the public interest. In the absence of such evidence, the trial court cannot presume to supervise the district attorney's exercise of prosecutorial discretion, and the district attorney's decision will be left undisturbed. Thereafter, the appellate court will review the trial court's decision for an abuse of discretion, in keeping with settled principles of appellate review of discretionary matters. The appropriate scope of appellate review in policy-declination cases is limited to whether the trial court misapprehended or misinterpreted the district attorney's decision and/or, without legitimate basis in the record, substituted its own judgment for that of the district attorney. Thus, we will disturb the trial court's decision only if there are no reasonable grounds for the court's decision, or the court relied on rules of law that were palpably wrong or inapplicable. Otherwise, the trial court's decision must stand, even if the appellate court would be inclined to decide the case differently.

In re Private Crim. Complaint of Wilson, 879 A.2d 199, 218-19 (Pa. Super. 2005) (*en banc*).

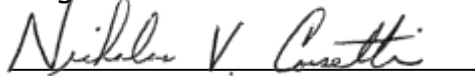
On appeal, Appellant merely claims that the District Attorney failed to "view[] the official state police investigative report." (Appellant's Brief, at 7). However, the District Attorney noted that he reviewed "a report from former Crawford County Coroner Patrick McHenry which made reference to Trooper Giliberto's investigative report," (Memorandum Order, 11/07/12, at 2), and concluded that the "incident has already been properly investigated by a police agency and no criminal conduct has been found." (Memorandum and Order, 5/01/12, at 2). Thus, the trial court did not disturb the district attorney's decision to disapprove Appellant's private criminal complaint. (Memorandum Order, 11/07/12, at 1-2). Appellant does not address how

the coroner's report is defective, and even after being given a hearing on the matter, Appellant identifies no evidence that "the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore not in the public interest." ***Wilson, supra*** at 218-19.

On independent review of the record, we have determined that the trial court did not abuse its discretion or "misapprehend[] or misinterpret[] the district attorney's decision and/or, without legitimate basis in the record, substitute[] its own judgment for that of the district attorney." ***Wilson, supra*** at 218-19. Therefore, we decline to disturb the trial court's decision.⁶

Order affirmed.

Judgment Entered.



Deputy Prothonotary

Date: May 29, 2013

⁶ "We are not limited by the trial court's rationale and may affirm its decision on any basis." ***Commonwealth v. Hunter***, 60 A.3d 156, 162 n.18 (Pa. Super. 2013) (citation omitted).