NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. YASHEAM WASHINGTON Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1062 MDA 2013

Appeal from the Judgment of Sentence May 16, 2013
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-CR-0001515-2012

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY OLSON, J.: **FILED APRIL 28, 2014**

Appellant, Yasheam Washington, appeals from the judgment of sentence entered on May 16, 2013, following his jury trial conviction for possessing a weapon or implement for escape, 18 Pa.C.S.A. § 5122(a)(2). We remand for additional proceedings.

We summarize the facts and procedural history of this case as follows. Appellant is an inmate at the State Correctional Institute at Mahanoy. On May 27, 2012, corrections officers were searching individual prison cells when they witnessed Appellant flush an unknown object down the toilet. Appellant was the only occupant of the cell at the time. The officers observed an object, which looked like white cloth, in the bottom of the toilet bowl. While officers went to obtain a tool to retrieve the item from the toilet, Appellant reentered his cell and flushed the toilet again. Police

restrained Appellant. They then removed the toilet from the floor and recovered a metal rod approximately six inches long, with cloth wrapped around one end, from the sewer line. The unwrapped end of the metal rod was sharpened to a point. Appellant admitted to police that the device belonged to him.

On June 13, 2012, the Commonwealth charged Appellant with possessing a weapon or implement for escape. A jury convicted Appellant of the crime on April 29, 2013. On May 16, 2013, the trial court sentenced Appellant to 21 to 42 months of imprisonment, consecutive to the six to 14 year sentence that he was serving at the time of the incident.

On May 29, 2013, Appellant filed a *pro se* motion to modify or reduce his sentence, despite being represented by counsel. However, the trial court did not rule on the motion before Appellant filed a *pro se* notice of appeal to this Court on June 7, 2013. This Court entered an order on June 24, 2013, directing the trial court to conduct a hearing to determine whether Appellant wished to proceed *pro se* or have counsel appointed to represent him on direct appeal. The trial court held a hearing wherein Appellant requested appellate counsel. Trial counsel for Appellant was also present for the hearing. On July 16, 2013, the trial court entered an order wherein it determined that because one of Appellant's *pro se* appellate claims was that the trial court committed an error of law by encouraging him to listen to his attorney and not take the stand in his defense, trial counsel would be

permitted to withdraw. The order also appointed the Public Defender's Office to represent Appellant on appeal to this Court.

On June 11, 2013, during the intervening period between the filing of Appellant's *pro se* notice of appeal and the order of this Court directing the trial court to conduct a hearing pursuant to ***Grazier***,[1] the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied *pro se* on July 3, 2013. On July 30, 2013, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a) based upon the issues raised in Appellant's *pro se* Rule 1925(b) statement.

Appellant had appointed counsel at all times during this matter. Our Supreme Court has expressly precluded hybrid representation. ***See Commonwealth v. Jette****,* 23 A.3d 1032, 1038–1040 (Pa. 2011) (reiterating "that there is no constitutional right to hybrid representation either at trial or on appeal," and declaring that an examination of Pennsylvania Supreme Court "jurisprudence reveals the consistent expression precluding hybrid representation"). Hence, the trial court was not permitted to accept *pro se* filings, but instead was required to forward those documents to counsel pursuant to Pa.R.Crim.P. 576, which provides in pertinent part:

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[1] ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998) (When a waiver of the right to counsel is sought at the post-conviction and appellate stages, an on-the-record determination should be made that the waiver is a knowing, intelligent, and voluntary one.).

> In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document shall be forwarded to the defendant's attorney and the attorney for the Commonwealth within 10 days of receipt.

Pa.R.Crim.P. 576(4). In this case, upon review of the record, the trial court followed the proper procedure pursuant to Rule 576(4) when Appellant filed his *pro se* post-sentence motion to modify and reduce his sentence and his *pro se* notice of appeal. ***See*** Order, 5/29/2013; ***see also*** Schuylkill County Clerk of Courts Letter, 6/7/2013, *citing* Pa.R.Crim.P. 576. However, the trial court then accepted Appellant's *pro se* Rule 1925(b) statement and issued an opinion pursuant to Rule 1925(a) addressing the merits of the *pro se* filing. The trial court should have directed the Clerk of Courts to forward all of Appellant's *pro se* filings to the Public Defender's Office, so that appointed counsel could then file a Rule 1925(b) statement on Appellant's behalf. ***Jette***, 23 A.3d at 1044 ("[T]he proper response to any *pro se* pleading is to refer the pleading to counsel, and to take no further action on the *pro se* pleading unless counsel forwards a motion."). Hence, we are constrained to remand this matter to the trial court to direct appointed counsel to file a counseled Rule 1925(b) statement.

Case remanded for additional proceedings. Jurisdiction retained.