NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. RICHARD CINTRON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1906 EDA 2012

Appeal from the Order Entered May 11, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0412411-1986

COMMONWEALTH OF PENNSYLVANIA, Appellee v. RICHARD CINTRON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1907 EDA 2012

Appeal from the Order Entered May 11, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0908661-1986

COMMONWEALTH OF PENNSYLVANIA, Appellee v. RICHARD CINTRON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1908 EDA 2012

Appeal from the Order Entered May 11, 2012
In the Court of Common Pleas of Philadelphia County

Criminal Division at No(s): MC-51-CR-0833621-1987

COMMONWEALTH OF PENNSYLVANIA, Appellee v. RICHARD CINTRON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1909 EDA 2012

Appeal from the Order Entered May 11, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): MC-51-CR-1111161-1990

BEFORE: BENDER, P.J.E., PANELLA, J., and LAZARUS, J.

MEMORANDUM BY BENDER, P.J.E. **FILED MAY 01, 2014**

Appellant, Richard Cintron, appeals from four orders reducing the amount of bail forfeitures ("the four orders") in the above-captioned cases. Because there is no transcript for the hearing on Appellant's petitions to set aside or remit the forfeitures, and because the trial court has determined that it is unable to reconstitute the record, we remand for a new hearing on those petitions.

Four bail forfeitures were ordered due to Appellant's failure to appear for court on several dates between September 17, 1986, and April 25, 1991. The Commonwealth did not seek payment on these forfeitures for nearly two decades. When the Commonwealth sought to collect, Appellant filed petitions to set aside or remit the forfeitures on December 27, 2011. A hearing on the petitions was held before Hearing Officer Dominic J. Rossi on

January 17, 2012. Appellant testified at the hearing and was represented by counsel. The Commonwealth was not represented at the hearing. Subsequently, on May 3, 2012, Mr. Rossi recommended reductions in the bail forfeitures. His recommendations were approved by President Judge Pamela Pryor Dembe. President Judge Dembe then issued the four orders implementing the recommended reductions on May 11, 2012.[1]

Appellant filed notices of appeal from the four orders on September 19, 2012.[2] Soon thereafter, it became apparent that the transcript of the January 17, 2012 hearing could not be produced. On September 26, 2012, Judge Dembe filed an opinion pursuant to Pa.R.A.P. 1925(a), in which she recommended to this Court that the matter be remanded for a new hearing due to the lack of a transcript because "it will not be possible to conduct a meaningful review of the cases without a transcription of the hearing[.]" Trial Court Opinion, 9/26/12, at 1. This Court did not remand for a new hearing. Instead, this Court remanded for the production of a statement in absence of transcript pursuant to Pa.R.A.P. 1923 ("Rule 1923 statement").

---

[1] The bail forfeitures were reduced as follows:

CP-51-CR-0412411-1986: reduced by 30%
CP-51-CR-0908661-1986: reduced by 50%
MC-51-CR-0833621-1987: reduced by 30%
MC-51-CR-1111161-1990: reduced by 30%

[2] Acting *sua sponte*, this Court consolidated these appeals by order dated June 6, 2013.

Appellant proposed Rule 1923 statements for each of the four cases and served them upon the Commonwealth. The Commonwealth prepared responses and both were filed with Judge Dembe for settlement and approval on August 30, 2012. On September 5, 2013, Judge Dembe filed a supplemental 1925(a) opinion, which read, in pertinent part:

> The lower court did not preside over [the January 17, 2012] hearing on the petitions to vacate bail judgments which are the subject of the instant appeal. The Commonwealth had not entered an appearance in the case at that point and [an] Assistant District Attorney was not present at the hearing. The lower court is not able to make a meaningful assessment of the Appellant's proposed statements or the Commonwealth's objections. A new hearing is the easiest and fairest way to resolve this matter.
>
> In the interests of justice, the matter should be returned to the lower court for a new hearing and jurisdiction relinquished.

Second Supplemental Opinion, 9/5/13, at 2.

Appellant now presents the following question for our review:

> Where the transcript of hearings on petitions to set aside or remit bail judgments cannot be produced by the court reporter and the trial judge has ruled that the … Statement in Absence of Transcript cannot be settled and approved under Pa.R.A.P. 1923, should the appeals be remanded to the trial court for new hearings on the merits?

Appellant's Brief at 6.

Here, both the trial court and Appellant are in accord that this matter should be remanded for a new hearing on Appellant's four petitions to set aside or remit bail forfeitures. Therefore, we need only consider the Commonwealth's objections to this course of action.

The Commonwealth first contends that Appellant is not entitled to a new hearing due to his failure to comply with Rule 1923. The Commonwealth argues that because Appellant's proposed Rule 1923 statement contained only his counsel's recollections of what transpired at the hearing, Appellant failed to use the "best available means" to prepare the statement as required by Rule 1923. ***See*** Pa.R.A.P. 1923 ("If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection."). The Commonwealth posits that because Appellant did not seek to augment his counsel's recollections with his own, or Mr. Rossi's account of the hearing, Appellant fell short of utilizing the best available means to reconstruct the hearing transcript. Consequently, the Commonwealth relies on ***Commonwealth v. Harvey***, 32 A.3d 717 (Pa. Super. 2011), to suggest that this Court should simply affirm the four orders due to Appellant's failure to comply with Rule 1923. We disagree.

The Commonwealth's reliance on ***Harvey*** is misplaced as that case is easily distinguishable on many grounds. In ***Harvey***, the appellant argued that he was entitled to a new trial because his own Rule 1923 statement was not an adequate substitute for the missing transcript. ***Harvey***, 32 A.3d at 721. On appeal, Harvey admitted that the inadequacy of the Rule 1923 statement produced by his attorney was due to the fact that trial counsel's

> recollection of events was vague and he took no trial notes. Appellate counsel [also admitted] that her review in preparing the statement in [the] absence of [a] transcript was limited to the case file, which consisted of correspondence with appellant, the available discovery, and the preliminary hearing notes of testimony.

Id. The trial court in ***Harvey*** "found no merit to [the a]ppellant's contention he is entitled to a new trial based on the missing transcript." ***Id.*** This Court affirmed.

The trial court in this case, however, has itself requested remand for a new hearing after finding that meaningful review is impossible without a transcript. Furthermore, the trial judge did not conduct the hearing from which the four orders were generated, and the trial court's Rule 1925(a) opinion and supplemental statements do not indicate any failure on Appellant's part in his attempt to comply with Rule 1923. Moreover, the Commonwealth did not enter its appearance at the January 17, 2012 hearing.[3] Thus, the Commonwealth has no *factual* basis upon which to object to the content of Appellant's proposed Rule 1923 statement concerning what occurred at that hearing. None of the circumstances were present in ***Harvey***; therefore, that case is inapposite and not controlling authority.

---

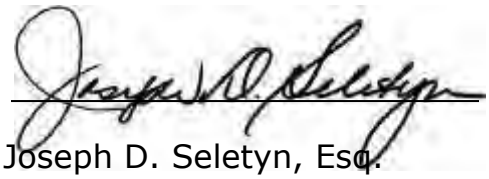
[3] Although the Commonwealth indicates that "it has an interest in a properly functioning bail system that discourages defendants from failing to appear[,]" it offers no reason why it failed to appear at the January 17, 2012 hearing. Commonwealth's Brief at 2 n.1.

Alternatively, the Commonwealth contends that Appellant "has decided to focus his argument that remand is appropriate based on Rule 1923, and has not developed argument on the merits of his substantive claims." Commonwealth's Brief at 19. Thus, the Commonwealth argues, those substantive claims have been waived. Given that the heart of this matter is the absence of a reliable record upon which to conduct meaningful appellate review, a position adopted by the trial court, this argument is without merit.

We conclude, therefore, in accordance with the recommendation of the trial court, that justice requires remand for a new hearing on Appellant's petitions to set aside or remit the bail forfeitures.

Orders ***vacated***. Case ***remanded*** for further proceedings consistent with this memorandum. Jurisdiction ***relinquished***.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/1/2014