

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

ALBERT G. MAXSON,

Appellant

No. 1805 MDA 2017

Appeal from the Judgment of Sentence November 2, 2017
in the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003361-2016

BEFORE: OTT, J., MUSMANNO, J., and PLATT*, J.

MEMORANDUM BY MUSMANNO, J.:

FILED NOVEMBER 20, 2018

Albert G. Maxson ("Maxson"), *pro se*, appeals from the judgment of sentence imposed upon the revocation of his parole. We remand for further proceedings.

The trial court concisely summarized the procedural history as follows:

On or about May 5, [2]016, [Maxson] was arrested and charged with burglary and criminal mischief. On August 15, 2016, he pleaded guilty to burglary[,] and the criminal mischief charge was withdrawn. He was sentenced to 9-23 months in Dauphin County Prison[, plus] 2 years of County Probation. On September 26, 2017, a Revocation Hearing Request form was filed[,] indicating [that Maxson] had violated his probation/parole for incurring new charges, failing to report, and failing to make payments on his restitution, fines and costs. A revocation hearing was held [on] November 2, 2017[,¹ at the close of which the trial court revoked Maxson's parole and resentenced him to serve 11 months and twenty days in prison, consecutively with a 24-month term of probation.]

¹ Maxson was represented by counsel with the Dauphin County Public Defender's Office.

* Retired Senior Judge assigned to the Superior Court.

On November 6, 201[7], [Maxson, *pro se*,] filed [a] timely Notice of Appeal [] with the Superior Court of Pennsylvania. [The trial c]ourt ordered [Maxson,] on November 28, 2017, to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). [Maxson] complied with said Order on December 14, 2017[, and filed a *pro se* Concise Statement]. No transcripts were requested. Initially, on January 30, 2018, the Superior Court dismissed the appeal for failure to file a brief. However[,] on February 2, 2018[,] that [O]rder was vacated [by the Superior Court,] and [the trial c]ourt was ordered to determine whether counsel had abandoned [Maxson]. [The trial c]ourt held a hearing on February 9, 2018, and[, by an Order entered that same date,] found that Maxson had not informed the Public Defender's Office that he wished to pursue an appeal, and he filed his Notice of Appeal *pro se*[;] thus[,] that [O]ffice was unaware of it and had not abandoned him.

Trial Court Opinion, 3/7/18, at 1-2 (footnote added). Notably to the instant appeal, the certified record does not include a transcript from the February 9, 2018 hearing. Moreover, the trial court's February 9, 2018 Order does not indicate whether the court had conducted a colloquy to determine whether Maxson's desire to waive his right to direct appeal counsel was knowing, intelligent and voluntary, pursuant to ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998).

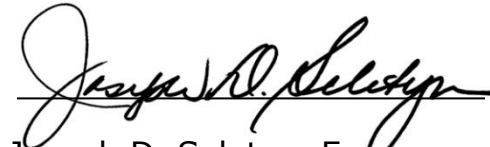
Maxson has filed a *pro se* brief raising several issues for this panel's review. Based on the record before us, however, we cannot consider these issues at this time. It is well established that a criminal appellant has a constitutional right to counsel on direct appeal. ***Commonwealth v. Wrecks***, 931 A.2d 717, 722 (Pa. Super. 2007). Further, a ***Grazier*** hearing is required before we may adjudicate an appeal, even where (1) a particular appellant

“clearly and unequivocally indicates a desire to represent himself,” **Commonwealth v. Robinson**, 970 A.2d 455, 459-60 (Pa. Super. 2009); and/or (2) neither of the parties challenges the lack of a **Grazier** hearing, **see Commonwealth v. Stossel**, 17 A.3d 1286, 1290 (Pa. Super. 2011), as is the situation here.

Accordingly, we remand this case for the trial court to conduct an on-the-record **Grazier** hearing within thirty days, to determine whether Maxson wants to continue to proceed *pro se*. If, however, Maxson states that he wishes to be represented by counsel, and the trial court determines that he remains indigent, the trial court shall appoint him direct appeal counsel. **See Wrecks, supra.**

Case remanded with instructions; panel jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/20/2018