NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ERIC K. HARRISON Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 276 EDA 2013

Appeal from the Judgment of Sentence May 11, 2012
In the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0001542-2011

BEFORE: GANTMAN, J., SHOGAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, J.: **FILED JANUARY 31, 2014**

Appellant, Eric K. Harrison, appeals from the judgment of sentence entered in the Monroe County Court of Common Pleas, following his conviction of criminal conspiracy, use or possession of drug paraphernalia, and three counts of possession of a controlled substance.[1] We quash the appeal and remand for further proceedings.

The relevant facts and procedural history of this appeal are as follows. On June 16, 2011, Mr. Matt Stahl was driving his vehicle with Appellant in the passenger's seat when Pennsylvania State Trooper Gregory Yanochko stopped the vehicle for a traffic violation. Appellant and Mr. Stahl told

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[1] 18 Pa.C.S.A. § 903(a)(1), 35 P.S. §§ 780-113(a)(32), 780-113(a)(16), respectively.

Trooper Yanochko they were returning from New York City where they had been visiting friends. Trooper Yanochko noticed Appellant and Mr. Stahl appeared nervous and requested permission to search the vehicle, which Mr. Stahl granted. Trooper Yanochko found $3,020.00 and a hypodermic needle in the center console of the car. He also found a Pringles potato chip container that contained 180 bags of heroin, Alprazolam and Buprenorphine, prescription pills for individuals experiencing heroin withdrawal. Mr. Stahl told Trooper Yanochko the money and the pills were his property. Trooper Yanochko's partner searched Appellant and found a hypodermic needle in Appellant's pants. Appellant told Trooper Yanochko that Mr. Stahl had given Appellant two packets of heroin, earlier that day, and that Appellant had used both packets.

Appellant was charged with possession with intent to manufacture or deliver, conspiracy to commit possession with intent to manufacture or deliver, possession of drug paraphernalia, and three counts of possession of a controlled substance for the heroin, Alprazolam, and Buprenorphine. Appellant filed a pretrial *habeas corpus* motion, which the trial court denied on November 18, 2011, after a hearing. On March 15, 2012, a jury convicted Appellant of criminal conspiracy, possession of drug paraphernalia, and all counts of possession of a controlled substance. On May 11, 2012, the court sentenced Appellant to an aggregate term of three and a half (3½) to seven (7) years' imprisonment.

Appellant timely filed a post-sentence motion on May 18, 2012, and a brief in support of the motion on September 21, 2012. Neither the court nor the Monroe County Clerk of Courts ever denied the motion. On January 18, 2013, Appellant filed a notice of appeal. The court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied on February 12, 2013.

Appellant raises the following issues for our review:

> DID THE [COURT] ERR WHEN [IT] DENIED [APPELLANT'S] *HABEAS CORPUS* MOTION FINDING THAT THE COMMONWEALTH COULD DEMONSTRATE A *PRIMA FACIE* CASE AGAINST HIM FOR POSSESSION, POSSESSION WITH INTENT TO DELIVER, AND CONSPIRACY TO COMMIT POSSESSION WITH INTENT TO DELIVER HEROIN, ALPRAZOLAM, AND [BUPRENORPHINE]?
>
> WAS THE JURY'S VERDICT FINDING [APPELLANT] GUILTY OF CONSPIRACY TO COMMIT POSSESSION WITH INTENT TO DELIVER, AND POSSESSION AGAINST THE WEIGHT OF THE EVIDENCE?

(Appellant's Brief at 5).

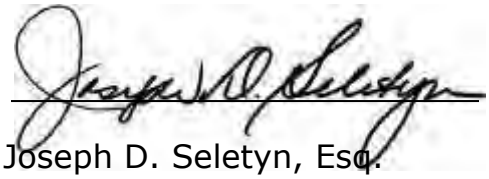
As a general rule, this Court has jurisdiction only over final orders. ***Commonwealth v. Rojas***, 874 A.2d 638 (Pa.Super. 2005). In criminal cases, a direct appeal properly lies from the entry of a final judgment of sentence. ***Commonwealth v. Borrero***, 692 A.2d 158, 159 (Pa.Super. 1997). When post-sentence motions are timely filed, the judgment of sentence does not become final for the purposes of an appeal until the trial court disposes of the motions or the motions are denied by operation of law. ***Id.*** at 160; Pa.R.Crim.P. 720(A)(2), comment (stating defendant cannot

take direct appeal "while his…post-sentence motion is pending"). When an appellant files a notice of appeal before the court has ruled on his post-sentence motions, the judgment of sentence has not become "final" and any purported appeal will be interlocutory and unreviewable. ***Borrero, supra*** at 160. In those circumstances, the proper remedy is to quash the appeal, relinquish jurisdiction, and remand for the trial court to consider the post-sentence motions *nunc pro tunc*. ***Id.*** at 161.

Instantly, the court failed to issue a decision on Appellant's post-sentence motion, and the Monroe County Clerk of Courts failed to enter an order on the docket denying the post-sentence motion by operation of law. Therefore, Appellant filed his notice of appeal while his post-sentence motion was still pending. ***See id***. at 160 (explaining 120-day period for deciding post-sentence motion had expired, resulting in denial by operation of law, but judgment of sentence was not finalized because appropriate order was not entered upon docket; entry of appropriate order is prerequisite to Superior Court's exercise of jurisdiction). Absent an order disposing of Appellant's post-sentence motion, this appeal is interlocutory, and we lack jurisdiction to hear it. Accordingly, we quash the appeal and remand for the court to consider and rule on Appellant's post-sentence motion. Due to our disposition, we decline to address Appellant's issues.

Appeal quashed; case remanded for further proceedings. Jurisdiction is relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/31/2014