

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

DOYLE WAYNE KENT

Appellant

No. 309 EDA 2013

Appeal from the PCRA Order January 10, 2013
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0008412-2010

BEFORE: BOWES, J., PANELLA, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.

FILED DECEMBER 18, 2013

Appellant, Doyle Wane Kent, appeals *pro se* from the order entered January 10, 2013, by the Honorable William R. Carpenter, Court of Common Pleas of Montgomery County, which denied his petition filed pursuant to the Post Conviction Relief Act (PCRA).¹ We affirm.

On August 22, 2011, Kent entered a negotiated guilty plea to one count of robbery, and was sentenced pursuant to the agreement to six to twelve years' imprisonment. No direct appeal was filed. Thereafter, on June 11, 2012, Kent filed a *pro se* PCRA petition. The PCRA court appointed counsel; however, on October 24, 2012, the PCRA court granted counsel permission to withdraw his representation, and issued notice of its intent to

* Former Justice specially assigned to the Superior Court.

¹ 42 PA.CON.S.TAT.ANN. § 9541, *et seq.*

dismiss Kent's PCRA petition within 20 days. The PCRA court issued a final order dismissing Kent's PCRA petition without a hearing on November 14, 2012. This *pro se* appeal followed.²

On appeal, Kent raises multiple allegations of ineffective assistance of trial counsel. Preliminarily, we must determine whether Kent has preserved these issues for our review. On January 25, 2013, the trial court issued an order directing Kent to file a 1925(b) statement of matters complained of on appeal. Kent did not file a 1925(b) statement, however, on March 27, 2013, Kent filed a Petition for Reinstatement of Appeal Rights or Permission to File 1925(b) Concise Statement Nunc Pro Tunc. The trial court summarily denied Kent's Petition.

"[I]n order to preserve their claims for appellate review, [a]ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Rule 1925. Any issues not raised in a 1925(b) statement will be deemed waived." ***Commonwealth v.***

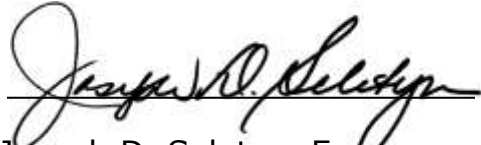
² On December 12, 2012, the PCRA court granted Kent a 30 day extension in which to file his notice of appeal, effective from the date of that order. In effect, the court granted *nunc pro tunc* relief due to a breakdown in the court system. According to the post-mark, Kent's notice of appeal was mailed from SCI Albion on January 22, 2013, although it is dated January 10, 2013. "Pursuant to the prisoner mailbox rule, we deem a document filed on the day it is placed in the hands of prison authorities for mailing." ***Commonwealth v. Patterson***, 931 A.2d 710, 714 (Pa. Super. 2007). Although there is no evidence when Kent gave the notice of appeal to prison authorities for mailing, as it was signed on January 10, 2013, we will deem it timely filed for the sake of judicial economy.

Lord, 453 Pa. 415, 719 A.2d 306, 309 (1998). Herein, Kent failed to file a 1925(b) statement when ordered by the trial court to do so, and the lower court denied his petition to file a statement *nunc pro tunc*. We are therefore constrained to find Kent has waived these issues on appeal.

Order affirmed.

Bowes, J., files a dissenting memorandum.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/18/2013