

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

LOMAN RAVENELL

Appellant

No. 3447 EDA 2012

Appeal from the Judgment of Sentence November 7, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0010492-2011
CP-51-CR-0010493-2011

BEFORE: BOWES, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.

FILED DECEMBER 23, 2013

Loman Ravenell appeals from the judgment of sentence entered in the Court of Common Pleas of Philadelphia County. We affirm.

Following a non-jury trial before the Honorable Sean Kennedy, the court convicted Ravenell of burglary, criminal trespass, criminal mischief, theft by unlawful taking, receiving stolen property, and possession of an instrument of crime. On November 7, 2012, Judge Kennedy sentenced Ravenell to a total term of imprisonment of five to ten years. On November 15, 2012, Ravenell filed a "Brief in Support of Motion for Extraordinary Relief." Thereafter, on November 28, 2012, he filed a "Motion to Amend the Title of Petitioner's Post-Sentence Filing." On December 6, 2012, Ravenell filed a timely appeal and, on January 8, 2013, a Statement of Errors

Complained of on Appeal. **See** Pa.R.A.P. 1925(b). Ravenell raises one issue for our review:

Was not the verdict of guilt on burglary and related charges to contrary to the weight of the evidence as to warrant a new trial, where appellant was convicted solely on the testimony of two questionable eyewitnesses; a security guard who lied to police, and gave conflicting accounts on the witness stand, and her boyfriend, who police initially held as a suspect?

Whether a new trial should be granted on the ground that a conviction was against the weight of the evidence is addressed to the sound discretion of the trial judge, and that decision will not be reversed on appeal absent a showing of abuse of discretion. **Commonwealth v. Davis**, 799 A.2d 860 (Pa. Super. 2002). A challenge to the weight of the evidence must be preserved either in a post-sentence motion, by a written motion before sentencing, or orally prior to sentencing. **See** Pa.R.Crim.P. 607; **Commonwealth v. Priest**, 18 A.3d 1235, 1239 (Pa. Super. 2011). Failure to properly preserve the claim will result in waiver, even if the trial court addresses the weight challenge in its opinion. **See Commonwealth v. Sherwood**, 982 A.2d 483, 494 (Pa. 2009). **See also Commonwealth v. Lofton**, 57 A.3d 1270, 1273 (Pa. Super. 2012).

Here, Ravenell did not raise a weight of the evidence claim in a written motion before sentencing, nor did he address the issue orally prior to sentencing. As noted above, the docket indicates that on November 15, 2012 Ravenell filed a "Brief in Support of Motion for Extraordinary Relief" and, on November 28, 2012, he filed a "Motion to Amend the Title of

Petitioner's Post-Sentence Filing." Neither of these documents, however, is included in the record on appeal.

Ravenell's appellate brief states that the "trial court erred in denying his motion for extraordinary relief." **See** Appellant's Brief, at 10.¹ We find no indication in the docket that this motion was denied, nor does the trial court indicate that in its Rule 1925(a) opinion. The trial court, however, does address the weight of the evidence challenge, since it was presented in Ravenell's Rule 1925(b) statement. As we explained in **Commonwealth v. Kohan**, 825 A.2d 702, 706 (Pa. Super. 2003), "[a] party cannot rectify the failure to preserve an issue by proffering it in response to a Rule 1925(b) order." **See Commonwealth v. Melendez-Rodriguez**, 856 A.2d 1278 (Pa. Super. 2004) (en banc) (trial court's decision to address waived issue in reply to defendant's statement of issues complained of on appeal did not preserve issue for appellate review). As such, we find Ravenell's claim waived for purposes of appeal.² **See Sherwood, supra** (failure to properly preserve claim will result in waiver even if trial court addresses weight

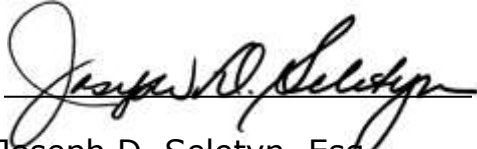
¹ The Commonwealth's letter brief makes no argument on waiver and makes no mention of the procedural irregularities in this case.

² Even had this Court reached the merits, Ravenell's claim would fail. **See Commonwealth v. Kearns**, 70 A.3d 881 (Pa. Super. 2013) (where issues of credibility and weight of the evidence are concerned, it is not function of appellate court to substitute its judgment based on cold record for that of trial court; the weight to be accorded conflicting evidence is exclusively for fact finder, whose findings will not be disturbed on appeal if they are supported by record).

challenge in its opinion). **See also Commonwealth v. Griffin**, 65 A.3d 932 (Pa. Super. 2013); **Commonwealth v. Washington**, 825 A.2d 1264 (Pa. Super. 2003).

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013