

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

LARRY PONCHERI

Appellant

No. 442 EDA 2012

Appeal from the Order Entered January 5, 2012
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-SA-0000707-2011

BEFORE: LAZARUS, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.

FILED MAY 24, 2013

Larry Poncheri appeals from the order entered on January 5, 2012 by the Court of Common Pleas of Montgomery County, which dismissed his summary appeal and entered judgment on the June 21, 2011 finding of guilt for the summary charge of disorderly conduct - unreasonable noise.¹ Poncheri argues the trial court erred in dismissing the summary appeal because he reasonably believed in good faith the action was continued or stayed pending the outcome of a corresponding civil case in federal court, and the court dismissed the action without taking testimony and without

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 5503(a)(2).

entering a verdict of guilty or not guilty. After review of the record, submissions of the parties, and applicable law, we affirm.

The trial court stated the facts and procedural history as follows:

On November 12, 2010, the West Pottsgrove Township Police Department issued [Poncheri] a non-traffic citation for Disorderly Conduct- Unreasonable Noise, 18 Pa.CS. § 5503(A)(2), a summary offense. After several continuances, on June 21, 2011 a hearing was held pursuant to Pa.R.Crim.P. 456 before Magisterial District Justice Cathleen K. Rebar of District No. 38-1-20. District Justice Rebar found [Poncheri] guilty of violating 18 Pa.C.S. § 5503(A)(2) and directed him to pay a total of \$343.00 (\$50.00 of which [Poncheri] had previously paid to the District Court as collateral to ensure his appearance at the hearing).

[Poncheri] filed an appeal of his summary conviction to this Court on July 20, 2011. After several continuances, a trial was scheduled before [The Hon. Gary S. Silow] for January 5, 2012.¹

¹ The record reflects that notice of the trial was mailed to [Poncheri] on December 1, 2011.

On this date, [Poncheri] failed to appeal [sic] for trial, and this Court consequently dismissed [Poncheri's] appeal.

On February 2, 2012, [Poncheri] filed a Notice of Appeal of this dismissal to the Superior Court. On February 8, 2012, pursuant to Pa.R.A.P. 1925(b), this Court directed [Poncheri] to file a Concise Statement of Errors Complained of on Appeal (a "Concise Statement") within twenty[-one] (21) days. To date, [Poncheri] has failed to file a Concise Statement.

Trial Court Opinion, 6/4/2012 at 1-2. The trial court filed its Rule 1925(a) opinion on June 6, 2012. On July 24, 2012, Poncheri requested from this

Court an extension of time to file his appellate brief. The extension was granted. On September 24, 2012 Poncheri filed his brief along with a Rule 1925(b) concise statement *nunc pro tunc*.

Before we may address the issue, we must determine whether his failure to timely file his Rule 1925(b) statement constitutes waiver of the appeal.

Our jurisprudence is clear and well-settled, and firmly establishes that: Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered; any issues not raised in a Rule 1925(b) statement will be deemed waived; the courts lack the authority to countenance deviations from the Rule's terms; the Rule's provisions are not subject to *ad hoc* exceptions or selective enforcement; appellants and their counsel are responsible for complying with the Rule's requirements; Rule 1925 violations may be raised by the appellate court *sua sponte*, and the Rule applies notwithstanding an appellee's request not to enforce it; and, if Rule 1925 is not clear as to what is required of an appellant, on-the-record actions taken by the appellant aimed at compliance may satisfy the Rule. We yet again repeat the principle first stated in *Lord* [***Commonwealth v. Lord***, 719 A.2d 306 (Pa. 1998)] that must be applied here: “[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 Pa.R.A.P. 1925. Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived.” 719 A.2d at 309.

Commonwealth v. Hill, 16 A.3d 484, 494 (Pa. 2011)(internal footnotes omitted). Our Supreme Court’s directive is clear that the appellant must comply with the trial court’s directive for filing of the Rule 1925(b) statement. Poncheri did not request, pursuant to Rule 1925(b)(2), an extension of time to file the concise statement; rather, he filed it 208 days

late. Poncheri's failure to file a timely Rule 1925(b) concise statement is fatal to the appeal. Accordingly, the issue is deemed waived and the order entered by the trial court dismissing the summary appeal and entering judgment on the July 21, 2011 conviction, is affirmed.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 5/24/2013