

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

PAUL AARON ROSS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 663 WDA 2013

Appeal from the Order entered April 11, 2013,
in the Court of Common Pleas of Blair County,
Criminal Division at No(s): CP-07-CR-0002038-2004

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY ALLEN, J.:

FILED DECEMBER 4, 2013

Paul Aaron Ross ("Appellant") was convicted of first-degree murder and sentenced to life in prison. He appealed, and on October 10, 2012, this Court, in a 5-4 decision, vacated Appellant's judgment of sentence and remanded the case for a new trial. **Commonwealth v. Ross**, 57 A.3d 85 (Pa. Super. 2012) (*en banc*). We noted in our opinion that the Commonwealth had referenced documents that "were never authenticated or admitted into evidence at trial, and may not be considered in deciding this appeal." **Id.** at 96, n.11. We further referenced the procedure prescribed in Pa.R.A.P. 1926 "to correct or modify a certified record when properly included documents were omitted." **Id.**

Pa.R.A.P. 1926 provides:

(b) If anything material to a party is omitted from the record by error, breakdown in the processes of the court, or accident or is misstated therein, the omission or misstatement may be corrected by the following means:

(1) by the trial court or the appellate court upon application or on its own initiative **at any time**; ...

(Emphasis added).

After receiving our decision, the Commonwealth petitioned the Pennsylvania Supreme Court for Allowance of Appeal. Our Supreme Court denied the Commonwealth's petition on August 15, 2013. The Commonwealth then filed an application for reconsideration, which the Supreme Court denied on October 17, 2013.

On March 7, 2013, the Commonwealth petitioned the trial court for modification of the record pursuant to Pa.R.A.P. 1926, on the basis that "the current record ... does not fully and adequately reflect what occurred in the lower court. Items material to this matter are absent from the record and/or misstated therein." Petition for Modification of the Record, 3/7/13, at 2 (unnumbered). The trial court convened a hearing on March 15, 2013, after which it granted the Commonwealth's petition for modification of the record by opinion and order dated April 11, 2013. The trial court determined that "the application of Pa.R.A.P. 1926 is not limited by ... rule [Pa.R.A.P.] 1701(a)." Trial Court Opinion, 4/11/13, at 6.¹ At the time, the

¹ Pa.R.A.P. 1701(a) provides: "Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, (Footnote Continued Next Page)"

Commonwealth's petition for allowance of appeal was pending before the Pennsylvania Supreme Court. Appellant filed this appeal on April 17, 2013.

Appellant states his issue as follows:

WHETHER, AFTER THE SUPERIOR COURT IN THE DIRECT APPEAL FROM THE JUDGMENT OF SENTENCE HAD ENTERED JUDGMENT, ORDERING A *VACATUR* AND REMAND, AND THE COMMONWEALTH HAD PETITIONED FOR ALLOWANCE OF APPEAL THEREFROM, THE TRIAL COURT, ON THE COMMONWEALTH'S PETITION, LACKED THE AUTHORITY UNDER **PA.R.A.P. 1701** AND **PA.R.A.P. 1926** TO FUNDAMENTALLY CHANGE THE RECORD BY ADDING EXHIBITS AND TESTIMONY THAT WERE NOT CONSIDERED BY THE TRIAL COURT IN ITS RULING CHALLENGED ON DIRECT APPEAL AND TO TRANSMIT SUCH ADDITIONAL MATTER TO THE SUPREME COURT, AND SO THE TRIAL COURT ERRED BY GRANTING RELIEF?

Appellant's Brief at 4.

Significantly, Appellant filed his appeal prior to our Supreme Court denying the Commonwealth's petition for allowance of appeal on August 15, 2013, and denying the Commonwealth's application for reconsideration of the denial on October 17, 2013. Appellant's issue as it pertains to modification of the record vis-à-vis appellate review by the Supreme Court is therefore moot.

To the extent that Appellant generally asserts that the trial court erred by permitting the Commonwealth to modify the record pursuant to Pa.R.A.P. 1926, we agree with the Commonwealth that the appeal is interlocutory.

(Footnote Continued) _____

the trial court or other government unit may no longer proceed further in the matter."

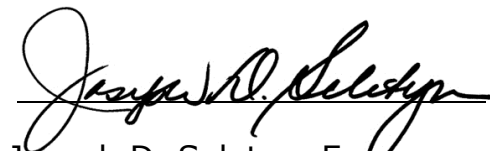
Generally, appeals must be taken from a final order. ***Commonwealth v. Makara***, 980 A.2d 138, 140 (Pa. Super. 2009). Pursuant to Pa.R.A.P. 341(b), a final order: (1) disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) is entered as a final order []. ***See Commonwealth v. Scarborough***, 64 A.2d 602, 208 (Pa. 2013).

Here, the trial court's April 11, 2013 order was not final where this Court had remanded the case for a new trial. Nor is it an interlocutory order appealable by right, Pa.R.A.P. 311, nor an appealable collateral order, Pa.R.A.P. 313. Finally, Appellant never sought permission to pursue an interlocutory appeal pursuant to Pa.R.A.P. 312. Because the April 11, 2013 order was interlocutory, this appeal is premature.

Based on the foregoing, we quash the appeal so that proceedings may continue before the trial court. The motion to dismiss is denied as moot.

Appeal quashed. Jurisdiction relinquished.

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: 12/4/2013

