

2012 PA Super 225

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

EYIWUNMI AKINSANMI

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 722 WDA 2012

Appeal from the Order Entered of April 2, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-SA-0000224-2012

BEFORE: STEVENS, P.J., BENDER, J., and WECHT, J.

OPINION BY WECHT, J.

Filed: October 17, 2012

Eyiwunmi Akinsanmi [“Appellant”] appeals from an April 2, 2012 Order dismissing her summary appeal. We affirm.

On December 10, 2011, Appellant received a traffic citation for parking where prohibited by sign in Schenley Park in Pittsburgh. Traffic Citation, 12/14/11.¹ On January 13, 2012, Appellant was found guilty of the offense by a magisterial district court. Traffic Docket at 2. On February 6, 2012, Appellant filed a notice of appeal from the summary conviction. A *de novo* hearing before the Court of Common Pleas was scheduled for April 2, 2012. Appellant did not appear for the hearing. Order, 4/2/12. The appeal was

¹ The ticket was issued on December 10, 2011, but date stamped on December 14, 2011.

dismissed, and judgment was entered for the Commonwealth pursuant to Pa.R.Crim.P. 462(D), discussed *infra*. On April 30, 2012, Appellant filed a notice of appeal with this Court.²

Appellant challenges the sufficiency of the evidence. Appellant's Brief at 2. However, because the trial court dismissed her appeal for failure to appear, we must review the court's dismissal. Our standard of review from an appeal of a summary conviction following *de novo* trial is whether there was an error of law or whether the findings of the court are supported by the record. ***Commonwealth v. Marizzaldi***, 814 A.2d 249, 251 (Pa. Super. 2002). The trial court's verdict will only be disturbed if there was a manifest abuse of discretion. ***Id.***

Appellant argues that the December 10 ticket was improperly issued because there was a boot on her car at the time and the car was no longer in her control. Appellant contends that she did everything she could to get the boot off, but was unable to do so before December 13. Appellant does not address her failure to attend the April 2 hearing except to say, in the last sentence of her argument, that she was unable to return from a research conference in time to attend the hearing. Appellant's Brief at 2-4.³

² The trial court did not order, and Appellant did not file, a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

³ We note that Appellant's brief does not fully conform to the appellate rules. Specifically, the brief is lacking a statement of jurisdiction (Pa.R.A.P. 2114), the order in question (Pa.R.A.P. 2115), a statement of the questions (*Footnote Continued Next Page*)

The Commonwealth contends that the trial court has the authority to dismiss the summary appeal when the defendant is absent without cause. The Commonwealth alleges that Appellant's absence was due to a scheduled and known commitment, which distinguishes it from those cases where a defendant was unable to attend a summary hearing due to unforeseen circumstances. Therefore, the Commonwealth asserts, dismissal was appropriate. Appellee's Brief at 4-9.

Rule 462 sets forth the procedure for a *de novo* trial as an appeal from a summary conviction. In pertinent part, it provides:

If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

Pa.R.Crim.P. 462(D).

When a defendant does not appear for the summary appeal and does not provide an excuse, dismissal of the appeal is proper. ***Commonwealth v. Slomnicki***, 773 A.2d 216, 218 (Pa. Commw. 2001). Conversely, when good cause for the absence is shown, a new trial should be granted. ***See Marizzaldi***, 814 A.2d at 251, 253 (where appellant arrived ten minutes late due to missing bus and tardiness was not voluntary, appellant should have

(Footnote Continued) _____

involved (Pa.R.A.P. 2116), or a summary of the argument (Pa.R.A.P. 2118). Appellant also cites no legal authority in her argument. However, procedural defects can be overlooked in relatively straightforward issues where the parties and trial court address the merits. ***Commonwealth v. Laboy***, 936 A.2d 1058, 1060 (Pa. 2007).

been given opportunity to present case); ***Commonwealth v. Mesler***, 732, A.2d 21, 25 (Pa. Commw. 1999) (where appellant's counsel was present and represented that appellant was on way, appeal should not have been dismissed); ***Commonwealth v. Doleno***, 594 A.2d 341, 343-44 (Pa. Super. 1991) (where appellant's attorney told appellant wrong date, absence was not voluntary; good cause shown).

In the instant case, Appellant did not appear for her hearing. This was not a case of an involuntary absence, nor was it due to unforeseen circumstances. Appellant was attending a research conference. She does not explain why she did not seek a continuance given the scheduled conflict with her hearing. She does not offer any good cause for missing her hearing, other than being at a conference. This is not a good cause, an involuntary absence, or an unforeseen circumstance. The trial court properly dismissed the case upon Appellant's failure to appear. We find no error in that action.

Order affirmed. Jurisdiction relinquished.