

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JEFFREY WILLIAM LOSHAW

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 757 WDA 2012

Appeal from the Judgment of Sentence November 16, 2011
In the Court of Common Pleas of Bedford County
Criminal Division at No(s): CP-05-CR-0000112-2011

BEFORE: GANTMAN, J., OTT, J., and FITZGERALD, J.*

MEMORANDUM BY GANTMAN, J.:

FILED: May 17, 2013

Appellant, Jeffrey William Loshaw, appeals from the judgment of sentence entered in the Bedford County Court of Common Pleas, following his jury trial convictions for simple assault, recklessly endangering another person ("REAP"), unlawful restraint, false imprisonment, and endangering the welfare of a child ("EWOC").¹ We dismiss the appeal as untimely filed.

The relevant facts and procedural history of this appeal are as follows. In February 2011, Appellant supervised his girlfriend's six-year-old daughter, M.P., while his girlfriend recovered from surgery. During this period, Appellant assaulted M.P., repeatedly tripping her and dragging her across

¹ 18 Pa.C.S.A. §§ 2701, 2705, 2902, 2903, 4304, respectively.

*Former Justice specially assigned to the Superior Court.

the floor by the hair. Appellant also locked M.P. in the attic of his residence. On February 27, 2011, Appellant's uncle and aunt visited the residence and discovered that M.P. had bruises and abrasions all over her body. Appellant's uncle and aunt took M.P. to a local emergency room, and hospital personnel notified law enforcement about the injuries.

On September 8, 2011, the Commonwealth filed a criminal information charging Appellant with EWOC, false imprisonment, unlawful restraint, simple assault, and REAP. Following trial, a jury found Appellant guilty on all counts. With the benefit of a pre-sentence investigation report, the court conducted Appellant's sentencing hearing on Wednesday, November 16, 2011. At the conclusion of the hearing, the court sentenced Appellant to an aggregate term of fifty-six (56) to one hundred twelve (112) months' imprisonment, followed by a consecutive term of ten (10) years' probation. The court also informed Appellant of his right to file a post-sentence motion within ten days or a notice of appeal within thirty days.

On Tuesday, November 29, 2011, Appellant filed untimely post-sentence motions. In the post-sentence motions, Appellant requested reconsideration of the sentence, moved for a new trial in light of newly-discovered evidence, and alleged that the court had provided confusing answers to certain questions from the jury. The court conducted a hearing on the post-sentence motions on January 12, 2012. At that time, the parties did not address the timeliness of the post-sentence motions. On

February 15, 2012, Appellant filed amended post-sentence motions, raising additional challenges to the weight and sufficiency of the evidence. The court denied Appellant's post-sentence motions on April 9, 2012.

Appellant filed a notice of appeal on May 4, 2012. On May 8, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b). Appellant filed a Rule 1925(b) statement on May 24, 2012.

Appellant raises two issues for our review:

WHETHER THE SENTENCE IMPOSED WAS MANIFESTLY EXCESSIVE BY FOCUSING TOO MUCH ON THE PUNITIVE NATURE OF THE SENTENCE AND NOT PLACING ENOUGH EMPHASIS ON REHABILITATION?

WHETHER THE EVIDENCE WAS INSUFFICIENT TO PROVE FALSE IMPRISONMENT AND UNLAWFUL RESTRAINT?

(Appellant's Brief at 3).

As a prefatory matter, we observe the time limitations for taking appeals are strictly construed and cannot be extended as a matter of grace. ***Commonwealth v. Valentine***, 928 A.2d 346 (Pa.Super. 2007). This Court can raise the matter *sua sponte*, as the issue is one of jurisdiction to entertain the appeal. ***Id.*** This Court has no jurisdiction to entertain an untimely appeal. ***Commonwealth v. Patterson***, 940 A.2d 493, 497 (Pa.Super. 2007), *appeal denied*, 599 Pa. 691, 960 A.2d 838 (2008). "Nonetheless, this general rule does not affect the power of the courts to

grant relief in the case of fraud or breakdown in the processes of the court.”
Id. at 498.

“[T]he notice of appeal...shall be filed within 30 days after the entry of the order from which the appeal is taken.” Pa.R.A.P. 903(a). “A direct appeal in a criminal proceeding lies from the judgment of sentence.” **Patterson, supra** at 497 (quoting **Commonwealth v. Preacher**, 827 A.2d 1235, 1236 n.1. (Pa.Super. 2003)). If a defendant files a **timely** post-sentence motion, the notice of appeal shall be filed within 30 days of the entry of the order deciding the motion. Pa.R.Crim.P. 720(A)(2)(a). To be timely, a post-sentence motion must be filed no later than 10 days after imposition of sentence. Pa.R.Crim.P. 720(A)(1). Absent a timely post-sentence motion, the notice of appeal shall be filed within 30 days of imposition of sentence. Pa.R.Crim.P. 720(A)(3); **Commonwealth v. Dreves**, 839 A.2d 1122, 1127 (Pa.Super. 2003) (*en banc*).

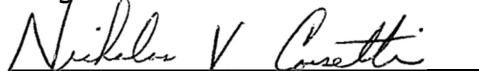
Instantly, the court imposed sentence on Wednesday, November 16, 2011. At the conclusion of the hearing, the court instructed Appellant regarding his rights and the time limitations for filing post-sentence motions and a direct appeal. Therefore, Appellant’s post-sentence motions were due on or before Monday, November 28, 2011 (November 26, 2011 fell on a Saturday).² Appellant filed untimely post-sentence motions on Tuesday,

² Monday, November 28, 2011, is not listed as an official court holiday.

November 29, 2011. Thus, Appellant's notice of appeal was due within thirty days of his sentencing, on or before December 16, 2011. **See id.** Appellant did not file a notice of appeal until May 4, 2012, more than thirty days after sentencing. **See** Pa.R.A.P. 903(a). No evidence of record indicates any fraud or breakdown in court processes. **See Patterson, supra.** Under these circumstances, Appellant's post-sentence motion did not toll the appeal period, and we must deem his appeal from the judgment of sentence untimely filed.³ Accordingly, we dismiss this appeal as untimely filed.

Appeal dismissed.

Judgment Entered.



Deputy Prothonotary

Date: 5/17/2013

³ Moreover, the trial court's decision to address the post-sentence motions on the merits did not excuse the untimely filing of the motions or constitute an express grant of *nunc pro tunc* relief. **See Dreves, supra** at 1128-29 (explaining defendant can file post-sentence motion *nunc pro tunc* if, within thirty days of imposition of sentence, he demonstrates sufficient reasons that excuse late filing; if trial court does not expressly grant *nunc pro tunc* relief, time for filing appeal is neither tolled nor extended; trial court's resolution of merits of untimely post-sentence motion is no substitute for order expressly granting *nunc pro tunc* relief).