

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	
v.	
ANDRE L. MASON,	
Appellant	No. 987 MDA 2012

Appeal from the Judgment of Sentence entered April 5, 2012,
in the Court of Common Pleas of Schuylkill County,
Criminal Division, at No(s): CP-54-CR-0001087-2011

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, and ALLEN, JJ.

MEMORANDUM BY ALLEN, J.:

Filed: January 7, 2013

Andre L. Mason, (“Appellant”), appeals from the judgment of sentence entered following his negotiated guilty plea to possession of weapons or implements of escape.¹ For the following reasons, we remand for the filing of a Pa.R.A.P. 1925(b) statement and a Pa.R.A.P. 1925(a) trial court opinion.

The pertinent facts and procedural history are summarized as follows: On May 25, 2011, while Appellant was serving a sentence at the State Correctional Institution–Mahanoy, in Schuylkill, Pennsylvania, the Department of Corrections (“DOC”) staff learned that Appellant was in possession of a weapon. DOC staff conducted a search of Appellant in his cell, in the course of which Appellant retrieved a weapon from his waistband

¹ 18 Pa.C.S.A. § 5122(a)(2).

and threw it out of his cell. Staff members retrieved the weapon, a sharpened 7" Colgate toothbrush handle. Appellant was subsequently charged with possession of weapons or implements of escape. On April 5, 2012, the day jury selection was to commence, Appellant opted to plead guilty. Affidavit of Probable Cause, 6/4/11 at 1; Trial Court Order, 5/4/12 at 1 (unnumbered). The trial court accepted the guilty plea and sentenced Appellant, that same day, in accordance with the terms of the negotiated plea, to six to twelve months of imprisonment.

On April 12, 2012, Appellant filed a post-sentence motion to withdraw his guilty plea. The trial court denied Appellant's motion on May 4, 2012, without a hearing. Appellant filed a timely notice of appeal. On June 1, 2012, the trial court directed Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant did not comply. On July 13, 2012, the trial court issued an order pursuant to Pa.R.A.P. 1925(a), attaching its May 4, 2012 order in lieu of a trial court opinion.

Appellant raises the following issue for our review:

DID THE TRIAL COURT ERR IN NOT ALLOWING
[APPELLANT] TO WITHDRAW HIS GUILTY PLEA AFTER
SENTENCING?

Appellant's Brief at 4.

Preliminarily, we note that Appellant failed to file a concise statement after being ordered to do so by the trial court. Pa.R.A.P. 1925(b), amended in 2007, includes a procedure for appellate courts to remedy a criminal appellant's failure to file a court-ordered statement. ***See Commonwealth***

v. Thompson, 39 A.3d 335 (Pa. Super. 2012). Subsection 1925(c)(3) allows the appellate court to remand in criminal cases when the appellant has completely failed to file a court-ordered statement, and the Court is convinced that counsel has been *per se* ineffective. **Thompson**, 39 A.3d at 339 (citing Pa.R.A.P. 1925(c)(3)). The total failure to file a court-ordered Pa.R.A.P. 1925(b) statement constitutes *per se* ineffectiveness. **Thompson, supra; Commonwealth v. Brown**, 18 A.3d 1147 (Pa. Super. 2011). The most effective means to restore an appellant's appeal rights in this circumstance is to remand for counsel to file a proper statement. **Commonwealth v. McBride**, 957 A.2d 752 (Pa. Super. 2008).

Here, the trial court on June 1, 2012 ordered Appellant to file a Pa.R.A.P. 1925(b) statement within twenty-one (21) days. Appellant's counsel did not comply. Thus, Appellant's counsel was *per se* ineffective. Accordingly, we remand for Appellant and his counsel to comply with Pa.R.A.P. 1925(b) within thirty (30) days of the date this memorandum is filed, and for the trial court to file a Pa.R.A.P. 1925(a) opinion thirty (30) days thereafter.

Case remanded with instructions. Jurisdiction retained.