

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 99-10,131

VS :

GLENROY MARKS :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated August 30, 1999 in which the Defendant was sentenced to undergo incarceration for a minimum of twelve months and a maximum of twenty-four months. This sentence was imposed after the Defendant was found guilty by a jury of Persons not to Possess a Firearm. Following the trial, the Defendant filed a Motion in Arrest of Judgement, which was denied by this Court's Order dated August 27, 1999. On September 2, 1999, the Defendant filed a Motion to Reconsider Sentence, which was denied by Order dated September 2, 1999. The Defendant filed his appeal to the Superior Court on September 15, 1999.

In an effort to determine the issues the Defendant wished to raise on appeal, on September 16, 1999, this Court directed that the Defendant's counsel prepare a concise statement of matters complained of on appeal in accordance with Pa.R.A.P. 1925. To date, the Court has not received a statement of matters complained of.

The Pennsylvania Rule of Appellate Procedure 1925(b) provides that the Court may enter an Order directing the appellant to file a concise statement of matters complained of on appeal. The Rule further provides that a failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of. Pursuant to this Rule, in order to preserve

their claims for appellate review, appellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Rule 1925. Any issues not raised in a 1925(b) statement will be deemed waived. Commonwealth v. Lord, 553 Pa 415, 719 A.2d 306, (1998). As the Court's Order directing that a statement of matters complained of on appeal has not been complied with, this Court would find that the issues should be deemed waived.¹

Additionally, even if it were found that the Defendant's failure to file a statement does not act as a waiver in this case, the Court chooses not to bind the Superior Court to address an issue that the Defendant may or may not wish to raise, See Commonwealth v. Perez, 444 Pa. Super. 570, 664 A.2d 582 (1995).

Dated: 12/9/99

By The Court,

Nancy L. Butts, Judge

xc: William Miele, Esquire
Kenneth Osokow, Esquire
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges

¹ In the event that the Defendant is raising the issues raised in his post-verdict Motion in Arrest of Judgement, the Opinion in support of this Court's Order denying the motion is accompanying the Order dated August 17, 1999.