

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 97-10,362

VS :

KATHERINE STEADLEY :

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

Defendant appeals this Court's Order dated June 29, 1998 in which the Defendant was sentenced to an aggregate period of incarceration of five to ten years and a four year period of probation. This sentence was imposed after the Defendant was found guilty by a jury of conspiracy to deliver cocaine, conspiracy to deliver heroin, possession with the intent to deliver cocaine, delivery of cocaine, possession of cocaine, possession with the intent to deliver heroin, possession of heroin, and possession of drug paraphernalia.

Although the Defendant was represented by private counsel through the trial, the Defendant sent letters to the prothonotary after her sentencing which indicated that her private counsel no longer represented her. One of the letters sent by the Defendant dated July 20, 1998, indicated that she knew she had only 30 days to appeal her sentence, and that she wished to file an appeal to her sentence at that time. The Clerk of Courts sent a written response to the Defendant on July 22, 1998, informing her that under Pa.R.Crim.P. 9022(c), where a Defendant is represented by an attorney, the clerk of courts shall not docket a motion which has not been signed by the attorney, but that the motion shall be forwarded to the attorney within 10 days of the receipt. On November 2, 1998, the Defendant filed a petition for allowance of appeal nunc pro tunc,

which was granted by the Court on December 21, 1998.¹ The Defendant filed her appeal to the Superior Court on January 19, 1999.

Instantly, the Defendant's right to appeal the legality of the search warrant is properly preserved under Pa.R.Crim.P. 1410 (Issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion on those issues.) The Opinion in support of this Court's Order with regard to the Defendant's Motion to Suppress is accompanying the Order dated December 3, 1997.

In an effort to determine what other issues the Defendant wished to raise on appeal, this Court directed that conflicts counsel from the Public Defender's Office prepare a concise statement of matters complained of on appeal in accordance with Pa.R.A.P. 1925 on April 16, 1999. The attorney assigned to the Defendant's case terminated his affiliation with the Public Defender's office at the end of April, 1999, and new counsel was appointed to the case. In an effort to allow the Defendant's new counsel time to familiarize himself with the case, the Court permitted counsel additional time for the preparation of the statement. Four months have now passed, and the Court now finds that it has allowed a reasonable time for counsel to have prepared a statement.

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

¹ Although the Superior Court Docket notice indicates that the Defendant appealed two separate cases, the Court granted the right to appeal nunc pro tunc only from the sentence entered under the trial court docket number 97-10,362.

The second case number listed on the Superior Court docket (97-11,075) is a case in which the Defendant plead guilty on 8/29/97 and was sentenced on 11/03/97. The Court will not be addressing any issues associated with that case, as it appears this docket number was included in the appeal paperwork in error.

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. *Com. v. Lord*, 719 A.2d 306, (Pa. 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.

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: _____

By The Court,

Nancy L. Butts, Judge

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