

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 96-12,139

VS :

MARK MONTA WHITE :

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

Defendant appeals this Court's Order dated February 4, 1999 wherein the Defendant was sentenced to undergo incarceration for an aggregate minimum of 24 months and an aggregate maximum of 60 months, and a five year consecutive period of probation. This sentence was imposed after the Defendant was found guilty by a jury of conspiracy, possession with the intent to deliver a controlled substance, delivery of a controlled substance, possession of a controlled substance, and possession of marijuana.

The Defendant filed a pro se petition for Post Conviction Collateral Relief on October 8, 1998, in which he alleged that he had requested that his counsel file an appeal to his conviction, and that his request had not been complied with. Defendant was appointed conflicts counsel from the Public Defender's office.

On April 16, 1999, this Court entered an Order, upon agreement of the parties, deeming the Defendant's PCRA Petition as a Motion for Leave to Appeal Nunc Pro Tunc. Defendant's counsel filed his Appeal to the Superior Court on May 17, 1999. On May 20, 1999, this Court directed that Defendant file a concise statement of matters complained of on appeal in accordance with Pa.R.A.P. 1925(b). Six months have now passed, and the Court has not received a statement of matters complained of on appeal.

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, 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: November 29, 1999

By The Court,

Nancy L. Butts, Judge

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