

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

: No. 98-12,079

:

:

vs.

: CRIMINAL DIVISION

:

:

**PAUL WHITEMAN,
Defendant**

: 1925(a) Opinion

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

This opinion is written in support of this Court's Judgment of Sentence dated May 27, 1999 and docketed June 3, 1999. The procedural history is as follows.

A criminal complaint was filed against the defendant on June 20, 1998, charging him with driving under the influence of alcohol - incapable of safe driving, resisting arrest and various summary offenses. A jury trial was held March 18-19, 1999. The jury found the defendant guilty of driving under the influence of alcohol - incapable of safe driving and not guilty of resisting arrest. The Court found the defendant guilty of the summary offenses of driving under suspension - DUI related, driving on roadways laned for traffic, disorderly conduct, and public drunkenness. The Court sentenced the defendant on these convictions on May 27, 1999.

On July 1, 1999, the defendant filed a notice of appeal. On July 12, 1999, the Court ordered the defendant to file a Concise Statement of Matters Complained of on Appeal in accordance with Rule 1925(b). The Court inadvertently sent this Order to Assistant Public Defender Jay Stillman instead of the defendant's conflict's attorney, James Protasio. On or about December 15, 1999, the Court issued an amended Order directing the defendant to file a

statement of matters on appeal on or before December 21, 1999.¹ This Order was sent to Attorney Protasio. The Court also orally informed counsel of the contents of this order on that same date. The Court has not received any response to either the July 12, 1999 or the December 15, 1999 orders.

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.

¹The Court normally would have given counsel 14 days within which to file such a statement; however, since it was nearly six months from the filing of the appeal and counsel should have already determined the issues he wished to raise on the defendant's behalf, the Court gave counsel a shorter time frame. Moreover, the original Order directing a statement of matters on appeal would ordinarily be forwarded by the Public Defender's office to conflict's counsel.

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).

DATE: 12/30/99

By The Court,

Kenneth D. Brown, J.

cc: Michael Dinges, Esquire (ADA)
James Protasio, Esquire
Law Clerk
Gary Weber, Esq. (Lycoming Reporter)
Superior Court (original & 1)
Work file