

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 97-10,190

VS :

MICHAEL JOSEPH DOUGHERTY :

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

Defendant appeals this Court's Order dated August 2, 1999 wherein the Defendant was sentenced to undergo incarceration for a minimum of five (5) years and a maximum of twenty (20) years after a jury found him guilty of aggravated assault, simple assault and recklessly endangering another person. The following is a brief procedural history of this case.

On January 6, 1997, the Defendant was arrested and charged with aggravated assault, simple assault and recklessly endangering another person as a result of an incident which occurred on September 8, 1996. On that date the Defendant's girlfriend, Stacy Tupper, was taken to the hospital with a severe head injury that was alleged to have occurred when she fell from a power line tower. It was alleged that the Defendant had some involvement with her fall from the tower. The Preliminary Hearing was held January 29, 1997, after which all charges were bound over for trial. On March 19, 1997, the Defendant filed a Petition for Habeas Corpus. The Defendant's petition was denied by the Court by Opinion and Order dated July 29, 1997. The Defendant filed Motions in Limine on October 30, 1997, which were denied by the Court by Opinion and Order dated May 15, 1998.

On August 7, 1998, the Defendant pled guilty to the charge of aggravated assault under a negotiated plea agreement of 11 ½ months to 23 months county sentence, and county parole supervision. At the time set for the sentencing on November 10, 1998, the Defendant requested that he be permitted to withdraw his guilty plea. On December 15, 1998, after hearing on the Defendant's motion, the Defendant's request was granted.

The case was listed for trial, and on June 16, 1999, the jury found the Defendant guilty of all of the charges. The Defendant was sentenced on August 2, 1999. On August 18, 1999, the Defendant filed post sentence motions nunc pro tunc, which were summarily denied by the Court on August 20, 1999. The Defendant filed his appeal to the Superior Court on August 30, 1999.

Instantly, the Defendant's right to appeal the pre trial motions 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 Opinions in support of this Court's Order' with regard to the Defendant's pre trial motions are accompanying the Orders.

In an effort to determine what other issues the Defendant wished to raise on appeal, on August 31, 1999, this Court directed that the Defendant file a Concise Statement of Matters Complained of on Appeal in accordance with Pa.R.A.P. 1925(b). 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 matters 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: January 18, 2000

By The Court,

Nancy L. Butts, Judge

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