

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. SA – 34 - 2006
	:
vs.	: CRIMINAL DIVISION
	:
RUBEN A. HEKIMIAN,	: Petition to Allow Summary Appeal
Defendant	: Nunc Pro Tunc

OPINION AND ORDER

Before the Court is Defendant's Petition to Allow Summary Appeal Nunc Pro Tunc, filed June 6, 2006. A hearing on the petition was held July 3, 2006.

On April 17, 2006, Defendant was cited by the Pennsylvania State Police for Accidents Involving Damage to Unattended Property;¹ the citation was filed with the magisterial district judge, who then served it upon Defendant at his home address in California. Defendant signed the back of the citation on the line which states "I plead guilty" and mailed both the citation and the fines and costs of \$391.50 to the magistrate, who received them on May 1, 2006. On June 1, 2006, Defendant contacted the magistrate's office to inquire about withdrawing his guilty plea and was informed that he would have to file an appeal within thirty days of May 1, 2006. Defendant then filed the instant petition, on June 6, 2006, contending an appeal should be allowed nunc pro tunc² because "Defendant is not guilty of the offense charged and because he was not advised of the 30 day time limit for filing an appeal until after said time period had expired".

The standard to be applied in this case has been well defined by the appellate courts:

A party seeking leave to appeal from a summary conviction nunc pro tunc has the burden of demonstrating two things: (1) that the delay in filing his appeal was caused by extraordinary circumstances involving fraud or a wrongful or negligent act of a court official resulting in injury to that party and (2) that upon learning of the existence of the grounds relied upon for nunc pro tunc relief, he acted promptly to seek such relief.

¹ 75 Pa.C.S. Section 3745(a).

² As the time for filing an appeal expired thirty days after the plea was entered on May 1, 2006, Pa.R.Crim.P. Rule 460(A), any appeal may be heard only if granted by the Court nunc pro tunc.

Commonwealth v. Yohe, 641 A.2d 1210 (Pa. Super. 1994). While it appears Defendant acted promptly in filing the request to appeal nunc pro tunc, the Court cannot find the necessary fraud or wrongful act of a court official. Defendant's only excuse for the delay was that he had not been advised of the 30 day appeal period and that he does not speak English. The citation contains a statement, however, under the heading "Rights and Obligations",³ that "If you are found guilty by the Magisterial District Judge, or you plead guilty, and you wish to appeal, you have THIRTY (30) days to file an appeal for a trial in the Court of Common Pleas." Indeed, it has been held that such a statement on the citation is sufficient, and that no further notice of any appeal rights need be provided. Commonwealth v. White, 806 A.2d 45 (Pa. Super. 2002). While the Court is sympathetic with Defendant's difficulty with the English language, such does not provide the basis for a finding of fraud or breakdown in the court system.⁴

Defendant having failed to adequately support his request for an appeal nunc pro tunc, the Court must enter the following:

ORDER

AND NOW, this 17th day of July 2006, for the foregoing reasons, Defendant's Petition to Allow Summary Appeal Nunc Pro Tunc is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Peter T. Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

³ The place where Defendant signed the citation is on the same side of the page, approximately six inches below, the notice of the right to appeal.

⁴ The Court does note, however, the instructions on the citation respecting entering the plea and paying the fines and costs were properly followed.