

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 1465 - 2001
	:
vs.	: CRIMINAL DIVISION
	:
BRIAN YASIPOUR, SR.,	: Motion for Permission to Supplement
Defendant	: 1925(b) Statement

OPINION AND ORDER

Before the Court is Defendant's Motion for Permission to Supplement 1925(b) Statement, filed March 6, 2007. Argument on the motion was heard March 23, 2007.

After a non-jury trial, Defendant was found guilty but mentally ill of third degree murder, possession of an instrument of crime and tampering with evidence, in connection with the killing of his five-year-old daughter. By Order dated June 2, 2006, Defendant was sentenced to twenty to forty years incarceration on the count of murder, one to five years on the count of possession of an instrument of crime, and six months to two years on the count of tampering with evidence. All sentences were directed to run consecutively, for an aggregate sentence of twenty-one and one-half to forty-seven years.

Post-sentence motions were denied by Order dated August 21, 2006, and Defendant appealed to Superior Court by Notice of Appeal dated August 28, 2006. By Order dated August 30, 2006, Defendant was directed to file a Statement of Reasons Complained of on Appeal, pursuant to Pa.R.A.P. 1925(b). Such a statement was timely filed, on September 1, 2006. This Court then issued a short Opinion pursuant to Pa.R.A.P. 1925(a), referring the appellate court to the Opinion issued in support of the Order denying Defendant's post-sentence motions. The record still remains in this Court, however, as transcripts have yet to be completed.

On March 6, 2007, Edward J. Rymsza, Esquire was appointed by the Court to represent Defendant in this appeal, his trial counsel having withdrawn. That same date, the instant motion was filed. Appellate counsel seeks permission to supplement the original 1925(b) statement should he believe effective advocacy requires such, after reviewing the trial transcripts which, as noted above, are not yet complete.

An appellant who has filed a timely Pa.R.A.P. 1925(b) statement, and then for good cause shown discovers that additional time is required to file a supplemental Pa.R.A.P. 1925(b) statement, may file a separate petition seeking permission to file a supplemental Pa.R.A.P. 1925(b) statement *nunc pro tunc*. Commonwealth v. Woods, 909 A.2d 372 (Pa. Super. 2006). See also Commonwealth v. Gravely, 2007 Pa. Super. LEXIS 247. In the instant matter, appellate counsel contends that since he was not trial counsel, he must review the trial transcripts in order to discover any issues of arguable merit, and only then will he be in a position to supplement the original 1925(b) statement. Although the Commonwealth argues that such is not “good cause” for the filing of an additional statement, it appears the Superior Court has recommended that one in appellate counsel’s position follow the procedure followed herein,¹ and thus this Court believes the instant situation to be one where “good cause” is shown, especially considering the seriousness of the matter involved.

ORDER

AND NOW, this 27th day of March 2007, for the foregoing reasons, Defendant’s Motion for Permission to Supplement 1925(b) Statement is hereby GRANTED. Defendant shall have thirty (30) days after the filing of the complete set of transcripts, in which to supplement the 1925(b) Statement.

BY THE COURT,

cc: DA
Edward Rymysza, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

¹ “This Court has set forth the procedure, which is to be followed by an appellant when he or she is ordered to file a Pa.R.A.P. 1925(b) statement and the notes of testimony have not yet been transcribed. Specifically, we have held that, in such a situation: ‘[A] n appellant must petition the trial court within the fourteen day period he or she has to file a timely Pa.R.A.P. 1925(b) statement, set forth good cause for an extension of a specific amount of time in which to file the statement, and obtain an order granting the request for the extension before the issues raised in an untimely 1925(b) statement will be preserved for appeal to this Court. n5
n5. In the alternative, an appellant who has filed a timely Pa.R.A.P. 1925(b) statement, and then for good cause shown discovers that additional time is required to file a supplemental Pa.R.A.P. 1925(b) statement, may file a separate petition seeking permission to file a supplemental Pa.R.A.P. 1925(b) statement *nunc pro tunc*.’” Commonwealth v. Gravely, 2007 Pa. Super. LEXIS 247, quoting Commonwealth v. Woods, 909 A.2d 372, 378 (Pa. Super. 2006).