

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	No.: 1221-2000
	:	CRIMINAL DIVISION
MICHAEL P. SMITH,	:	APPEAL
Defendant	:	

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

The Defendant appeals this Court’s Order dated October 12, 2009, which denied Defendant’s Motion to Stop Act 84 Deductions of Fines, Court costs and Restitution. The Court notes a Notice of Appeal was timely filed on October 26, 2009. On November 10, 2009, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a concise statement of matters complained of on appeal; to date Defendant has failed to file said statement.

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 “[i]ssues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.” Pa.R.A.P. No. 1925(b)(4)(vii). Rule 1925 was amended to include “a procedure for appellate courts to rectify a criminal appellant’s failure to file a Rule 1925(b) statement.” Commonwealth v. Scott, 925 A.2d 1190, 1191 (Pa. Super. Ct. 2008). Rule 1925 now provides in relevant part:

If an appellant in a criminal case was ordered to file a Statement and failed to do so, such that the appellate court is convinced that counsel has been per se ineffective, the appellate court shall remand for the filing of a Statement nunc pro tunc and for the preparation and filing of an opinion by the judge.

Pa.R.A.P. 1925(c)(3).

In the instant case, Defendant is not represented by Counsel and has not secured nor requested representation by Counsel. Therefore, the failure to file a 1925(b) statement is not per se ineffective assistance of counsel as the failure is of the Defendant's own making. Accordingly, because the Defendant has failed to comply with this Court's November 10, 2009, Order directing him to file, pursuant to Pa.R.A.P. No. 1925(b), a concise statement of matters complained of on appeal, this Court respectfully suggests that the Defendant has waived all issues for appeal purposes. See Pa.R.A.P. No. 1925(b)(4)(vii).

By the Court,

Dated: _____

Nancy L. Butts, Judge

xc: DA
Michael P. Smith
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Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)