

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF
PENNSYLVANIA

vs.

ANTWINE JACKSON

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NO: CR-394-2010

ORDER

The Defendant was charged with Possession with Intent to Deliver and other drug related charges for offenses which occurred on January 21, 2010 and January 28, 2010. Following a jury trial, the Defendant was found guilty of all charges. On December 15, 2010 the Defendant was sentenced to an aggregate state sentence of three (3) to six (6) years.

On December 27, 2010 despite representation by counsel, the Defendant individually filed a Post Sentence Motion. On December 30, 2010 a Post Sentence Motion was filed by Defendant's counsel. On January 5, 2011 this Court issued an Order indicating that no action would be taken on the motion filed by Defendant Jackson individually pursuant to Pa.R.Crim.P. 576.

Pennsylvania Rule of Criminal Procedure 576(A)(4) provides as follows:

In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy

of the time stamped document shall be forwarded to the defendant's attorney and the attorney for the Commonwealth within 10 days of receipt.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(A)(1) a written post-sentence motions must be filed no later than 10 days after imposition of sentence. The Defendant's Post-Trial Motion filed by Counsel of Record was clearly untimely. Although the Defendant's Motion was filed in a timely fashion, the comment to Pennsylvania Rule of Criminal Procedure 576 provides:

The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response.

The Comment additionally references Pa.R.A.P. 3304 which states:

Where a litigant is represented by an attorney before the Court and the litigant submits for filing a petition, motion, brief or any other type of pleading in the matter, it shall not be docketed but forwarded to counsel of record.

In Commonwealth v. Ellis, 626 A.2d 1137 (Pa. 1993), following a jury trial, the defendant was convicted of robbery and driving under the influence of alcohol. A number of issues were raised on the defendant's appeal to the Superior Court, and although the defendant was represented by counsel who filed an appellate brief with the Superior Court, the defendant attempted to file his own brief as well. Following the Superior Court's refusal to review the defendant's brief, the defendant petitioned the Supreme Court for allowance of appeal which was granted on the limited issue of whether it was error for the Superior Court to refuse to review the defendant's pro se brief.

In analyzing this issue, the Supreme court reviewed portions of the Superior Court's Order in which the Superior Court noted that in Pennsylvania there is a constitutional right of appeal pursuant to the Pennsylvania Constitution, and the right

to an attorney in a criminal case. Id. at 1138. The Supreme Court noted that the “Superior Court next pointed out that there is no right of self-representation together with counseled representation (“hybrid representation”) at the trial level.....from this, Superior Court concluded that there is no statutory or constitutional requirement that a court must review a pro se appellate brief which is submitted by a counseled appellant.” Id. at 1138 (citations omitted).

In upholding the Superior Court’s ruling, the Pennsylvania Supreme Court concluded that a represented appellant can petition to terminate his representation, or conversely elect to allow counsel to handle his appeal, but an appellant cannot confuse and overburden the court by his own pro se filings. Id. at 1141.

In response to the argument that it would be more effective, ultimately to review pro se filings than to deny review and be faced later with withdrawal of counsel and ineffectiveness claims, the Supreme Court held:

While we concur with the appellant’s description of the problem, we disagree with the conclusion. Tails should not wag dogs....[I]f appellate counsel’s arguments do not prevail and the appellant is convinced that his own unheeded arguments should have been presented, he need only file a petition pursuant to the Post Conviction Relief Act, claiming appellate counsel’s ineffectiveness. Id. at 1140.

As the Comment to Pa.R.Crim.P. 576 clearly provides that the filing by a Defendant, individually, when represented by counsel of record does not trigger deadlines or any action on the party of any other party the Defendant’s Post-Sentence Motion is DENIED.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order to the Pennsylvania Superior Court; “(b) the right to

assistance of counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and (d) the qualified right to bail under Rule 521(B).”

ORDER

AND NOW, this 25th day of February, 2011, it is ORDERED and DIRECTED that for the reasons stated above, the Defendant’s Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: DA (KO)
PD (JL)
Gary Weber, Esquire