

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1672-2011
vs. :
: CRIMINAL DIVISION
:
:
:
:
:
: 1925(a) Opinion

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

This opinion is written in support of this court's Order dated July 25, 2017.

The relevant facts follow.

On October 2, 2102, Appellant entered a guilty plea to the charges of person not to possess a firearm and possession with intent to deliver a controlled substance in exchange for a sentence of five to ten years' incarceration in a state correctional institution, and the court sentenced Appellant in accordance with the plea agreement. Appellant did not file any post-sentence motion or a direct appeal. Therefore, Appellant's judgment of sentence became final on or about November 1, 2012.

On July 18, 2017, Appellant filed a petition for return of property in which he sought the return of all the property (or, in the alternative, the monetary value thereof plus interest) that the Williamsport police seized from him on October 26, 2011, when the police searched his residence.

On July 25, 2017, the court entered an order denying Appellant's petition as untimely.

On August 22, 2017, Appellant filed a notice of appeal, but the court was not served with a copy of the notice at that time.

On October 16, 2017, the court directed Appellant to file within 21 days a concise statement of errors on appeal. On October 26, 2017, Appellant mailed to the court a copy of his notice of appeal and his concise statement. The court received these items on or about October 31, 2017.

The sole issue asserted on appeal is did the lower court err and abuse its discretion by dismissing Appellant's petition for return of property as untimely?

This case is governed by the Pennsylvania Supreme Court decision in *Commonwealth v. Allen*, 630 Pa. 577, 107 A.3d 709 (Pa. 2014). On January 10, 2002, Mr. Allen was arrested for driving a stolen vehicle and related offenses. Although the charges were held for court on February 15, 2002, the Commonwealth withdrew the charges against him by nolle prosequi, and Mr. Allen's case was disposed of on November 8, 2002. Over seven years later, on July 22, 2010, Mr. Allen filed a petition for return of property. The Pennsylvania Supreme Court found that a petition for return of property "is timely when it is filed by an accused in the trial court while that court retains jurisdiction, which is up to thirty days after disposition." 107 A.2d at 717. Therefore, Mr. Allen had until thirty days following the dismissal of the charges, or December 8, 2002, to move for return of the property. As a result of Mr. Allen's failure to do so, he waived any entitlement to the return of the property, which precluded review of his stand-alone return petition. *Id.* at 717-18.

Here, the court disposed of Appellant's charges when it sentenced him on

October 2, 2012, and no post-sentence motions were filed.¹ Therefore, Appellant had until November 1, 2012 to file his motion for return of property. Appellant's motion was not filed until July 18, 2017, which was untimely by more than four years. By failing to timely file his petition for return of property, Appellant waived any entitlement to the return of the property.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Oronde Daniels, LS-4793
1100 Pike Street, Huntingdon PA 16654-1112
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

¹ If a post-sentence motion had been filed within ten days of sentencing, the court would have had jurisdiction to address a return of property motion until 30 days after disposition of the post-sentence motion.