

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : NO. CR-1190-2015
: OTN: L954770-5
vs. :
: :
: :
JAMES NOTTINGHAM :
Defendant / Appellant : **APPEAL / 1925 (a)**

OPINION AND ORDER

This Court issues the following pursuant to P.R.A.P. 1925(a). Appellant, James Nottingham, filed an appeal on December 20, 2016 from this Court's Order of November 1, 2016. The November 1, 2016 Order entered judgment on the jury verdict of GUILTY to the charge of persons not to possess, use, manufacture, control, sell or transfer firearms.¹ The November 1, 2016 Order deferred sentencing to January 4, 2017. Appellant filed this appeal approximately two months prior to the scheduled sentencing date. This Court recommends that the appeal be quashed for failure to comply with the timing for appeal as set forth in Pa. R. Crim. P. 720. "Pennsylvania law makes clear that "the general rule in criminal cases is that a defendant may appeal only from a final judgment of sentence, and an appeal from any prior order or judgment will be quashed." Commonwealth v. Wint, 1999 PA Super 81, 730 A.2d 965, 966 (Pa. Super. 1999), *quoting*, Commonwealth v. Kurilla, 391 Pa. Super. 241, 570 A.2d 1073 (Pa. Super. 1990). In the present case, the Mr. Nottingham filed his appeal on November 1, 2016 before being sentenced. The Court has since imposed sentence on January 10, 2017. As such, the Court respectfully requests and recommends that the appeal be quashed.

¹ By information filed on August 7, 2015, the Commonwealth charged James Nottingham with count ten, persons not to possess, use, manufacture, control sell or transfer firearms, a felony of the second degree as well as the following additional nine counts: count 1, aggravated assault, graded as a felony of the first degree, count 2, aggravated assault graded as a second degree felony, count 3, unlawful restraint, graded as a felony of the second degree, count 4, endangering welfare of children, graded as a felony of the third degree, count 5, terroristic threats, graded a misdemeanor of the first degree, count 6, possessing instruments of crime, graded as a misdemeanor of the first degree, count 7, simple assault, graded as a misdemeanor of the second degree. Count 8, recklessly endangering another person, graded a misdemeanor of the second degree, and count 9, a summary harassment. On October 19, 2016, the Court severed count 10 pursuant to Pa. R. Crim. P. 583.

In the alternative, this Court respectfully recommends and requests that the appeal be remanded for failure to file a concise statement pursuant to Pa. R.A.P. 1925 (c) (3). The Rules of Appellate procedure provide the following.

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 present case, on January 5, 2017, this Court ordered and directed that the appellant file a concise statement of errors made on appeal in accordance with Pa. R.A.P. 1925(b) within twenty one days. To date, the Court has not received a concise statement nor has any concise statement been filed of record on the docket. Accordingly, this Court recommends that the matter be remanded for failure to comply with the requirement for a concise statement.

BY THE COURT,

February 15, 2017

Date

Richard A. Gray, J.

c: DA (MW)
PD - Matthew B. Welickovitch, Esquire, (for Appellant)
(Superior & 1)
Prothonotary (LG)