NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. KATRINA S. KELLY, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2102 EDA 2016

Appeal from the Judgment of Sentence May 23, 2016
in the Court of Common Pleas of Lehigh County
Criminal Division at No.: CP-39-SA-0000035-2016

BEFORE: GANTMAN, P.J., OTT, J., and PLATT, J.*

JUDGMENT ORDER BY PLATT, J.: **FILED APRIL 24, 2017**

Appellant, Katrina S. Kelly, appeals from the judgment of sentence entered following her conviction at a trial *de novo* for the summary offense of harassment.[1] We dismiss.

The relevant facts and procedural history of this case are as follows. On January 19, 2016, a magisterial district judge convicted Appellant of harassment following a summary trial. The judge sentenced her to a term of ninety days' probation, and ordered her to have no contact with the victim, a neighbor. On January 26, 2016, Appellant filed a notice of appeal in the Lehigh County Court of Common Peas.

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 2709(a)(3).

On May 23, 2016, the trial court held a summary appeal hearing. At the conclusion of the hearing, the court found Appellant guilty of harassment and re-imposed the original sentence of ninety days' probation, and no contact with the victim. On June 2, 2016, Appellant filed a post-sentence motion, which the trial court denied on June 15, 2016. Appellant filed a notice of appeal on June 30, 2016.[2]

On appeal, Appellant challenges the weight and sufficiency of the evidence supporting her conviction. (***See*** Appellant's Brief, at 16-30). However, as a preliminary matter, we must consider the propriety of this appeal. The trial court and the Commonwealth maintain that this appeal should be dismissed as untimely. (***See*** Trial Court Opinion, 10/24/16, at 5-8; Commonwealth's Brief, at 7-8). Upon review, we agree.

The timeliness of an appeal implicates our jurisdiction, which "is vested in [this] Court upon the filing of a timely notice of appeal." ***Commonwealth v. Nahavandian***, 954 A.2d 625, 629 (Pa. Super. 2008) (citation omitted). "[P]ursuant to Pa.R.Crim.P. 720(D), a defendant in a summary appeal case is not permitted to file post-sentence motions." ***Commonwealth v. Dixon***, 66 A.3d 794, 797 (Pa. Super. 2013). Rule 720 provides, in pertinent part:

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[2] Appellant filed a timely court-ordered concise statement of errors complained of on appeal on August 3, 2016. ***See*** Pa.R.A.P. 1925(b). The trial court entered a Rule 1925(a) statement on October 24, 2016. ***See*** Pa.R.A.P. 1925(a).

> **(D) Summary Case Appeals.** There shall be no post-sentence motion in summary case appeals following a trial *de novo* in the court of common pleas. **The imposition of sentence immediately following a determination of guilt at the conclusion of the trial *de novo* shall constitute a final order for purposes of appeal**.

Pa.R.Crim.P. 720(D) (emphasis added). Thus, under the plain language of the rule, "[t]he time for appeal in summary cases following a trial *de novo* **runs from the imposition of sentence**." ***Id.***, comment (emphasis added).

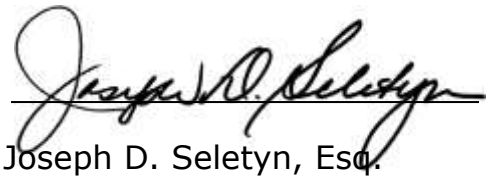
Here, because Appellant was not permitted to file a post-sentence motion in this summary case appeal, the appeal period began to run from the date her sentence was imposed, May 23, 2016. The filing of a motion for reconsideration of sentence in this context will not toll the thirty-day appeal period. Therefore, her notice of appeal, filed more than thirty days later, was untimely. ***See*** Pa.R.A.P. 903(a). Accordingly, we dismiss this appeal.[3]

Appeal dismissed.

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[3] We note that Appellant's reliance on ***Commonwealth v. Dougherty***, 679 A.2d 779 (Pa. Super. 1996), is misplaced, where the appellant in that case filed a **timely** notice of appeal within thirty days of the judgment of sentence and properly filed no post-sentence motions in the summary case appeal. ***See Dougherty***, ***supra*** at 781; (***see also*** Appellant's Brief, at 14).

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/24/2017