

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

WILLIAM R. LANDIS, JR.,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1018 MDA 2013

Appeal from the Judgment of Sentence May 15, 2013  
in the Court of Common Pleas of Berks County  
Criminal Division at No.: CP-06-CR-0005405-2009

BEFORE: PANELLA, J., OLSON, J., and PLATT, J.\*

MEMORANDUM BY PLATT, J.

**FILED APRIL 10, 2014**

Appellant, William R. Landis, Jr., appeals from the judgment of sentence entered following his conviction by a jury of first-degree murder. We affirm.

The trial court summarized the factual and procedural history of this case as follows:

On October 28, 2009, at approximately 9:20 p.m., Berks County Radio dispatched Spring Township Police officers to the residence of [Appellant] to investigate a possible shooting. A man had called to report that a woman had been shot. It was later discovered that the caller was [Appellant]. [Appellant's] wife, Sharon Landis, was found dead from a gunshot wound to the head on the second floor of the residence. The victim also had other nonfatal gunshot wounds on her body. While performing a clearing operation of the residence, officers discovered [Appellant] barricaded in the basement. [Appellant]

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\* Retired Senior Judge assigned to the Superior Court.

had a knife and two guns in his possession and threatened to shoot anyone who came down into the basement. While in the basement, [Appellant] made several telephone calls to family and friends and mentioned his dead wife. [He] became increasingly intoxicated as the evening progressed. The Berks County Emergency Response Team was called to the scene, and [Appellant] was eventually taken into custody after several hours had elapsed.

[On October 29, 2009, the Commonwealth filed a criminal complaint against Appellant.] On February 17, 2010, [Appellant] filed an omnibus pretrial motion to sever the charges related to his wife's murder from the charges related to the assaults upon the officers who had attempted to take him into custody. [On April 19, 2010, the trial] court granted [Appellant's] request for severance of the charges and granted a writ of *habeas corpus* on the charge of assault of a law enforcement officer.<sup>[1]</sup> The Commonwealth filed a timely appeal on the issuance of the writ. The Superior Court reversed [the trial] court's decision on the writ on June 26, 2012.

On December 31, 2012, [Appellant] filed a [m]otion to [d]ismiss [p]ursuant to Pa. R. Crim. P. 600(g).<sup>[2]</sup> Following argument, [the trial] court issued an [o]pinion and [o]rder which denied [Appellant's] motion. The trial on the charges of [m]urder of the [f]irst [d]egree, [m]urder of the [t]hird [d]egree, [v]oluntary [m]anslaughter, and [i]nvoluntary [m]anslaughter commenced on April 1, 2013, and ended on April 5, 2013. After several questions and several hours of deliberation the jury found [Appellant] guilty of [m]urder of the

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<sup>1</sup> On May 3, 2010, Appellant filed a "Petition for Release from Berks County Prison," requesting that the trial court grant him temporary release to permit him to attend his daughter's college graduation ceremony. The court denied the petition on May 7, 2010.

<sup>2</sup> Pennsylvania Rule of Criminal Procedure 600 implements speedy trial rights to defendants based upon the Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution. **See *Commonwealth v. Goldman***, 70 A.3d 874, 879 (Pa. Super. 2013), *appeal denied*, 2014 Pa. Lexis 276 (Pa. filed Jan. 28, 2014).

[f]irst [d]egree. [On May 15, 2013, the trial court sentenced Appellant to life imprisonment.] This timely appeal followed.

(Trial Court Opinion, 8/02/13, at 1-2).<sup>3</sup>

Appellant raises seven issues for this Court's review, with his first issue separated into two sub-parts:

I. Should [Appellant's] case be dismissed because of the failure to be granted a new trial in violation of Rule 600?

A. [Whether Appellant] should be released for violation of his rights as set out at Pa.R.Crim.P. 600(A)(2)[?]

B. [Whether Appellant] should be released for violation of his rights as set out at Pa.R.Crim.P. 600(D)(2)[?]

II. Should [Appellant] be granted a new trial because of the ineffective assistance of counsel and the failure of defense counsel to request a change in venue due to the adverse publicity of the incident and during the trial?

III. Should [Appellant] be granted a new trial because of the ineffective means of his counsel *ab initio* when they failed to conduct proper jury *voir dire* concerning the jurors' attitudes regarding marital infidelity and marital abuse[?]

IV. Was defense counsel ineffective by not presenting an active defense for [Appellant] following their demand on the first day of the trial for an additional \$50,000.00 from [Appellant's] family and his family only paying \$25,000.00 of the \$50,000.00 after counsel threatened to withdraw from the case during the trial?

V. Should [Appellant] be granted a new trial because of the ineffectiveness of his counsel by not calling essential witnesses, namely: (a) his retained psychiatrist; (b) his retained physical reconstruction expert; and (c) [Appellant] himself[?]

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<sup>3</sup> Pursuant to the trial court's order, Appellant filed a timely Rule 1925(b) statement of errors on June 21, 2013. The court entered a Rule 1925(a) opinion on August 2, 2013. **See** Pa.R.A.P. 1925.

VI. Should [Appellant] be granted a new trial because the jury was confused and could not render a decision based upon the facts as presented at trial?

VII. Should [Appellant] be granted a new trial because even the trial court was confused as to the facts in the case as set out in his opinion?

(Appellant's Brief, at 4).<sup>4</sup>

In his first issue, Appellant argues that the trial court violated his Rule 600 speedy trial rights when it denied the motion he filed on May 3, 2010.

(**See** Appellant's Brief, at 17).<sup>5</sup> We disagree.

In evaluating Rule [600] issues, our standard of review of a trial court's decision is whether the trial court abused its discretion. Judicial discretion requires action in conformity with law, upon facts and circumstances judicially before the court, after hearing and due consideration. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

The proper scope of review is limited to the evidence on the record of the Rule [600] evidentiary hearing, and the

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<sup>4</sup> Appellant's brief is sixty-one pages long and does not include a certification that it complies with word count limits, in violation of Pennsylvania Rule of Appellate Procedure 2135 [(providing that thirty-page principal brief is deemed to comply with 14,000 word limit and filing of certification of compliance required in all other cases.) **See** Pa.R.A.P. 2135(a)(1), (d)].

<sup>5</sup> Appellant divides his two-and-one-half-page argument on his Rule 600 issue into two sub-parts, "A" and "B." In sub-part "A," he alleges trial court error with respect to its denial of his May 3, 2010 petition.

findings of the [trial] court. An appellate court must view the facts in the light most favorable to the prevailing party.

***Commonwealth v. Ramos***, 936 A.2d 1097, 1100 (Pa. Super. 2007) (*en banc*), *appeal denied*, 948 A.2d 803 (Pa. 2008) (citation omitted).

Here, review of the record reflects that the document filed by Appellant on May 3, 2010, was a "Petition for Release from Berks County Prison." In the petition, Appellant requested that the trial court grant him temporary release, to permit him to attend his daughter's college graduation ceremony on May 13, 2010. (**See** Petition for Release from Berks County Prison, 5/03/10, at unnumbered pages 1-2). This petition filed by Appellant in May 2010 was not a Rule 600 motion; it did not raise an issue alleging violation of his speedy trial rights. (**See id.**). Appellant's argument wholly lacks record support and is therefore meritless.<sup>6</sup>

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<sup>6</sup> In sub-part "B" of his Rule 600 issue, Appellant raises an ineffective assistance of counsel claim, arguing that

the overall ineffective assistance of counsel and the lack of due diligence by [his] trial counsel was further demonstrated when counsel failed to argue that [he] should have been released when he was incarcerated for more than 120 days after a remand from [the Superior] Court and not granted a speedy trial.

(Appellant's Brief, at 17; **see id.** at 18-19). As discussed in detail below, we cannot address Appellant's ineffective assistance of counsel claims on direct appeal, and the claims are dismissed without prejudice. We note that Appellant's ineffective assistance of counsel argument in sub-part "B" is confusing because the record plainly reflects that counsel did file a Rule 600 motion on December 31, 2012, following remand from this Court, and that the trial court heard argument on the issue before denying the motion on (*Footnote Continued Next Page*)

In his second through fifth issues, Appellant raises four claims of ineffective assistance of trial counsel. (**See** Appellant’s Brief, at 4, 19-54). In **Commonwealth v. Holmes**, 79 A.3d 562 (Pa. 2013), our Supreme Court reaffirmed the general rule that ineffective assistance of counsel claims must await collateral review. **See Holmes, supra** at 563. The **Holmes** Court also recognized two limited exceptions to the deferral rule, both falling within the discretion of the trial court. **See id.** at 563-64. First, the Court held that trial courts retain discretion, in extraordinary circumstances, to entertain a discrete claim of trial counsel ineffectiveness if the claim is both apparent from the record and meritorious. **See id.** at 563. Second, the Court held that trial courts also have discretion to entertain prolix claims of ineffectiveness if there is good cause shown and the unitary review permitted is preceded by a knowing and express waiver by the defendant of the right to seek review under the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. **See id.** at 564.

Here, the facts of this case do not fall within the limited exceptions to the general deferral rule carved out by the **Holmes** Court. Therefore, Appellant cannot seek review of his ineffectiveness claims on direct appeal. Accordingly, we dismiss Appellant’s ineffective assistance of counsel claims without prejudice, should he decide to include these claims in a timely-filed

(Footnote Continued) \_\_\_\_\_

February 7, 2013. (**See** Motion to Dismiss Pursuant to Pa.R.Crim.P. 600, 12/31/12, at 1; Order, 2/07/13, at 1).

PCRA petition. **See id.** at 563-64; **see also Commonwealth v. Stollar**, 2014 WL 241864, at \*16-17 (Pa. filed Jan. 21, 2014) (dismissing, pursuant to **Holmes**, appellant's ineffective assistance of counsel claims raised on direct appeal without prejudice to pursue them on collateral review).

In his sixth and seventh issues, Appellant argues that he is entitled to a new trial because: 1) the jury was confused and could not render a decision based upon the facts as presented at trial; and 2) the trial court was confused as to the facts of this case. (**See** Appellant's Brief, at 4, 56-59). These issues are waived.

Pennsylvania Rule of Appellate Procedure 1925(b) provides that "[i]ssues not included in [an appellant's 1925(b)] Statement . . . are waived." Pa.R.A.P. 1925(b)(4)(vii); **see also Greater Erie Indus. Dev. Corp. v. Presque Isle Downs, Inc.**, 2014 WL 930822 at \*2 (Pa. Super. 2014) (*en banc*) ("[O]ur Supreme Court does not countenance anything less than stringent application of waiver pursuant to Rule 1925(b) [and] . . . it is no longer within [the Superior] Court's discretion to ignore the internal deficiencies of Rule 1925(b) statements.") (case citation omitted); **Commonwealth v. Schofield**, 888 A.2d 771, 774 (Pa. 2005) (stating bright-line rule under which failure to comply with Rule 1925(b) results in waiver of issues raised on appeal).

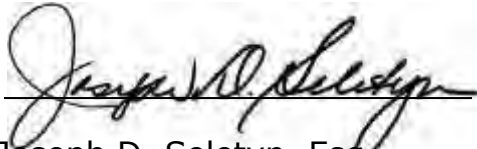
Here, Appellant's Rule 1925(b) statement does not raise the sixth and seventh issues he discusses in his brief alleging jury and trial court confusion regarding the facts of this case and the record. (**See** Rule 1925(b)

Statement, 6/21/13, at 1-2; Appellant's Brief, at 56-59). Consequently, Appellant's last two issues on appeal are waived. **See** Pa.R.A.P. 1925(b)(4)(vii). Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed. Ineffective assistance of counsel claims dismissed without prejudice.

Olson, J., concurs in the result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/10/2014