

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ANDY BUXTON

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1173 WDA 2013

Appeal from the Judgment of Sentence entered May 20, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No: CP-02-CR-0008697-2012

BEFORE: BOWES, OLSON, and STABILE, JJ.

MEMORANDUM BY STABILE, J.:

**FILED FEBRUARY 1, 2016**

Appellant Andy Buxton appeals from a judgment of sentence imposed on May 20, 2013 in the Court of Common Pleas of Allegheny County ("trial court") following his bench-trial conviction for, *inter alia*, two counts of driving under the influence of alcohol (DUI) in violation of Section 3802(a)(1) of the Motor Vehicle Code (Code), 75 Pa. C.S.A. §3802(a)(1). Because we are without jurisdiction over this appeal, we quash.

The facts and procedural history underlying this case are undisputed. On June 28, 2012, Officer Fred L. Hill, Jr., Duquesne Police Department, charged Appellant with multiple crimes, including DUI under Section 3802(a)(1) of the Code. The affidavit accompanying the complaint provided:

On Thursday 6/6/12 at 0205 Hrs, [Officer Hill] was parked in a marked police vehicle monitoring traffic on SR 837 [at] Leo's Service Center. [Officer Hill] is a certified operator of V-Spec

speed timing device and using a certified V-Spec speed timing device in unit 1771 clocked a black Audi . . . with black window tint making it unable to view the inside of the vehicle, traveling northbound at a speed of 80.1 mph in this 35 mph zone. [Officer Hill] pulled out to conduct a traffic stop. As [Officer Hill] attempted to catch up to this vehicle, Audi made a left turn onto Overland Avenue without using a turn signal and continued to travel at high rate of speed. [Officer Hill] observed this vehicle tap brakes, but not stop at posted stop sign on Overland Avenue [at] Fairmont Street. Vehicle slowed down but did not stop and did not use a turn signal as vehicle turned left onto Commonwealth Avenue. [Officer Hill] activated the emergency lights and conducted a traffic stop in the 200 block of Commonwealth Avenue.

Upon approaching the driver, identified as [Appellant], [Officer Hill] smelled an overwhelming odor of an alcoholic beverage emanating from [Appellant's] breath and person[.]. [Officer Hill] observed [Appellant] was slouched down into the door and [Officer Hill] was unable to view his left arm and hand. [Appellant] had bloodshot, glassy eyes, slurred speech and the general appearance and demeanor of someone highly intoxicated. As [Officer Hill] was walking up to [Appellant's] vehicle, [Appellant] was yelling "why the fuck you harassing me motherfucker, who the fuck is this[.]" [Officer Hill] asked [Appellant] for his driver[']s license, vehicle registration and proof of vehicle insurance. [Appellant] was screaming "fuck you motherfucker, I ain't showing you shit[.]" [Officer Hill] advised [Appellant] to calm down several times and repeated his request for [Appellant's] driver's license and vehicle information. [Appellant] was still slouched into the door and [Officer Hill] was unable to view his arm. [Appellant] was very verbally combative and now threatening to beat officers. [Officer Hill] opened the driver's door and [Appellant] was told to step out of the vehicle. [Appellant] refused. [Officer Hill] assisted [Appellant] out of the vehicle by getting control of his left arm. [Appellant] was told to place his hands against the vehicle. [Appellant] refused and was attempting to turn around to face officers. [Officer Hill] pushed [Appellant] against the side of his vehicle and he was told to place his hands on top of the vehicle. [Appellant] refused and had his arms at his waist area. [Officer Hill] did palm strikes to side of [Appellant's] face and did gain control of his right arm. [Appellant] still refused to show his left arm. Officer Steiner gained control of [Appellant's] left arm and he was handcuffed. [Appellant] was screaming threats and profanities at officers. [Appellant] was placed in police vehicle. [Appellant] refused to conduct field sobriety tests.

Based upon [his] training and years of experience, [Officer Hill] felt that [Appellant] was highly intoxicated and incapable of safely operating a motor vehicle. [Appellant] was advised that he was under arrest for DUI. [Appellant] continued to scream profanities and threaten officers. [Officer Hill] read [Appellant] his chemical testing warnings. [Appellant] stated "fuck you

motherfucker, I ain't taking no motherfucking test." [Officer Hill] deemed this as a refusal. [Appellant] refused to sign the refusal form.

Affidavit of Probable Cause, 6/28/12. The case proceeded to a bench trial, following which Appellant was convicted of, *inter alia*, two counts of DUI under Section 3802(a)(1)—general impairment “with refusal” and general impairment. On May 20, 2013, merging the DUI counts, the trial court sentenced Appellant to seven days’ intermediate punishment program (house arrest) and six months’ probation. On June 25, 2013, Appellant appealed to this Court.

The trial court directed Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Appellant complied. In response, the trial court issued a Pa.R.A.P. 1925(a) opinion, concluding that Appellant’s convictions for DUI were supported by sufficient evidence of record.

On appeal, Appellant argues that his convictions for DUI were not supported by sufficient evidence and that the trial court erred in convicting him for the same DUI offense twice. Before we may address the merits of Appellant’s claim, we must determine whether we have jurisdiction over this appeal.

It is settled that the time limitations for taking appeals are strictly construed and cannot be extended as a matter of grace. ***Commonwealth v. Valentine***, 928 A.2d 346, 349 (Pa. Super. 2007). This Court can raise the matter *sua sponte*, as the issue is one of jurisdiction to entertain the appeal. ***Id.*** As a general rule, however, this Court has no jurisdiction to

entertain an untimely appeal. **Commonwealth v. Patterson**, 940 A.2d 493, 497 (Pa. Super. 2007), **appeal denied**, 960 A.2d 838 (Pa. 2008). This general rule “does not affect the power of the courts to grant relief in the case of fraud or breakdown in the processes of the court.” **Id.** at 498.

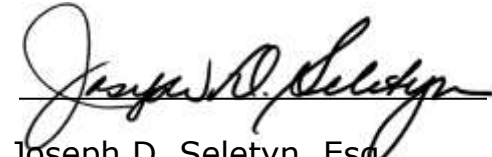
“[T]he notice of appeal . . . shall be filed within 30 days after the entry of the order from which the appeal is taken.” Pa.R. A.P. 903(a). “A direct appeal in a criminal proceeding lies from the judgment of sentence.” **Patterson, supra** at 497 (quoting **Commonwealth v. Preacher**, 827 A.2d 1235, 1236 n. 1. (Pa. Super. 2003)). If a defendant files a timely post-sentence motion, the notice of appeal shall be filed within 30 days of the entry of the order deciding the motion. Pa.R.Crim.P. 720(A)(2)(a). To be timely, a post-sentence motion must be filed no later than 10 days after imposition of sentence. Pa.R.Crim.P. 720(A)(1). Absent a timely post-sentence motion, the notice of appeal shall be filed within 30 days of imposition of sentence. Pa.R.Crim.P. 720(A)(3); **Commonwealth v. Dreves**, 839 A.2d 1122, 1127 (Pa. Super. 2003) (*en banc*).

Here, our review of the record reveals that Appellant did not appeal from the May 20, 2013 judgment of sentence until June 25, 2013—well outside the 30-day period. As a result, this appeal is untimely. Moreover, our review of the record does not indicate that there was a breakdown in the processes of the court or that Appellant filed any post-sentence motion.

Accordingly, we are constrained to quash this appeal.<sup>1</sup> **See**  
***Commonwealth v. Wrecks***, 934 A.2d 1287, 1289 (Pa. Super. 2007)  
(noting that we are without jurisdiction to hear an untimely appeal).

Appeal quashed. Application denied.

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: 2/1/2016

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<sup>1</sup> Based on the reasons outlined in this case, we deny Appellant's July 2, 2015 Application for Permission to Appeal *Nunc Pro Tunc*.