

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

LUTHER S. RYALS, JR.

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1542 EDA 2015

Appeal from the Order December 11, 2014  
In the Court of Common Pleas of Montgomery County  
Criminal Division at No(s): CP-46-CR-0001198-2009  
CP-46-MD-0001480-2008

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

**FILED FEBRUARY 01, 2016**

Appellant Luther S. Ryals Jr. appeals *pro se* from the order entered in the Montgomery County Court of Common Pleas, which denied his petition for return of property.<sup>1</sup> We affirm.

The trial court set forth the relevant facts and procedural history of this appeal as follows:

In September 2008, Appellant was arrested and charged with possession and intent to distribute a controlled substance, and possession of drug paraphernalia. Upon

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<sup>1</sup> “[B]oth this Court and the Commonwealth Court have jurisdiction to decide an appeal involving a motion for the return of property filed pursuant to Pa.R.Crim.P. 588.” ***Commonwealth v. Durham***, 9 A.3d 641, 642 (Pa.Super.2010) (citing ***Commonwealth v. Younge***, 667 A.2d 739 (Pa.Super.1995); ***In Re One 1988 Toyota Corolla***, 675 A.2d 1290 (Pa.Cmwltth.1996)). Because Appellant chose this forum, we will address this appeal.

his arrest, three thousand one hundred thirty-two [dollars] (\$3,132.00) was seized from Appellant. Specifically, Appellant avers that six hundred thirty two dollars (\$632.00) cash was seized from Appellant, and an additional sum of two thousand five hundred dollars (\$2,500.00) was paid by him to recover his automobile.

On November 17, 2008, a [s]tipulated [o]rder [(“the Stipulated Order”), ...] signed by Douglas B. Breidenbach, Jr., Appellant’s trial counsel, and James W. Staerk, Assistant District Attorney, states, in pertinent part:

The sum of six hundred thirty two dollars (\$632.00) is forfeited to the District Attorney of Montgomery County. An additional sum of two thousand five hundred dollars (\$2,500.00) shall also be forfeited to the District Attorney of Montgomery County. The Pottstown Police Department shall release custody and control of one 2005 BMW 7 Series to [Appellant] or his authorized agent.

On October 19, 2010, Appellant was convicted and sentenced to 8½ to 20 years[’ incarceration].

On November 5, 2014, Appellant, proceeding *pro se*, filed a [p]etition for [r]eturn of [p]roperty. A forfeiture hearing was scheduled before the Honorable Gary S. Silow on December 11, 2014. During the forfeiture hearing[,] the Honorable Gary S. Silow reviewed the Stipulated Order, and issued an [o]rder dated December 11, 2014, which dismissed Appellant’s Petition for Return of Property as moot.<sup>[2]</sup>

Thereafter, on April 10, 2015, Appellant filed a [m]otion to [v]acate [f]orfeiture. In said [m]otion, Appellant sought to vacate the Stipulated Order, and have his property returned to him, arguing: (1) that he never authorized his

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<sup>2</sup> Neither this order nor the notes of testimony from the forfeiture hearing are included in the certified record. The docket indicates that the trial court dismissed Appellant’s petition for return of property orally, at the forfeiture hearing.

trial counsel to sign the Stipulated Order; (2) that he was unaware of the existence of the Stipulated Order until the hearing on December 11, 2014; and (3) that his property was improperly forfeited as he was not afforded the basic due process rights of notice and an opportunity to be heard prior to forfeiture.

On April 28, 2015, this [c]ourt denied Appellant's [m]otion to [v]acate [f]orfeiture, and noted that Appellant's prior motion for Return of Property was denied on December 11, 2014.

On May 19, 2015, Appellant filed a [n]otice of [a]ppeal seeking to appeal both the December 11, 2014 [o]rder, and the April 28, 2015 [o]rder. On May 26, 2015, this [c]ourt directed Appellant to file a [c]oncise [s]tatement of [e]rrors [c]omplained of on [a]ppeal pursuant to Pa.R.A.P. 1925(b) ("Statement"). On June 8, 2015, Appellant filed a Statement, which alleges errors on the part of the trial court in his criminal conviction. Said statement is purportedly submitted in support [of] a [m]otion for [p]ost[-c]onviction [r]elief, and not in relation to the [o]rders that are the subject of the instant appeal.

Trial Court Pa.R.A.P. 1925(a) opinion, filed July 24, 2015, at 1-3.

On June 19, 2015, this Court issued an order to show cause why this appeal should not be quashed as untimely filed on May 19, 2015 from the order denying Appellant's motion for return of property entered on December 11, 2014. On June 29, 2015, Appellant filed a response claiming he did not receive the order denying his motion for return of property until May 1, 2015. Appellant attached to his response a letter he had written to the clerk of courts, filed January 13, 2015,<sup>3</sup> requesting an order or decision

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<sup>3</sup> Appellant's letter was dated January 6, 2015, mailed from prison on January 13, 2015, and filed with the trial court on January 27, 2015. *(Footnote Continued Next Page)*

on his motion for return of property as he had not yet received one. Appellant also attached to his response the trial court order filed April 30, 2015, which denied his motion to vacate forfeiture and indicated that Appellant's prior motion for return of property was denied "on or about" December 11, 2014. In consideration of Appellant's response, this Court referred the appeal to this merits panel to determine the timeliness of the appeal.

Appellant raises the following issues in his *pro se* brief:

DID THE [TRIAL COURT] ERR IN FAILING TO GRANT APPELLANT'S PETITION FOR RETURN OF PROPERTY WHEN THE COMMONWEALTH FAILED TO ESTABLISH PROOF, BY A PREPONDERANCE OF [THE] EVIDENCE, THAT APPELLANT'S PROPERTY WAS PROVEN CONTRABAND OR DERIVATIVE CONTRABAND FROM ILLEGAL CRIMINAL ACTIVITY[?]

DID THE [TRIAL COURT] ERR IN FAILING TO GRANT APPELLANT'S PETITION FOR RETURN OF PROPERTY WHEN THE COMMONWEALTH FAILED TO GIVE REASONABLE NOTICE AND AN OPPORTUNITY TO THE APPELLANT[, WHICH ARE THE] REQUIREMENTS THAT UNDERLINE DUE PROCESS OF THE LAW[?]

DID THE [TRIAL COURT] ERR IN FAILING TO GRANT APPELLANT'S PETITION FOR RETURN OF PROPERTY WHEN IT WAS APPARENT FROM THE FACE OF THE RECORD THAT COUNSEL FOR APPELLANT DID NOT NOTIFY APPELLANT THAT THERE WOULD BE A STIPULATED ORDER HEARING

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

Pursuant to the prisoner mailbox rule, we deem this letter filed on January 13, 2015. **See *Commonwealth v. Patterson***, 931 A.2d 710, 714 (Pa.Super.2007) ("Pursuant to the prisoner mailbox rule, we deem a document filed on the day it is placed in the hands of prison authorities for mailing.").

CONDUCTED, IN WHICH COUNSEL TOOK IT UPON HIMSELF TO SIGN A STIPULATED ORDER, THAT WOULD FORFEIT APPELLANT'S PROPERTY, WITHOUT APPELLANT'S CONSENT PERMISSION AND KNOWLEDGE[?]

Appellant's Brief at 5.

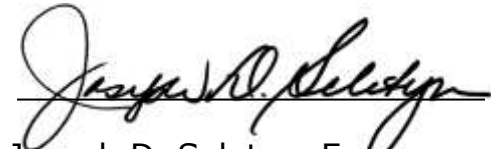
We deem Appellant's appeal timely under the unusual circumstances described above. Nevertheless, Appellant waived his claims by failing to raise them in his concise statement of errors complained of on appeal. **See** Appellant's Pa.R.A.P. 1925(b) Statement; **see also Commonwealth v. Castillo**, 888 A.2d 775, 780 (Pa.2005) (issues not raised in Pa.R.A.P. 1925(b) statements will be deemed waived). Appellant's concise statement only challenges the legality of his sentence. It does not challenge the trial court orders denying his petition for return of property or his motion to vacate forfeiture. Therefore, Appellant's concise statement does not raise any issue that Appellant attempts to raise in his appellate brief.

Order affirmed.

Judge Ott joins in the memorandum.

President Judge Emeritus Ford Elliott 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: 2/1/2016