

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHRISTOPHER J. NEUMAN,	:	
	:	
Appellant	:	No. 1308 MDA 2013

Appeal from the Order entered July 10, 2013,
Court of Common Pleas, Lebanon County,
Criminal Division at No. CP-38-CR-0001064-2012

BEFORE: BENDER, P.J.E., DONOHUE and STRASSBURGER*, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED APRIL 11, 2014

Christopher J. Neuman ("Neuman") appeals from the order of the Court of Common Pleas, Lebanon County, denying a motion entitled "Nunc Pro Tunc Motion for Sentence Modification." We affirm.

On July 2, 2012, Neuman was arrested and charged with simple assault stemming from a domestic dispute. At the time Neuman committed this assault, he was on parole for a previous conviction. On January 30, 2013, Neuman pled guilty to one count of simple assault. On March 13, 2013, the trial court sentenced him to ten months to two years of incarceration, and ordered that this sentence run concurrently with any other sentence Neuman was serving. Neuman did not file a post-sentence motion or a direct appeal.

*Retired Senior Judge assigned to the Superior Court.

On July 3, 2013, Neuman filed a document *pro se* entitled Nunc Pro Tunc Motion for Sentence Modification. In this motion, Neuman alleged that on June 25, 2013 he received a document from the Department of Corrections indicating that his simple assault sentence was not running concurrently with the sentence imposed upon the revocation of his parole.¹ He asked the trial court to modify his sentence “by removing [] one day from the maximum sentence which will allow the [Department of Corrections] to run this sentence concurrent.” Nunc Pro Tunc Motion for Sentence Modification, 7/2/13, at 4. The trial court denied Neuman’s petition.

This timely appeal followed, in which Neuman presents one issue for our review: “Should the lower court have heard [Neuman’s] modification of sentence, *nunc pro tunc*, filed on July 5, 2013 [*sic*] and granted the relief [Neuman] sought?” Appellant’s Brief at 3.

The trial court denied Neuman’s motion upon its conclusion that it lacked jurisdiction to modify Neuman’s sentence. Trial Court Opinion, 7/10/13, at 1-2. We agree. “Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order

¹ Attached to Neuman’s motion is a June 17, 2013 letter from the Commonwealth of Pennsylvania Board of Probation and Parole stating that Neuman’s conviction for simple assault established a violation of his parole, and that the Board was recommitting Neuman for a period of 9 months of incarceration for that parole violation. Nunc Pro Tunc Motion for Sentence Modification, 7/2/13, at Attachment 2.

within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.” 42 Pa.C.S.A. § 5505. “Once this 30–day period has expired ... the trial court is without jurisdiction to alter or modify its order.” **Commonwealth v. Martz**, 926 A.2d 514, 525 (Pa. Super. 2007). Neuman’s judgment of sentence was entered on March 13, 2013, and so the trial court had jurisdiction to modify it for thirty days from that date, *i.e.*, until April 12, 2013. Neuman did not seek modification of his sentence until more than two months after this date.

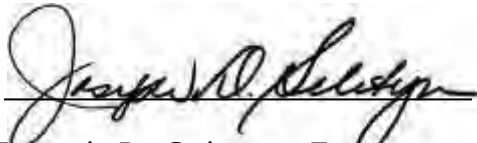
Neuman argues that the trial court had discretion to allow the filing of his untimely post-sentence motion and cites this Court’s decision in **Commonwealth v. Dreves**, 839 A.2d 1122 (Pa. Super. 2003) (*en banc*), in support of his claim. In **Dreves**, the appellant filed a post-sentence motion 20 days after the entry of his judgment of sentence. Although the post-sentence motion was untimely,² the trial court accepted it and subsequently decided it. **Id.** at 1126. Thus, in **Dreves**, unlike in the present case, the appellant filed his motion post-sentence motion while the trial court still had jurisdiction to modify the sentence pursuant to 42 Pa.C.S.A. § 5505. At issue in **Dreves** was the effect of an untimely post-sentence motion on the period in which to file an appeal to this Court, not whether a trial court has the discretion to accept a post-sentence motion more than 30 days after the

² Generally, post sentence must be filed within 10 days of the entry of judgment of sentence. Pa.R.Crim.P. 720(A)(1).

entry of judgment. Indeed, we explicitly stated that because the appellant filed his post-sentence motion with 30 days of the entry of judgment, “the ... case does not implicate a trial court’s powers to act under 42 Pa.C.S.A. § 5505[.]” **Id.** at 1127. Accordingly, **Dreves** does not advance Neuman’s position.

Order affirmed.

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: 4/11/2014