

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RONALD JERMAINE GALBREATH,	:	
	:	
Appellant	:	No. 1076 MDA 2013

Appeal from the Judgment of Sentence entered on April 24, 2013  
in the Court of Common Pleas of Franklin County,  
Criminal Division, No. CP-28-CR-0001168-2012

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
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	:	
RONALD JERMAINE GALBREATH,	:	
	:	
Appellant	:	No. 1077 MDA 2013

Appeal from the Judgment of Sentence entered on April 24, 2013  
in the Court of Common Pleas of Franklin County,  
Criminal Division, No. CP-28-CR-0001202-2012

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED APRIL 15, 2014**

In this consolidated appeal, Ronald Jermaine Galbreath ("Galbreath")  
appeals from the judgments of sentence imposed following his convictions of

two counts each of unlawful delivery of a controlled substance and criminal use of a communications facility.<sup>1</sup> We quash his appeal.

On March 5, 2013, a jury convicted Galbreath of the above-mentioned crimes. On April 24, 2013, the trial court sentenced Galbreath to an aggregate sentence of twelve years and ten months to thirty years in prison. Galbreath's trial counsel, Drew Deyo, Esquire ("Attorney Deyo"), filed a Motion for Extension of Time in which to file a post-sentence motion, which the trial court granted. Thereafter, on May 7, 2013, Galbreath timely filed, *pro se*, a Post-Sentence Motion purporting to challenge the weight of the evidence and effectiveness of counsel. In response, Attorney Deyo filed a Motion to Withdraw as Counsel on the basis that he could not argue his own ineffectiveness. The trial court scheduled a hearing on the Post-Sentence Motion. However, on May 22, 2013, the trial court entered an Order granting Deyo's Motion to Withdraw as Counsel, appointing replacement counsel for Galbreath and cancelling the hearing on the Post-Sentence Motion.

On June 14, 2013, Brian O. Williams, Esquire ("Attorney Williams") filed, on behalf of Galbreath, Notices of Appeal from the May 22, 2013 Order.<sup>2</sup> Thereafter, Galbreath, through Attorney Williams, filed a Concise Statement of Matters Complained of on Appeal, pursuant to Pa.R.A.P.

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<sup>1</sup> **See** 35 P.S. § 780-113(a)(30), 18 Pa.C.S.A. § 7512(a).

<sup>2</sup> This Court consolidated Galbreath's appeals.

1925(b), raising a host of evidentiary and procedural issues related to his trial. On January 7, 2014, Attorney Williams filed a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967). Thereafter, Attorney Williams filed an Application to Withdraw as Counsel.

As a preliminary matter, we must first ascertain whether the Order from which Galbreath purports to appeal is properly appealable, because the question of appealability implicates the jurisdiction of this Court. ***See Commonwealth v. Borrero***, 692 A.2d 158 (Pa. Super. 1997). This Court lacks jurisdiction over non-appealable orders. ***See Commonwealth v. Kennedy***, 876 A.2d 939, 943 (Pa. 2005). We may raise this issue of jurisdiction *sua sponte*, even though neither of the parties have done so. ***Borrero***, 692 A.2d at 158.

In this case, Galbreath's Notices of Appeal, filed June 14, 2013, wrongly state that he is appealing from the May 22, 2013 Order granting Deyo's Motion to Withdraw as Counsel, appointing replacement counsel for Galbreath and cancelling the hearing on the Post-Sentence Motion. This Order is non-appealable. The final, appealable order for a defendant's direct appeal in a criminal case is the judgment of sentence. ***See Borrero***, 692 A.2d at 159.

When a post-sentence motion has not been filed, the judgment of sentence constitutes a final and appealable order for purposes of appellate review, and any appeal therefrom must be filed within thirty days of the

imposition of sentence. Pa.R.A.P. 903(c)(3); Pa.R.Crim.P. 720(A)(3). However, if a post-sentence motion is timely filed, the judgment of sentence does not become final for purposes of appeal until the trial court disposes of the motion, or the motion is denied by operation of law. Pa.R.Crim.P. 720(B)(3)(a); **Borrero**, 692 A.2d at 159. A post-sentence motion is denied by operation of law if the trial court fails to decide the motion within 120 days. Pa.R.Crim.P. 720(B)(3)(a).

Here, Galbreath prematurely filed his Notices of Appeal on June 14, 2013, well before the 120-day period expired. Thus, at the time Galbreath filed his Notices of Appeal, his judgment of sentence had not been made final either by the disposition of his Post-Sentence Motion by the trial court or the entry of an order denying the Motion by operation of law. Accordingly, Galbreath improperly lodged this appeal while his Post-Sentence Motion was pending. **See** Pa.R.Crim.P. 720 cmt. (stating that “[n]o direct appeal may be taken by a defendant while his or her post-sentence motion is pending.”). Moreover, as of the filing of Galbreath’s Notices of Appeal, the trial court was divested of its jurisdiction to enter an order disposing of Galbreath’s Post-Sentence Motion or denying the Motion by operation of law. **See Commonwealth v. Claffey**, 80 A.3d 780, 783 (Pa. Super. 2013).

Furthermore, although the 120-day period has now expired, thereby resulting in the denial of Galbreath’s Post-Sentence Motion by operation of

law, the judgment of sentence has not yet been finalized because an appropriate order has not been duly entered upon the trial court docket. **See Borrero**, 692 A.2d at 160. The entry of an appropriate order is a prerequisite to this Court's exercise of jurisdiction. **Id.** Thus, we cannot regard this appeal as having been filed within thirty days of the date on which the post-sentence motion should have been denied by operation of law. **Id.** In view of the above circumstances, we conclude that the instant appeal is interlocutory. **Id.** Because we are precluded from exercising jurisdiction over appeals from non-final orders or judgments, we are compelled to quash this appeal.<sup>3</sup> **See id.** at 159-61. On this basis, we deny Attorney Williams's Application to Withdraw as Counsel as premature.

The fundamental purpose underlying the filing of post-sentence motions is to provide the trial court with the first chance to correct any errors which might warrant an arrest of judgment or the grant of a new trial. **See id.** at 160. In this case, the trial court has been deprived of this opportunity, albeit mistakenly, by virtue of Galbreath's premature appeal. More importantly, one of the issues raised by Galbreath relates to the weight of the evidence. This Court cannot entertain, in the first instance, a request

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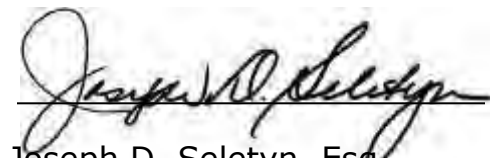
<sup>3</sup> Although this Court does have jurisdiction to consider appeals from collateral orders or certain classes of interlocutory orders which are appealable as of right, **see** Pa.R.A.P. Rules 311 and 313, the judgment entered in this case is not appealable pursuant to either of these rules. Moreover, Galbreath has not sought permission to pursue an interlocutory appeal in accordance with Pa.R.A.P. Rules 312 and 1301-1323. Nor is the judgment here appealable under any other rule or statute of which we are aware.

for a new trial on grounds that the verdict was contrary to the weight of the evidence because our standard of review of such claims is limited to an examination of the trial court's exercise of discretion in deciding whether to grant or deny a new trial on this basis. **See *Commonwealth v. Hodge***, 658 A.2d 386, 389 (Pa. Super. 1995). The interests of justice therefore require that the trial court consider Galbreath's Post-Sentence Motion on remand.

In light of the procedural posture of this case and the time limits within which a post-sentence motion must be decided, Galbreath's Post-Sentence Motion shall be deemed filed *nunc pro tunc* on the date on which the certified record is remanded to the trial court. The 120-day period for disposing of Galbreath's Post-Sentence Motion shall begin to run anew when the Motion is filed *nunc pro tunc, i.e.*, on the date on which the record is remanded.

Appeal quashed as interlocutory; Application to Withdraw as Counsel denied as premature; case remanded for further proceedings consistent with this Memorandum; jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/15/2014