NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. RICHARD J. SEARS, JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1776 WDA 2014

Appeal from the PCRA Order entered September 26, 2014
In the Court of Common Pleas of Westmoreland County
Criminal Division at No: CP-65-CR-0000124-2003

BEFORE: LAZARUS, STABILE, and JENKINS, JJ.

MEMORANDUM BY STABILE, J.: **FILED AUGUST 21, 2015**

Appellant Richard J. Sears, Jr. *pro se* appeals from an order of the Court of Common Pleas of Westmoreland County (PCRA court), which dismissed without a hearing his request for collateral relief under the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-46. For the reasons set forth below, we affirm.

The facts and procedural history underlying this case are undisputed. Briefly, Appellant was charged with, *inter alia*, robbery, kidnapping and indecent assault. The affidavit of probable cause accompanying the complaint provided the following background:

> This incident began when the victim stopped to assist [Appellant] and another man unknown male who[se car] had broken down along the south berm of the east bound lanes of SR 22 in Burrell Township, Indiana County. [Appellant] and the unknown male were operating a 1989 Chevrolet[.] The victim agreed to give the two a ride to the Sheetz located at the intersection of SR 22 and SR 981 within New Alexandria Borough, Westmoreland

> County. Once at the Sheetz, according to the victim, she pumped just over ten dollars worth of gasoline into her vehicle. She then went inside and paid for her gasoline and returned to her vehicle. The victim told the two actors that she could not remain at the location any longer and that they could wait for their ride or call someone else. At this time, [Appellant] pulled a hand gun and demanded that the victim drive them to Pittsburgh. [Appellant] also threatened to shoot the victim in her leg. The victim then drove the two individuals to the Pittsburgh area. The victim was directed to stop along Banfield Road in Penn Hills, Allegheny County where they told her to get out of the vehicle. Prior to exiting the vehicle, [Appellant] put his hands in the victim's front pockets of her pants and removed $10.00. [Appellant] then put his hands up the victim's shirt and underneath her bra looking for money. [Appellant] and the unknown actor then fled the scene in the victim's vehicle registered to her grandfather[.] The actors fled in the 1995 Mercury Sable . . . valued at approximately $6000.00. The actor's [sic] also fled with the victim's cell phone $180.00, approximately 60 music CD's [sic] $900.00, several cheerleading uniforms valued at approximately $800.00, her purse $60.00, wallet $6.00, health insurance cards, driver's license, eye glasses $207.00, contact lenses $70.00, AAA card, clarion CD player $200.00, two sub woofers $150.00 each, Jensen Amp $150.00, misc. clothing valued at $500.00, Eat-n-Park payroll check, credit cards, the victim's college ID cards and her social security card.
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> At approximately 0440 hours Johnstown Police Department in Cambria County became involved in a chase with the above vehicle. The vehicle was later stopped with the assistance of PSP Indiana along SR 22 in Indiana County. Indiana PSP recovered two firearms at the scene one in which the serial number was ground off and the other having serial number . . . [but] was confirmed stolen out of the City of Pittsburgh.
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> On 08/07/02 at 1256 hours the victim identified [Appellant] from a photographic line-up.

Affidavit of Probable Cause, 8/7/02. On November 29, 2004, Appellant pled guilty to robbery, kidnapping and indecent assault. On the same date, the trial court sentenced Appellant to an aggregate term of 7½ to 15 years' imprisonment to run concurrently with a 7½ to 15 year prison sentence that he received in Allegheny County. Appellant did not file a direct appeal or a PCRA petition.

On May 17, 2005, almost six months after the imposition of sentence, the trial court issued a letter to the Pennsylvania Department of Corrections ("DOC") in response to DOC's inquiry about sentences Appellant previously had received in Cambria County.[1] In the letter, the trial court stated that Appellant's instant sentence must run consecutive to the sentences previously imposed in Cambria County. On May 19, 2011, DOC requested the trial court to issue an order to confirm its May 17, 2005 letter. On June 13, 2011, the trial court issued an order confirming that Appellant's sentence of 7½ to 15 years' imprisonment was consecutive to the Cambria County sentences.

The trial court failed to serve Appellant with a copy of its June 13, 2011 order until December 6, 2013.[2] Appellant did not file a direct appeal from the modified judgment of sentence. On January 27, 2014, he timely filed a PCRA petition, challenging, *inter alia*, the trial court's ability to modify his November 29, 2004 judgment of sentence more than thirty days after it became final. On March 3, 2014, the PCRA court appointed James. H.

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[1] The docket indicates that Appellant received several sentences in Cambria County prior to the imposition of sentence in this case. The exact nature of the Cambria County sentences, however, is unclear.

[2] We are troubled by Westmoreland County Clerk of Courts' failure to comply with Pa.R.Crim.P. 114(C), relating to docket entries. Rule 114(C) provides that "[d]ocket entries promptly shall be made" and "shall contain . . . the date of the receipt in the clerk's office of the order or court notice; [] the date appearing on the order or court notice; and [] the date of service of the order or court notice."

Robinson, Jr., Esquire, to represent Appellant. Subsequently, Attorney Robinson filed a no-merit letter and moved for withdrawal. On July 17, 2014, the PCRA court issued a Pa.R.Crim.P. 907 notice of its intent to dismiss the petition without a hearing. Appellant did not respond to the Rule 907 notice. On September 26, 2014, the PCRA court dismissed Appellant's PCRA petition and granted Attorney Robinson's withdrawal motion.

Appellant appealed to this Court. Following Appellant's filing of a Pa.R.A.P. 1925(b) statement of errors complained of on appeal, the PCRA court issued a Pa.R.A.P. 1925(a) opinion, incorporating the reasons set forth in its Rule 907 notice.

On appeal,[3] Appellant essentially argues that the PCRA court erred in concluding that the trial court had authority to modify the November 29, 2004 judgment of sentence more than thirty days after the sentence became final.[4] We disagree.

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[3] "In reviewing the denial of PCRA relief, we examine whether the PCRA court's determination 'is supported by the record and free of legal error.'" ***Commonwealth v. Fears***, 86 A.3d 795, 803 (Pa. 2014) (quoting ***Commonwealth v. Rainey***, 928 A.2d 215, 223 (Pa. 2007)).

[4] To the extent Appellant challenges the plea agreement, the discretionary aspects of sentencing or raises constitutional violations, we reject these claims on jurisdictional grounds. As the record before us plainly indicates, Appellant did not file a direct appeal or a PCRA petition until after his November 29, 2004 judgment of sentence was modified on June 13, 2011. Moreover, he alleges no exceptions to the PCRA's timeliness requirements to overcome waiver of these issues. ***See*** 42 Pa.C.S.A. § 9545(b); ***Commonwealth v. Ali***, 86 A.3d 173, 177 (Pa. 2014) (Section 9545's timeliness provisions are jurisdictional).

In ***Commonwealth v. Moran***, 823 A.2d 923 (Pa. Super. 2003), we addressed a similar issue. In ***Moran***, the trial court sentenced Appellant to a lengthy term of imprisonment. In its sentencing order, the trial court stated that counts 2, 5, and 9 were consecutive to count 1, but it did not state whether the sentences for counts 2, 5, and 9 were consecutive to each other. On March 19, 2002, while the direct appeal was pending, the trial court *sua sponte* amended its February 6, 2002 sentencing order to clarify that "[c]ount 2 is to run consecutive to [c]ount 1, [c]ount 5 is to run consecutive to [c]ount 2, and [c]ount 9 is to run consecutive to [c]ount 5." ***Moran***, 823 A.2d at 925.

On appeal, the appellant argued that the trial court lacked jurisdiction to modify *sua sponte* its February 6, 2002 sentencing order, more than thirty days later while his appeal was pending. We disagreed. We acknowledged that under 42 Pa.C.S.A. § 5505, a trial court may modify a final, appealable order within 30 days after its entry if no appeal from the order has been taken. We, however, noted that in limited circumstances, a trial court may be excused from the requirements of Section 5505 to "correct a patent or obvious mistake or to supply defects or omissions in the record." ***Id.***; ***see also Commonwealth v. Holmes***, 933 A.2d 57, 65 (Pa. 2007) (noting that Section 5505 "was never intended to eliminate the inherent power of a court to correct obvious and patent mistakes in its orders, judgments, and decrees").

We explained that under Pa.R.Crim.P. 705,[5] relating to imposition of sentence, the trial court's failure to specify in its February 6, 2002 sentencing order whether sentences were concurrent or consecutive was a patent error. Rule 705 provided in part:

> Whenever more than one sentence is imposed at the same time on a defendant, **or** whenever a sentence is imposed on a defendant who is sentenced for another offense, the judge **shall state whether the sentences shall run concurrently or consecutively**.

Pa.R.Crim.P. 705(B) (emphasis added). Thus, based on Rule 705, we concluded that the trial court's modification of the February 6, 2002 sentencing order was not improper. ***Moran***, 823 A.2d at 925.

The same result obtains here. The trial court's failure to comply with the strictures of Rule 705 was a patent error. Under Rule 705, the trial court was required to specify whether the November 29, 2004 sentence was concurrent with or consecutive to the Cambria County sentences. Accordingly, the trial court's June 13, 2011 modification of the November 29, 2004 order did not violate the thirty-day limit under Section 5505 of the Judicial Code, because the courts have inherent jurisdictional power to correct patent errors in sentencing orders.

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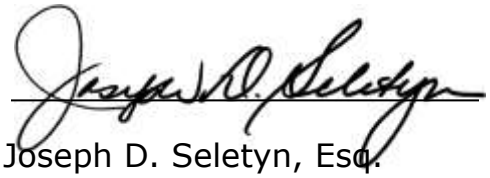
[5] Rule 705 was amended, effective August 1, 2005. The amended rule, however, does not apply to this case, as Appellant was sentenced on November 29, 2004.

In sum, the trial court had jurisdiction to amend the November 29, 2004 sentencing order more than thirty days later to indicate that the sentences set forth therein were consecutive to the Cambria County sentences.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/21/2015