[J-52A-2021 and J-52B-2021] [MO: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Appellant v. BRENDAN PATRICK YOUNG, Appellee	: : : : : : : : : : : : :	No. 19 MAP 2021 Appeal from the Order of the Superior Court at No. 2088 MDA 2018 dated November 2, 2020 Quashing the Order of the Centre County Court of Common Pleas, Criminal Division at Nos. CP-14-CR-0001389-2017, CP-14-CR-0000784-2018 & CP-14-CR-0001540-2018 dated November 21, 2018. ARGUED: September 21, 2021
COMMONWEALTH OF PENNSYLVANIA, Appellant v. DANIEL CASEY, Appellee	: : : : : : : : : : : : :	No. 20 MAP 2021 Appeal from the Order of the Superior Court at No. 2089 MDA 2018 dated October 28, 2020 Quashing the Order of the Centre County Court of Common Pleas, Criminal Division, at Nos. CP-14-CR-0001377-2017, CP-14-CR-0000781-2018 & CP-14-CR-0001536-2018 dated November 21, 2018. ARGUED: September 21, 2021

CONCURRING AND DISSENTING OPINION

JUSTICE WECHT **DECIDED: December 22, 2021**

In both cases here, the Commonwealth filed a single notice of appeal from an order that resolved issues arising under more than one docket. As the Majority explains, each of the docket numbers related to a distinct set of criminal charges, and thus involved either different victims, different instances of alleged criminality, or distinct conduct toward the

same victim. Given those circumstances, I agree with the Majority that the various dockets did not "merge" within the meaning of *Always Busy Consulting, LLC v. Bradford Co*., 247 A.3d 1033 (Pa. 2021) (hereinafter "*ABC*").[1] Instead, the cases before us today present the same concerns that motivated the bright-line rule that we announced in *Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018): when "one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeals must be filed." *Id.* at 976. Therefore, I concur with the Majority that "the exception to the *Walker* rule enunciated in *ABC* is not broad enough to encompass the present matter" and that "quashal was seemingly required by Rules of Appellate Procedure 341(a) and 311(d) as interpreted in *Walker."* Maj. Op. at 19, 20.

The Commonwealth asserts that *Walker's* quashal mandate was misguided and inconsistent with Pennsylvania Rule of Appellate Procedure 902, which provides "that failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal." Pa.R.A.P. 902. Rule 902 instructs appellate courts to take any other action that the court "deems appropriate, which may include, but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken." *Id.*[2] Like the Majority, I agree with the Commonwealth that, per the

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[1] *ABC*, 247 A.3d at 1043 (holding that "filing a single notice of appeal from a single order entered at the lead docket number for consolidated civil matters where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues, does not run afoul of *Walker . . . .*"); *see also* Maj. Op. at 20 (explaining that *Walker* "seemingly" requires quashal here because, although the charges listed under multiple docket numbers have been consolidated for trial, "each docket number encompassed a different set of criminal charges, and each such charge, by its nature, involved different victims, different occasions, or different conduct toward the same victim," and, thus, the docket numbers were not "different ways of litigating the exact same dispute").

[2] *See also* Pa.R.A.P 902, Note ("The reference to dismissal of the appeal has been deleted in favor of a preference toward remanding the matter to the lower court so that

plain language of Rule 902, appellate courts first should afford appellants that have filed defective notices of appeal under *Walker* an opportunity to cure those defects. Only after the appellant fails to do so should *Walker*'s remedy of quashal be on the table.

The Majority would apply Rule 902, "notwithstanding any effect its application here may have on the bright-line rule of *Walker*." Maj. Op. at 24. The Majority observes that application of the single notice of appeal requirement often elevates form over substance. In addition to *Walker*'s tension with Rule 902's instruction, the Majority astutely explains, *Walker*'s quashal mandate also conflicts with our decision in *Commonwealth v. Williams*, 106 A.3d 583, 588 (Pa. 2014) (holding that Rule 902 demonstrates a "preference for correcting procedurally defective, albeit timely, notices of appeal so that appellate courts may reach the merits of timely appeals."). The Majority's criticisms are well-founded.

While I joined this Court's decision in *Walker*, my observations of its application over the past three years have led me to reconsider my embrace of that precedent to the extent that it commands quashal unequivocally. The quashal mandate has deprived too many litigants of their right to an appeal because of technical defects, defects as to which our rules allow correction prior to any direct resort to quashal. *Walker*'s unwavering command of dismissal seems unwarranted in light of the plain language of Rule 902. For these reasons, I agree with the Majority that, consistently with *Walker*, Rule 341 requires an appellant to file separate notices of appeal when a single order resolves issues arising under more than one docket; "but, where a timely appeal is erroneously filed at only one docket, Rule 902 permits the appellate court, in its discretion, to allow for correction of the error, where appropriate." Maj. Op. at 24.

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the omitted procedural step may be taken, thereby enabling the appellate court to reach the merits of the appeal.").

I part ways with the Majority inasmuch as I would not apply Rule 902's safe harbor here. It would be inequitable to afford the Commonwealth the grace that has been received by no other appellant whose appeals have been quashed for the same *Walker* violation, including Messrs. Young and Casey themselves.[3]

In *Walker*, we chose to overlook the Commonwealth's noncompliance, holding that our rule would apply only prospectively. To that end, we observed that requiring quashal for the failure to file multiple notices "was contrary to decades of case law from this Court and the intermediate appellate courts that, while disapproving of the practice of failing to file multiple appeals, seldom quashed appeals as a result." *Walker,* 185 A.3d at 977. We deemed it critical that Rule 341's official Note was unclear as to whether multiple notices of appeal were required and as to the consequence of failure to comply with the bright-line instruction. *See id*. Given that ambiguity, and given the novelty of our holding, it would have been unfair to hold that the Commonwealth's noncompliance required quashal.

Here, there has been no amendment to the appellate rules that is inconsistent with existing practice under *Walker*. Rather, the Commonwealth asks that we overrule *Walker*, at least insofar as it relates to the consequence of an appellant's failure to file multiple notices. This is not a circumstance in which the Commonwealth was unable to anticipate that its failure to comply with *Walker* would compel quashal. In each of the cases before us here, the Commonwealth filed the notice of appeal on December 21, 2018. We decided *Walker* on June 1, 2018. The Commonwealth had ample notice of *Walker*'s clear holding that "the proper practice under Rule 341(a) is to file separate appeals from an order that resolves issues arising on more than one docket." *Id*. If there was doubt as to

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[3] *See infra*.

whether *Walker*'s bright-line rule applied, the Commonwealth should have erred on the side of caution. It failed to do so.

And the present circumstances are unlike those at issue in *ABC*. While *ABC* carved out an exception to *Walke*r, it was not the exception alone that warranted reversal of the Superior Court's order quashing the appeal there. In that case, the appellant attempted to comply with the multiple notice of appeal requirement, but the attempt was thwarted. *ABC*, 247 A.3d at 1042 (emphasizing that "the prothonotary apparently relied on custom to require a single notice of appeal in consolidated cases, notwithstanding the conflicting directive of *Walker*, and ABC was thus misinformed by the court regarding the applicable law. We conclude this was a breakdown in court operations that ordinarily would preclude quashal.") No such breakdown in court operations occurred in this case. The Commonwealth's notices of appeal did not evince any attempt to conform with *Walker*'s bright-line rule. Nor does this case present an exception to *Walke*r. As the Majority recognizes, the Commonwealth simply failed to comply with the bright-line mandate.

In both *Walker* and *ABC*, fairness militated against quashal. There is nothing unfair about upholding the Superior Court's order in this case. Indeed, to afford the Commonwealth a do-over here would be particularly troubling considering that the Superior Court quashed Young's and Casey's appeals for the same reason that it quashed the Commonwealth's appeals challenging the trial court's order, which had granted in part and denied in part Young's and Casey's pretrial motions. Like the Commonwealth, Young and Casey filed a single notice of appeal from the trial court's ruling on their pre-trial motions. The Superior Court applied *Walker* to quash their application for permission to appeal from the trial court's order on the theory that they had filed a single application listing three docket numbers. *See Commonwealth v. Casey*, 218

A.3d 429 (Pa. Super. 2019). When Young and Casey petitioned this Court for review, requesting that we excuse their noncompliance, we declined to do so. *See Commonwealth v. Casey*, No. 10 MM 2020.

The only ostensible difference between the Superior Court's order quashing the Commonwealth's appeal and its order quashing Young's and Casey's appeals is that, because of the former order, the Commonwealth may not be able to secure a conviction, raising the possibility that the Commonwealth's challenge to the trial court's suppression rulings will evade post-verdict appellate review.[4] However, our laws and rules must apply soberly, and without contemplation of consequence. This Court should not distort law and rules in order to give the Commonwealth a break or to assist it in securing a conviction. If Young and Casey are required to suffer *Walker*'s harsh mandate, it is only fair that we hold the Commonwealth to the same standard.

In sum, while I agree with the Majority that, properly applied, Rule 902 provides appellants an opportunity to cure any *Walker* defects, it would be unduly one-sided to apply that principle here. Instead, I would do so prospectively. The Commonwealth was required to file multiple notices of appeal. Pursuant to *Walker*, the failure to do so mandated dismissal of the appeal. This Court decided *Walker* more than six months before the Commonwealth filed the notices. Nothing prevented the Commonwealth from complying with our clear holding. It simply failed to follow the law. I discern no reason to excuse the Commonwealth's noncompliance when countless other appellants, including Young and Casey themselves, have suffered *Walker*'s consequence. For those reasons, I would affirm the Superior Court's order quashing the Commonwealth's appeals.

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[4] *See generally Commonwealth v. Gibbons*, 784 A.2d 776 (Pa. 2001) (explaining that double jeopardy bars a Commonwealth appeal from a verdict of acquittal).