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COMMONWEALTH OF PENNSYLVANIA vs. JOHN HENRY
HAYNES, JR., C.P. Franklin County Branch, Criminal Action
No. 473 of 1998

Commonwealth v. Haynes

flight before sentencing - appeal issues waived

1. Pennsylvania Supreme Court overruled previous per se rule that a defendant's voluntary escape acts as a forfeiture of his right to appeal.
2. Instead, forfeiture of rights depends on the time of defendant's return: if a fugitive returns in time to file post-trial motions, he should be allowed to file them, but if he returns after the time for filing has expired, his request to file post-trial motions or to reinstate such motions should be denied. Similarly, if defendant becomes a fugitive between post-trial motions and appeal, and he returns after the time for filing an appeal has expired, his request to file an appeal should be denied.
3. Defendant fled after trial and before sentencing, but his attorney filed a direct appeal on his behalf, because defendant became a fugitive before an appeal was filed and after the period for appeal had expired, defendant forfeited the right to appeal.

*John F. Nelson, District Attorney, Attorney for the
Commonwealth*

*David Yoder, Assistant Public Defender, Attorney for the
Defendant*

Julie Dorsett, Esquire, Attorney for the Defendant

OPINION

WALKER, P.J., May 20, 1999:

Factual Background

Defendant, John Henry Haynes, Jr., was tried before a jury on November 18, 1998 and found guilty of simple assault on Timothy Horace Baker, Betty Renee Baker, Timothy Bear Baker, Jeremiah Baker, Brock Ian Uglow, Chase Aaron Uglow, and terroristic threats against Candis Lyn Baker and Timothy Horace Baker, and one count of disorderly conduct. On November 18, 1998, the court entered an order finding that the jury had convicted John Haynes, Jr. of six counts of simple assault, two counts of terroristic threats and one count of disorderly conduct. The court ordered that the defendant may remain on nominal bail.

The court further directed that he shall telephone Franklin County Probation Department on Friday, November 20, 1998, on Franklin Farm Lane so that a pre-sentence investigation report may begin and that the matter shall be listed for sentencing on Wednesday, January 6, 1999. The defendant failed to contact the Probation Department and a pre-sentence report was presented to the court minus any information that the defendant could have provided.

January 6, 1999, the defendant failed to appear for sentencing, and his court-appointed counsel having informed the court that John Henry Haynes, Jr. had telephoned him and told him that he had car trouble. The court continued the sentencing until Wednesday, January 20, 1999, and in the order included that Mr. Haynes would be sentenced on January 20, 1999 whether he appears or whether he wishes to have his sentence delivered by mail or when the sheriff apprehends him.

On January 20, 1999, the court imposed sentences on all counts. The aggregate of these sentences was one to ten at a state correctional institution. The court noted that the defendant failed to appear on January 20, 1999 for sentencing, and his defense counsel had had no contact with him since January 6, 1999. The court issued a bench warrant for his apprehension, and directed that he be taken to the state diagnostic and classification center to commence serving his sentence. With the defendant nowhere in sight, his court-appointed counsel filed a notice of appeal to the Superior Court of Pennsylvania on February 19, 1999.

The court by order dated March 1, 1999 ordered a statement of reasons complained of on appeal. March 15, 1999, the defendant's counsel filed a concise statement of matters complained of on appeal together with citations of authority. The summary of matters for appeal is as follows:

1. Method of selection of petit jury from venire varied prejudicially from method provided in Pa.R. Crim. P 1106(E)(2).

2. Commonwealth was unconstitutionally permitted to strike only minority from petit panel without providing a legitimate reason for so doing.

3. Trial court erred by giving missing witness instruction on request of Commonwealth without adequate foundation for the instruction.

On May 3, 1999, defendant voluntarily appeared in court with counsel. After hearing from counsel and the defendant, the court denied the petition for bail pending appeal and also denied defendant's petition that he remain incarcerated in the Franklin County Prison pending appeal.

Discussion

The court takes notice that defense counsel in defendant's absence filed an appeal. The court feels that there may be a basic problem here after reading the case of *Commonwealth v. Deemer*, 550 Pa. 290, 705 A.2d 827 (1997). In *Deemer* the issue was whether a trial court could properly deny defendant's motion to file post trial motions nunc pro tunc when defendant has willfully and purposely become a fugitive during proceedings before the trial court and before post trial proceedings have begun. In *Deemer*, the defendant was convicted of retail theft, fifth offense, on February 8, 1994. He was present for the trial but failed to return to the court when the jury announced its verdict. He also failed to appear for a scheduled post verdict pre-sentence investigation report, and a bench warrant was issued for the defendant's arrest, and on April 13, 1994, the court sentenced him in absentia. Defense counsel had filed post trial motions on February 8, 1994 and April 22, 1994, which were dismissed on April 29, 1994, due to the defendant's fugitive status. *Deemer* was subsequently apprehended on June 30, 1994, and on December 8, 1994, he filed a pro se motion to reinstate post verdict motions nunc pro tunc.

The trial court in *Deemer* dismissed his post trial motions relying on *Commonwealth v. Jones*, 530 Pa. 536, 610 A.2d 439 (1992). In *Jones*, the Pennsylvania Supreme Court stated that a defendant's voluntary escape acts as a pro se forfeiture of his right to appeal. Where the defendant is a fugitive at any time after post trial proceedings commence, such a forfeiture is irrevocable and continues despite the defendant's capture or

MODERN MYTHS

voluntary return to custody. Thus, by choosing to flee from justice, appellant has forfeited his right to appeal. *Jones*, 530 Pa. at 541.

The Supreme Court in *Deemer* did away with the per se rule that appellate rights are forfeited upon a defendant's flight. Rather, the Supreme Court determined that the forfeiture of rights depends on the time of the defendant's return. Thus, the court held that if a fugitive returns in time to file post trial motions, he should not lose that right but should be allowed to file them. *Deemer*, 705 A.2d at 829. However, if he returns after the time for post trial motions has expired, his request to file post trial motions or to reinstate post trial motions should be denied. *Id.* Similarly, if the defendant became a fugitive between post trial motions and an appeal and he returns before the time for appeal has expired, he should be allowed to appeal. But if he returns after the time for filing an appeal has elapsed, his request to file an appeal should be denied. *Id.* In short, the court held that "a fugitive who returns to court should be allowed to take the system of criminal justice as he finds it upon his return; if time for filing has elapsed, he may not file; if it has not, he may." *Id.*

Thus, the basic issue seems to be that if a defendant doesn't show up for a pre-sentence report, fails to appear at sentencing, and defense counsel has no contact with him, can the defense counsel without defendant's knowledge or consent, file appeal motions on behalf of his client? The *Deemer* case seems to hold that a defendant who becomes a fugitive before an appeal was filed and returns only after that right has expired, has forfeited the right to appeal.

In this case, the defendant clearly became a fugitive before any appeal had been filed in this matter.

Wherefore, since Haynes voluntarily absconded from the jurisdiction and did not return within the time allowed for filing appeal motions, the lower court would respectfully request that the Superior Court find that by becoming a fugitive, defendant forfeited his appeal rights.

MYTH #1: The disease of alcoholism is caused by drinking alcohol.

MYTH #2: Alcoholism is caused by stress.

MYTH #3: Alcoholism is the symptom of an underlying psychological disorder.

MYTH #4: Alcoholics must drink to excess on a daily basis.

MYTH #5: Alcoholism is cured by not drinking.

Alcoholism is:

a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with drug/alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.

There is no cure for alcoholism; however, with proper treatment the disease can be placed in remission.

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