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Commonwealth v Kelly

COMMONWEALTH OF PENNSYLVANIA v. JOSHUA KELLY, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 1920-2011

HEADNOTES

Criminal Law; Post-Trial Procedures; Post-Sentence Motions

1. Pa. R. Crim. P 720 requires post-sentence motions to be filed no later than 10 days following the imposition of sentence.
2. A defendant may request permission from the Court to file a post-sentence motion nunc pro tunc if an "extraordinary circumstance" exists. Such a request and the Court's decision on the request must occur within the 30 days following sentencing.
3. If the Court grants the motion to file nunc pro tunc, the defendant's subsequently filed post-sentence motion is treated as if it had been filed within the 10-day period following sentencing.
4. The Court has 120 days from the filing of a post-sentence motion to render a decision on the motion.

Appearances:

Matthew Stewart, Esq., Attorney for the Defendant
Zachary I. Mills, Esq., Assistant District Attorney
Joshua Kelly, Defendant

OPINION

Van Horn, J.

Statement of the Case

On August 21, 2012, the above-captioned Defendant was found guilty of Fleeing or Attempting to Elude Officer in violation of 75 Pa.C.S.A. § 3733(a), Recklessly Endangering Another Person in violation of 18 Pa.C.S.A. § 2705, and Resisting Arrest or other Law Enforcement in violation of 18 Pa.C.S.A. § 5104. Defendant was then sentenced on October 24, 2012 by this Court. At the time of sentencing, the Court ordered that the 10-day period of time for filing a post-sentence motion be extended to 30 days since trial counsel was no longer representing the Defendant and new counsel was appointed by the Court. On November 14, 2012, the Defendant, through new counsel, filed for a Motion For Continuance/Extension of Deadline, asking the court for a 10-day extension to the deadline for filing his post-sentence motions due to not yet having received the transcripts of his trial from the court reporter. The Court granted the Motion for Continuance/Extension of Deadline by Order of Court dated November 20, 2012. Defendant then filed his Post Sentence [sic] Motion on December 3, 2012, to which the Commonwealth filed an Answer on December 27, 2012. Also on December 27, 2012, the Commonwealth filed a Motion to Dismiss the Defendant's Post Sentence [sic] Motion arguing that this Court lacks the jurisdiction to grant the Defendant the relief requested in his post-sentence motion because more than 30 days have passed since the imposition of the Defendant's sentence. Through this Opinion and Order, the Court denies the Commonwealth's Motion to Dismiss and will allow Defendant's Post Sentence [sic] Motion to proceed.

Discussion

The Rules of Criminal Procedure provide for the filing of post-sentence motions. See Pa. R. Crim. P. 720. Under the Rules, a written post-sentence motion must be filed no later than ten (10) days following the imposition of sentence. See *id.* at (A)(1). However, a defendant may, within 30 days of the imposition of his sentence, request permission from the Court to file a post-sentence motion nunc pro tunc. See *Commonwealth v. Dreves*, 839 A.2d 1122, 1128 (Pa.Super. 2003). The defendant's motion must "demonstrate an extraordinary circumstance which excuses the tardiness" of the filing of his

motion. *Id.* The Court must then render a decision on the Defendant's request within the 30 days after the imposition of the Defendant's sentence. See *id.* at n.6, citing 42 Pa.C.S.A. § 5505. The Court's decision on the defendant's motion to file nunc pro tunc is separate and distinct from a decision on the merits of the underlying post-sentence motion. See *id.* at 1129. If the Court grants the defendant's motion to file nunc pro tunc, the defendant's subsequently-filed post-sentence motion must be treated as if it were filed within the 10-day period following the imposition of his sentence. See *id.* The Court then has 120 days from the filing of the post-sentence motion to render a decision on the motion. See Pa.R.Crim.P. 720(B)(3)(a).

The Commonwealth argues that this Court does not have jurisdiction to grant the relief requested in the Defendant's post-sentence motion because 42 Pa.C.S.A. § 5505 provides that "any decision by the Court to modify, rescind or vacate the sentence must be rendered within 30 days of the imposition of sentence" and more than 30 days have passed from the imposition of the Defendant's sentence. The Court disagrees.

The statute that the Commonwealth cites in support of its argument states "Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order 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 (emphasis added). While the Court agrees that this statute requires any modification to the Court's order within 30 days of that order, the Court disagrees that this statute applies to the instant situation. The statute provides for an exception to this 30-day rule if another law gives the Court a different period of time for modification of an order. In the case of post-sentence motions, Rule 720(B)(3)(a) specifically states that the Court must render a decision on a post-sentence motion within 120 days of the filing of the motion. Therefore, because it is "otherwise provided or prescribed by law," 42 Pa.C.S.A. §5505 doesn't apply to the Court's decision on the Defendant's post-sentence motion.

Defendant filed his Motion For Continuance/Extension of Deadline on November 14, 2012, less than 30 days after his October 24, 2012 sentencing, on the grounds that he had not yet received the transcript of his trial. The Court found that the Defendant's rationale constituted an "extraordinary circumstance" and granted the Defendant's motion on November 20, 2012, again, less than 30 days after Defendant's sentencing. Because these actions occurred within the requisite time periods, under *Dreves*, the Defendant's post-sentence motion, filed Decemeber 3, 2012, must be treated as if it were filed within the 10-day period after imposition of his sentence. See *Commonwealth v. Dreves*, 839 A.2d at 1129. Therefore, under Rule 720(B)(3)(a), this Court has 120 days from the date Defendant filed his post-sentence motion to render a decision.

Further, reading 42 Pa.C.S.A. §5505 as the Commonwealth does would result in a serious injustice to defendants. If a trial court does not have jurisdiction to render a decision on the underlying post-sentence motion more than 30 days after sentencing, any defendant whose "extraordinary circumstance" forces him to file his post-sentence motion more than 30 days after being sentenced would not be entitled to a decision on that motion. Likewise, such a reading would render the Court's ability to grant a defendant's motion to file a post-sentence motion nunc pro tunc useless, as the Court cannot decide on a post-sentence motion before it is even filed by the Defendant, but would lose jurisdiction to decide on the motion if the Court waits until the motion is filed. This Court does not believe that such an outcome is what the Pennsylvania Legislature or the Pennsylvania Courts intended and therefore will not accept the Commonwealth's reading of these statutes.

Conclusion

The Defendant requested an extension of time to file his post-sentence motion because he had not received the transcript of his trial and the Court granted that motion within 30 days of the imposition of his sentence. As a result, the Defendant was entitled to file his motion nunc pro tunc. Because the Court has determined that 42 Pa.C.S.A. § 5505 does not apply to the Court's decision on post-sentence motions, the Court has 120 days to render a decision on that motion, as provided for in Pa.R.Crim.P. 720. Accordingly, the attached order denies the Commonwealth's Motion to Dismiss Defendant's Post Sentence [sic] Motion.

ORDER OF COURT

AND NOW January, 2013, the Court having reviewed and considered the Commonwealth's Motion to Dismiss Defendant's Post Sentence [sic] Motion, filed December 27, 2012, and having reviewed the applicable law;

IT IS HEREBY ORDERED THAT the Commonwealth's Motion to Dismiss Defendant's Post Sentence [sic] Motion is DENIED.