IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ajani Posey, Appellant	:	
v.	:	
Kathy Brittain, Correctional Officer Batista, Correctional Officer Carvahal, Correctional Officer Fessler, Correctional Officer Fryer, Correctional Officer Garcia, Correctional Officer Mayo, Courtney Schaeffer, Unit Manager, and Kelly Sheluga, Unit Manager	:	No. 381 C.D. 2025 Submitted: June 16, 2026

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM FILED: November 3, 2026

Appellant Ajani Posey (Appellant or Plaintiff), an inmate currently imprisoned at the State Correctional Institution (SCI)-Camp Hill, appeals *pro se* from the order of the Court of Common Pleas of Schuylkill County (trial court) denying Appellant's request to proceed *in forma pauperis* (IFP) and dismissing the suit as frivolous pursuant to Pennsylvania Rule of Civil Procedure 240(j) (Rule 240(j)). We now remand the matter to the trial court and retain jurisdiction.

I. BACKGROUND

Appellant filed a complaint with the trial court, asserting causes of action for negligence, intentional infliction of emotional distress, cruel and/or unusual punishment, and conspiracy against SCI-Frackville Superintendent Kathy Brittain; Correctional Officers Batista, Carvahal, Fessler, Fryer, Garcia, and Mayo; and Unit

Managers Courtney Schaeffer and Kelly Sheluga (collectively Appellees or Defendants). Appellant alleged that while he was incarcerated at SCI-Frackville, he was housed in a cell with a bunk bed with no ladders, his cell flooded after a new toilet was installed, the kitchen was infested with rats and roaches, and the correctional officer Defendants were engaged in a conspiracy to violate the rights of inmates by, among other things, making false reports of inmate misconduct and then imposing disciplinary sanctions on those inmates. Compl., 2/13/25, at ¶¶ 17, 20, 23-27. Appellant further alleged that the conditions in the cells violated Pennsylvania regulations, United States Department of Justice (DOJ) standards, and American Correctional Association standards. *Id.* at ¶¶ 17-19. Appellant further claimed that Defendants' acts and omissions violated his constitutional right to be free from cruel and unusual punishment. *Id.* at ¶¶ 14, 19, 27, 30.

On February 18, 2025, prior to Appellant serving the complaint on Defendants, the trial court denied Appellant's IFP petition and dismissed his complaint pursuant to Rule 240(j)(1). The trial court found the complaint to be frivolous because Appellant failed to exhaust administrative remedies.

Appellant then filed a petition for review on March 10, 2025, which the trial court treated as a notice of appeal. On March 25, 2025, pursuant to Pennsylvania Rule of Appellate Procedure 1925 (Rule 1925), the trial court entered an order (Rule 1925(b) Order) directing **Defendants,** not Appellant**,** to file and serve a concise statement of errors complained of on appeal (Rule 1925(b) Statement) within 21 days. Upon receiving the Rule 1925(b) order directed to Defendants (Rule 1925(b) Order), Appellant sent a letter to the Prothonotary of the Court of Common Pleas of Schuylkill County (Prothonotary) requesting clarification of the Rule 1925(b) Order, specifically whether it was he that had been ordered to file a Rule 1925(b) Statement.

On April 8, 2025, the trial court entered an amended order (Amended Rule 1925(b) Order) this time directing **Appellant** to file a Rule 1925(b) Statement within 25 days. By letter to the Prothonotary, dated April 10, 2025, and received on April 15, 2025, Appellant advised the Prothonotary that he had been transferred to SCI-Camp Hill and requested that all future legal mail be sent there.

Appellant did not file a Rule 1925(b) Statement. On May 6, 2025, the trial court filed an order in lieu of an opinion, explaining that Appellant had failed to file a Rule 1925(b) Statement and adopting the reasoning set forth in the trial court's February 18, 2025 order. Appellant filed his brief with this Court on May 23, 2025, addressing the merits only. That same day, this Court ordered the parties to address whether Appellant waived all issues on appeal in their briefs due to Appellant's "fail[ure] to comply with the trial court's order to file a concise statement of errors complained of on appeal." Order, No. 381 C.D. 2025, filed 5/23/25. In response, Appellant filed a supplemental brief, referencing the original Rule 1925(b) Order and making no reference to the Amended Rule 1925(b) Order.

II. ISSUES

Appellant argues that the trial court erred by dismissing his complaint as frivolous.[1,2] Appellant also argues that he did not waive any issues on appeal,

[1] "Appellate review of a decision dismissing an action pursuant to Pa.R.C.P. No. 240(j)(1) is limited to determining whether an appellant's constitutional rights have been violated and whether the trial court abused its discretion or committed an error of law." *Jones v. Doe*, 126 A.3d 406, 408 n.3 (Pa. Cmwlth. 2015).

[2] We note that Appellant's initial brief and his supplemental brief do not contain a statement of questions involved as required by Pennsylvania Rule of Appellate Procedure 2111(4). We further note that while we may liberally construe materials filed by a *pro se* litigant, *pro se* status does not confer any special benefit upon a litigant. *See Kozicki v. Unemployment Comp. Bd. of Rev.*, 299 A.3d 1055, 1063 (Pa. Cmwlth. 2023). However, "[w]hile an appeal may be dismissed or quashed when a defect in a brief is substantial, Pa.R.A.P. 2101, we may ignore even egregious

because the trial court did not direct him to file a Rule 1925(b) Statement.

III. DISCUSSION

First, we address Appellant's failure to file a Rule 1925(b) Statement and whether Appellant has waived all issues on appeal. Appellant argues that he did not file a Rule 1925(b) Statement because the trial court's order did not apply to him. Appellant's Suppl. Brief at 2 (unpaginated). Appellant, therefore, contends that his issues are not waived on appeal. *Id.*

"[T]he issue of waiver presents a question of law, and, as such, our standard of review is *de novo* and our scope of review is plenary." *Trigg v. Child.'s Hosp. of Pittsburgh of UPMC*, 229 A.3d 260, 269 (Pa. 2020). We have held:

> [W]hen a trial court orders an appellant to file a Rule 1925(b) [s]tatement, he must do so within [the time prescribed by the trial court][3] and "concisely identify each error that [he] intends to assert with sufficient detail to identify the issue to be raised for the judge[,]" Pa.R.A.P. 1925(b)(4)(vii), or risk waiving those issues.

Cummings v. Matiyasic, 347 A.3d 849, 852 (Pa. Cmwlth. 2025); *see also* Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.").

As explained above, the trial court initially entered the Rule 1925(b) Order directing Defendants (instead of Appellant) to file a Rule 1925(b) Statement. The trial court then entered an Amended Rule 1925(b) Order directing Appellant to file

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violations of the Rules of Appellate Procedure if these defects do not preclude meaningful appellate review." *Arnold v. Workers' Comp. Appeal Bd. (Lacour Painting, Inc.)*, 110 A.3d 1063, 1067 (Pa. Cmwlth. 2015) (citations and quotation marks omitted).

[3] As noted above, the trial court's Amended Rule 1925(b) Order directed Appellant to file a Rule 1925(b) Statement within 25 days of the date of the Amended Rule 1925(b) Order. Rule 1925(b)(2)(i) provides, in part: "The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the Statement." Pa.R.A.P. 1925(b)(2)(i).

a Rule 1925(b) Statement. The trial court docket indicates that notice of the entry of the Amended Rule 1925(b) Order was sent by the Prothonotary to Appellant at SCI-Frackville on April 8, 2025. Shortly thereafter, the Prothonotary received a letter from Appellant on April 15, 2025, informing the trial court of his change of address from SCI-Frackville to SCI-Camp Hill. That letter was dated April 10, 2025, a mere two days after the Prothonotary mailed the Amended Rule 1925(b) Order to Appellant at SCI-Frackville.

Nowhere in his brief does Appellant indicate that he had any knowledge that the trial court entered an Amended Rule 1925(b) Order. Appellees filed with this Court a letter of non-participation, offering no position on this matter. Due to Appellees' non-participation, Appellees did not file a brief referencing the Amended Rule 1925(b) Order. Additionally, our order directing Appellant to address his failure to file a Rule 1925(b) Statement did not refer to the date of the order at issue, thus it would not have alerted Appellant to the Amended Rule 1925(b) Order if he had not previously been aware of it. All of this makes the Court consider these questions: (1) did Appellant receive the Amended Rule 1925(b) Order after the trial court's initial administrative error; (2) if Appellant was no longer at SCI-Frackville at the time the Amended Rule 1925(b) Order arrived at SCI-Frackville, did the Department of Corrections make any effort to ensure that Appellant's legal mail reached him promptly at SCI-Camp Hill; (3) did the Prothonotary make any attempt to ensure that the Amended Rule 1925(b) Order reached Appellant when it appears that it is highly likely that Appellant's request for an address change and the Amended Rule 1925(b) Order crossed in the mail; and (4) if there was a breakdown

in the administrative process, should Appellant be permitted to file a Rule 1925(b) Statement *nunc pro tunc*?[4]

We note that an appellant cannot be penalized for failing to file a timely Rule 1925(b) Statement when the appellant was not served with notice of the trial court's order directing the appellant to file a Rule 1925(b) Statement. *See Great Valley Sch. Dist. v. Zoning Hearing Bd. of E. Whiteland Twp.*, 863 A.2d 74, 79 (Pa. Cmwlth. 2004). "[A] party's failure to file a [Rule] 1925(b) statement will [not] be excused based merely upon bald allegations that the party did not receive a [Rule] 1925(b) order." *Commonwealth v. Hess*, 810 A.2d 1249, 1255 n.9 (Pa. 2002); *cf. Ali v. Unknown CERT Team Members*, 334 A.3d 953, 956-957 (Pa. Cmwlth. 2025) (where the petitioner claimed that he had received the trial court's Rule 1925(b) order after the time to file a Rule 1925(b) statement had expired, this Court remanded the matter to the trial court to determine if the petitioner did not timely receive the trial court's Rule 1925(b) order, and, if so, the petitioner was entitled to file a Rule 1925(b) statement *nunc pro tunc*). Appellant, here, has not alleged that he did not receive the Amended Rule 1925(b) Order, nor did he allege that he received it after the deadline to file a Rule 1925(b) Statement had passed. As noted above, however, the Court has concerns that Appellant still does not know **even today** of the existence of the Amended Rule 1925(b) Order. Under these circumstances, a remand to the trial court to determine if Appellant is entitled to *nunc pro tunc* relief is appropriate.

[4] Interestingly, Appellees filed their notice of nonparticipation after Appellant filed his brief. Had Appellees filed a brief, they likely would have mentioned the Amended Rule 1925(b) Order. Thus, if the Court's concern is validated—meaning if the Court learns that Appellant did not receive the Amended Rule 1925(b) Order—Appellees' decision not to file a brief may have contributed to Appellant remaining unaware of the Amended Rule 1925(b) Order and not addressing it in a reply brief.

Because we are remanding this matter to determine whether Appellant is entitled to file a Rule 1925(b) Statement *nunc pro tunc*, we need not address Appellant's argument as to the merits at this time.

IV. CONCLUSION

For the reasons set forth above, this matter is remanded to the trial court for the trial court to conduct an evidentiary hearing to determine whether Appellant is entitled to *nunc pro tunc* relief and to issue an opinion and order that includes findings of fact and conclusions of law. Should the trial court determine that Appellant is not entitled to *nunc pro tunc* relief, it shall promptly remit the record to this Court. Should the trial court determine that Appellant is entitled to *nunc pro tunc* relief, the trial court shall issue a new Rule 1925(b) Order directing Appellant to file a Rule 1925(b) Statement, issue a Rule 1925(a) Opinion, and promptly transmit a supplemented record to this Court. The trial court shall transmit the record to this Court no later than 120 days after the issuance of this Opinion.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ajani Posey,	:	
Appellant	:	
	:	
v.	:	
	:	
Kathy Brittain, Correctional Officer	:	
Batista, Correctional Officer	:	
Carvahal,Correctional Officer	:	
Fessler, Correctional Officer	:	
Fryer, Correctional Officer Garcia,	:	
Correctional Officer Mayo, Courtney	:	
Schaeffer, Unit Manager, and Kelly	:	
Sheluga, Unit Manager	:	No. 381 C.D. 2025

PER CURIAM **O R D E R**

AND NOW, this 3rd day of November, 2026, this matter is REMANDED to the Court of Common Pleas of Schuylkill County (trial court) for proceedings consistent with the attached Opinion. As directed in the Opinion, the trial court shall transmit the supplemented record to this Court within 120 days of the date of this Order.

Jurisdiction is RETAINED.