

J-S45023-23

J-S45024-23

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

ABRAHAM T. ALDRICH

Appellant

No. 434 MDA 2023

Appeal from the Judgment of Sentence Entered February 2, 2023
In the Court of Common Pleas of Perry County Criminal Division at
No(s): CP-50-CR-0000131-2021

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

ABRAHAM T. ALDRICH

Appellant

No. 436 MDA 2023

Appeal from the Judgment of Sentence Entered February 2, 2023
In the Court of Common Pleas of Perry County Criminal Division at
No(s): CP-50-CR-0000135-2021

BEFORE: BOWES, J., LAZARUS, J., and STEVENS, P.J.E.*

JUDGMENT ORDER BY LAZARUS, J.:

FILED: MARCH 27, 2024

Abraham T. Aldrich appeals from the judgment of sentence, entered in
the Court of Common Pleas of Perry County, after pleading guilty to various

* Former Justice specially assigned to the Superior Court.

drug related charges¹ on four separate criminal dockets.² As Aldrich failed to submit a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and we find this failure to constitute *per se* ineffective assistance of counsel, we remand for further proceedings.

Briefly, between April 15 and November 15, 2020, Aldrich and his wife, Alicia Aldrich, were involved in the distribution and use of heroin and fentanyl while living in the Borough of Newport. On April 15, 2020, Aldrich shared fentanyl with his neighbor, Nicholas Winter, who was later found deceased. On September 13, 2020, Aldrich shared methamphetamine with John Heims, who was visiting his girlfriend, also one of Aldrich's neighbors. John Heims was also found deceased.

On December 1, 2022, Aldrich entered a hybrid guilty plea³ for all four of his outstanding cases related to the above facts and other related drug use.

¹ On Docket CP-50-CR-0000131-2021 (No. 131-2021), Aldrich pled guilty to one count each of possession with intent to deliver (PWID) and involuntary manslaughter, and two counts of tampering with physical evidence. **See** 35 P.S. § 780-113(a)(30); 18 Pa.C.S.A. § 2504(a); *id.* at § 4910(1), respectively. On Docket CP-50-CR-0000135-2021 (No. 135-2021), Aldrich pled guilty to one count each of PWID and involuntary manslaughter.

² On March 20, 2023, Aldrich filed two timely notices of appeal, each listing a separate docket number, with respect to Docket Nos. 131-2021 and 135-2021, in compliance with our Supreme Court's holding in ***Commonwealth v. Walker***, 185 A.3d 969 (Pa. 2018). Aldrich only appeals his judgment of sentence at two of four criminal dockets. For ease of disposition, we have *sua sponte* consolidated Aldrich's appeals. **See** Pa.R.A.P. 513 (consolidation of multiple appeals).

³ As part of the agreement, the Commonwealth withdrew Aldrich's drug delivery resulting in death charges at the above-captioned dockets.

On February 2, 2023, Aldrich was sentenced to an aggregate term of 8 to 18 years' incarceration.⁴ Aldrich filed timely post-sentence motions in both cases, averring that the trial court imposed an excessive sentence by running his PWID and involuntary manslaughter terms consecutively for both No. 131-2021 and No. 135-2021, which the trial court denied on February 28, 2023. Subsequently, Aldrich filed timely notices of appeal on March 20, 2023.⁵ On March 21, 2023, the trial court ordered Aldrich to file a Rule 1925(b) statement within 25 days, or by April 17, 2023.⁶

Aldrich failed to comply with the court's Rule 1925(b) orders and did not file a Rule 1925(b) concise statement in either case.⁷ On April 19, 2023, the trial court entered orders in both cases, stating that because Aldrich failed to

⁴ At No. 131-2021, Aldrich was sentenced to 2 to 4 years' incarceration for PWID, 2 to 5 years' incarceration for involuntary manslaughter, to be served consecutively, and 1 to 2 years' incarceration for each tampering with evidence count, to be served concurrently. At No. 135-2021, Aldrich was sentenced to 2 to 4 years' incarceration for PWID and 2 to 5 years' incarceration for involuntary manslaughter, to be served consecutively to each other and to No. 131-2021.

⁵ Trial counsel, David Edward Wilson, Esquire, filed a petition for leave to withdraw as counsel with the trial court on the same date. The trial court did not rule on trial counsel's petition.

⁶ The 25th day was Saturday, April 15, 2023, and, therefore, Aldrich had until Monday, April 17, 2023, to file his Rule 1925(b) statement. **See** 1 Pa.C.S.A. § 1908 ("Whenever the last day of any such time period shall fall on a Saturday or Sunday . . . such day shall be omitted from the computation.").

⁷ We note that trial counsel filed an application to withdraw as counsel and for a stay of proceedings with this Court on May 2, 2023. On May 5, 2023, we granted trial counsel's application to withdraw. On June 1, 2023, the trial court appointed William Shreve, Esquire, to represent Aldrich on direct appeal.

file a Rule 1925(b) statement, no Rule 1925(a) opinion would be forthcoming. The failure to file a court-ordered Rule 1925(b) statement constitutes *per se* ineffective assistance of counsel. **See** Pa.R.A.P. 1925(c)(3); ***Commonwealth v. Thompson***, 39 A.3d 335, 339-41 (Pa. Super. 2012); ***Commonwealth v. Scott***, 952 A.2d 1190, 1191-92 (Pa. Super. 2008); ***Commonwealth v. West***, 883 A.2d 654, 657-58 (Pa. Super. 2005). Because Aldrich's counsel failed to file a Rule 1925(b) statement and the trial court has not prepared an opinion pursuant to Rule 1925(a), we are constrained to follow the dictates of Rule 1925(c)(3) and remand the case to the trial court for the appointment of new counsel, the filing of a Rule 1925(b) statement, *nunc pro tunc*, and a responsive Rule 1925(a) trial court opinion.

Case remanded for further proceedings consistent with this order. Panel jurisdiction retained.