Rule 1925 of the Rules of Appellate Procedure

Judge Mary Jane Bowes
Superior Court of Pennsylvania

Rule 1925 in Civil and Criminal Appeals

I. The purpose of Rule 1925

A. Appellate courts want trial court opinions that cover all of the questions they must decide.

1. "Rule 1925 is . . . a crucial component of appellate process." ***Commonwealth v. McBride***, 957 A.2d 752, 758 (Pa.Super. 2008). With so many issues requiring us to determine whether the trial court abused its discretion, we need a trial court opinion, explaining its reasoning, to facilitate "meaningful and effective appellate review." ***Id***. Accordingly, Rule 1925(a) requires a trial court, upon receipt of a notice of appeal, either to "file of record at least a brief opinion of the reasons for the order" or ruling giving rise to the appeal, or to "specify in writing the place in the record where such reasons may be found."

B. Rule 1925(b) is a tool for narrowing the issues that the trial court must address in its opinion.

1. Sometimes the trial court knows exactly what the appeal is about (e.g., a Commonwealth appeal from the grant of a suppression motion), and can just write the opinion without any additional information from the appellant.

2. More often, there are myriad issues that the appellant could complain about. Rather than address in its opinion all the potential issues that could arise from the denial of a continuance to overruled objections to the denial of post-trial motions, Rule 1925(b) is available "to aid trial judges in identifying and focusing upon those issues that the parties plan to raise on appeal." ***Commonwealth v. McBride***, 957 A.2d 752, 758 (Pa.Super. 2008).

3. "The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of raising that issue on appeal." Pa.R.A.P. 1925, *Note* (subparagraph (b)(4).

C. The Rule is <u>not</u> a vehicle for raising claims of error in the first instance.

1. The general rule is that "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a).

    a. The requirement that issues be raised in the trial court in the first instance is not a pointless hoop-jumping exercise or "a trap to defeat appellate review." ***Hess v. Fox Rothschild, LLP***, 925 A.2d 798, 804 (Pa.Super. 2007) (cleaned up).

    b. Rather, "the issue preservation requirement ensures that the trial court that initially hears a dispute has had an opportunity to consider the issue, which in turn advances the orderly and efficient use of our judicial resources, and provides fairness to the parties." ***Commonwealth v. Speed***, 323 A.3d 850, 853 (Pa.Super. 2024) (cleaned up).

2. Once an appeal has been filed, the trial court has lost jurisdiction to correct its errors. ***See Commonwealth v. Monjaras-Amaya***, 163 A.3d 466, 469 (Pa.Super. 2017).

3. Therefore, waiver applies even if trial court chooses to address in its opinion an issue raised for the first time in a 1925(b) statement. ***Commonwealth v. Melendez-Rodriguez***, 856 A.2d 1278, 1288 (Pa.Super. 2004) (*en banc*).

D. Waiver is the mechanism for enforcing compliance with the Rule.

1. A Rule 1925(b) order is not precatory: there are serious consequences for failure to comply. As is discussed more fully below, all issues not raised, and all issues improperly raised, in a concise statement are waived. ***See*** Pa.R.A.P. 1925(b)(4)(vii).

    a. Of course there are caveats and exceptions, which will be addressed below.

II. Mechanics of the Rule

A. The Judge orders the filing of a concise statement.

1. An appellant's duties under the Rule normally are imposed by the trial court's ordering the filing of a concise statement.

    a. However, unprompted concise statements trigger the same waiver rules as statements filed in response to a court order.

        i. When a party has filed a statement of errors complained of on appeal voluntarily, a trial court has no reason to issue a 1925(b), as it is already aware of the appellant's complaints. If the enforcement rules did not apply to such gratuitously-filed statements, this Court "would, in effect, be allowing appellant to circumvent the requirements of the Rule." ***Commonwealth v. Snyder***, 870 A.2d 336, 341 (Pa. Super. 2005) (finding issues waived for failure to raise them in a statement filed contemporaneously with the notice of appeal).

    b. In appeals designated as children's fast track, the Rule 1925(b) statement shall be filed concurrent with the notice of appeal. ***See*** Pa.R.C.P. 1925(a)(2)(i).

        i. Although failure to comply with the concurrent filing provision of Rule 1925(a)(2)(i) generally will not result in waiver, the failure to comply with a trial court order or Superior Court order directing you to file a Rule 1925(b), statement **will** result in waiver. ***Compare In re Adoption of N.N.H.***, 197 A.3d 777, 781 (Pa.Super. 2018), ***with J.P. v. S.P.***, 991 A.2d 904 (Pa.Super. 2010).

2. The Rule specifies that the judge must include the following in the order "directing the filing and service of a Statement."

    a. The order must state the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement. ***See*** Pa.R.A.P. 1925(b)(3)(i).

        i. The judge must allow at least twenty-one days. ***See*** Pa.R.A.P. 1925(b)(2).

ii. The appellant can request an extension "for good cause shown," such as delay in production of transcripts. Pa.R.A.P. 1925(b)(2). The request for an extension should be made in writing, filed of record, before the deadline for filing a statement established by the trial court's 1925(b) order. ***Commonwealth v. Gravely***, 970 A.2d 1137, 1145 (Pa. 2009). "[A] court may not deny an appellant's **timely** motion for enlargement of time to file a Rule 1925(b) statement without providing justification for its finding that good cause has not been shown." ***Commonwealth v. Hopfer***, 965 A.2d 270, 275 (Pa.Super. 2009) (emphasis added).

b. The order must indicate that the Statement shall be filed of record. ***See*** Pa.R.A.P. 1925(b)(3)(ii).

c. The order must provide that the Statement also shall be served on the judge, and specify "both the place the appellant can serve the Statement in person and the address to which the appellant can mail the Statement." Pa.R.A.P. 1925(b)(3)(iii).

d. The order must state that any issue not properly included in the Statement timely filed and served shall (not may!) be deemed waived. ***See*** Pa.R.A.P. 1925(b)(3)(iv).

e. The trial judge "shall not require the citation to authorities." Pa.R.A.P. 1925(b)(4)(ii). Nor may the judge "require appellant or appellee to file a brief, memorandum of law, or response as part of or in conjunction with the Statement." Pa.R.A.P. 1925(b)(4)(iii).

3. As discussed more fully below, the order must be properly entered and served to be enforceable.

B. Drafting the concise statement.

1. The requirements of a proper statement are specified in paragraph (b)(4) of the Rule.

a. "The Statement shall set forth only those errors that the appellant intends to assert." Pa.R.A.P. 1925(b)(4)(i).

i. You need to state each issue in the 1925(b) statement, for "the Superior Court has consistently frowned upon appellants' attempts to satisfy Rule 1925(b) simply by incorporating by reference previously filed documents." ***Commonwealth v. Parrish***, 317 A.3d 551, 558 n.9 (Pa. 2024).

b. "The Statement shall concisely identify each error that the appellant intends to assert with sufficient detail to identify the issue to be raised for the judge." Pa.R.A.P. 1925(b)(4)(ii). However, "The Statement should not be redundant or provide lengthy explanations as to any error." Pa.R.A.P. 1925(b)(4)(iv).

c. The states errors "will be deemed to include every subsidiary issue that was raised in the trial court[.]" Pa.R.A.P. 1925(b)(4)(v). But "this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal." ***Id***.

d. Although not necessary, the appellant "may choose to include pertinent authorities and record citations in the Statement." Pa.R.A.P. 1925(b)(4)(ii).

2. From this we see that **a well-crafted statement balances conciseness with sufficient detail** to alert the trial court to exactly what issues it must address in its opinion.

a. As mentioned above: "The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of raising that issue on appeal." Pa.R.A.P. 1925, Note (subparagraph (b)(4).

a. However, as discussed in more detail *infra*, going to one extreme (so concise as to be vague) or the other (so voluminous that it is overwhelming) can result in waiver.

3. If counsel intends to file a petition to withdraw and an ***Anders***/***Santiago*** or ***Turner***/***Finley*** brief in the Superior Court, he or she need not state claims of error.

a. Instead, "counsel shall file of record and serve on the judge a statement of intent to withdraw in lieu of filing a Statement." Pa.R.A.P. 1925(c)(4).

i. Counsel is not required to file a statement of intent in to withdraw, and a trial court opinion that addresses the issues that will be briefed on appeal is helpful in determining whether the appeal is wholly frivolous. Hence, we will not discourage counsel from filing a 1925(b) statement in these circumstances.

b. If the Superior Court ultimately disagrees with counsel, and concludes "that there are arguably meritorious issues for review," we will "remand for the filing and service of a Statement pursuant to Pa.R.A.P. 1925(b), a supplemental opinion pursuant to Pa.R.A.P. 1925(a), or both." Pa.R.A.P. 1925(c)(4). "Upon remand, the trial court may, but is not required to, replace appellant's counsel." ***Id***.

C. The appellant must both file the statement with the clerk of courts/prothonotary <u>and</u> serve it on the trial judge.

1. Mailing the statement to the trial judge but not filing is insufficient. ***See Commonwealth v. Butler***, 812 A.2d 631, 634 (Pa. 2002).

2. Filing the statement but not serving the trial judge may result in waiver. ***See Forest Highlands Cmty. Ass'n v. Hammer***, 879 A.2d 223, 229 (Pa.Super. 2005).

3. A *pro se* statement filed by a represented defendant is a legal nullity. ***See Commonwealth v. Ali***, 10 A.3d 282, 293 (Pa. 2010). Therefore, counsel in such instances cannot not rely upon her client's statement, but should timely comply with the order by filing a statement herself.

III. Enforcement of the Rule.

A. Usually, failure to file a timely concise statement will result in waiver.

1. The Rule itself expressly states: "Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived." Pa.R.A.P. 1925(b)(4)(vii).

a. Note: when advocating for or against application of Rule 1925 waiver in the Superior Court, decisions in civil and criminal cases are equally applicable. ***See Commonwealth v. Levanduski***, 907 A.2d 3, 29 n.8 (Pa.Super. 2006) (*en banc*) ("The Rules of Appellate Procedure apply to criminal and civil cases alike.").

i. Exception: as discussed below, remand, rather than waiver, may result from noncompliance in cases of *per se* ineffective assistance of counsel. ***See*** Pa.R.A.P. 1925(c)(3).

2. If it is unclear whether a statement was filed and served, or was timely filed and served, the Superior Court may remand for a factual determination on the issue. ***See*** Pa.R.A.P. 1925(c)(1).

3. Failure to comply with Rule 1925 may not be penalized if the order directing the appellant to file a statement was deficient or was not entered properly. As the Court stated, "The requirement that defendants be given notice of the need to file a Rule 1925(b) statement is not a mere technicality. If we are to find that defendants waived their constitutional rights, we must be sure that the clerk of the court did his or her job to advise the defendants that it was necessary to act." ***Commonwealth v. Davis***, 867 A.2d 585, 588 (Pa.Super. 2005) (*en banc*).

a. No waiver where the docket did not indicate notice of the 1925 order was provided to the parties. ***See Commonwealth v. Williams***, 959 A.2d 1252, 1256 (Pa.Super. 2008); ***Commonwealth v. Davis***, 867 A.2d 585, 588 (Pa. Super. 2005) (*en banc*).

b. No waiver where the docket did not state the date when notice of the order was provided as required by Pa.R.Crim.P. 114(C)(2)(c). ***See Commonwealth v. Chester***, 163 A.3d 470, 472 (Pa.Super. 2017).

c. No waiver where the appellant presented two copies of the statement to the prothonotary, rather than filing one and serving one on the judge, where the order instructed the appellant to "file" a copy of the statement with the court and the trial judge. ***See Berg v. Nationwide Mut. Ins. Co.***, 6 A.3d 1002, 1008 (Pa. 2010) (plurality).

d. No waiver for *pro se* defendant's failure to file a statement where it was served upon his former attorney by hand delivery rather than sent to his prison address by mail as is required by Pa.R.Crim.P. 114(B)(a)(v). ***See Commonwealth v. Hart***, 911 A.2d 939, 940 (Pa.Super. 2006).

e. No waiver where 1925(b) order suggested that failure to comply "may" result in waiver rather than stating that the issues be "shall be deemed waived." ***Commonwealth v. Jones***, 193 A.3d 957, 962 (Pa.Super. 2018).

f. Waiver did not apply where order did not state both the place for hand-delivery and the address for serving the judge by mail. ***See Rahn v. Consol. Rail Corp.***, 254 A.3d 738, 747 (Pa.Super. 2021); ***Boyle v. Main Line Health, Inc.***, 272 A.3d 466 (Pa.Super. 2022) (non-precedential decision).

g. **BUT NOTE**: Whether there must be a connection between the order's deficiency and the appellant's lack of compliance for wavier to be inapplicable is at issue in ***Sellers v. Erie Ins. Exch.***, 1431 MDA 2023, for which this Court granted *en banc* review on January 16, 2025.

4. Of course, some issues may be raised for the first time on appeal, and thus are not waived by the failure to comply with a 1925(b) order. ***See***, ***e.g.***, ***Commonwealth v. Hodges***, 193 A.3d 428, 432 (Pa.Super. 2018) ("[A] challenge to legality of sentence is cognizable, even in the absence of a Rule 1925(b) statement.").

5. In sum, the best practice is, obviously, to comply with the order even if it is defective. However, if mistakes are made, be aware of the available arguments to avoid waiver.

B. Statements that are too vague or unnecessarily voluminous may result in waiver.

1. The Note to the rule explains: "Neither the number of issues raised nor the length of the Statement **alone** is enough to find that a Statement is vague or non-concise enough to constitute waiver." (emphasis added). Nonetheless, care should be taken

to articulate only the "specific errors with which the appellant takes issue and why."

2. **Vague statements**: A "concise statement must properly specify the error to be addressed on appeal. [In other words, th]e Rule 1925(b) statement must be specific enough for the trial court to identify and address the issue an appellant wishes to raise on appeal." ***Tong-Summerford v. Abington Mem'l Hosp.***, 190 A.3d 631, 649 (Pa.Super. 2018) (cleaned up). "A concise statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement at all." ***Commonwealth v. Hansley***, 24 A.3d 410, 415 (Pa.Super. 2011) (cleaned up).

   a. This often comes up in criminal cases in the context of challenges to the sufficiency of the evidence.

      i. The general rule is that, "[i]f an appellant wants to preserve a claim that the evidence was insufficient, then the 1925(b) statement needs to specify the element or elements upon which the evidence was insufficient. This Court can then analyze the element or elements on appeal. Where a 1925(b) statement does not specify the allegedly unproven elements, the sufficiency issue is waived on appeal." ***Commonwealth v. Arnold***, 284 A.3d 1262, 1279 (Pa.Super. 2022) (cleaned up).

      ii. The determining factor in deciding whether waiver applies is whether the trial court was on notice what issues it needed to address in its opinion. Below are some examples of waiver analysis when the appellant's statement merely claimed that the evidence was insufficient without detailing specific elements.

         A. No waiver: ***Commonwealth v. Laboy***, 936 A.2d 1058, 1060 (Pa. 2007) ("[W]e agree with Appellant that the Superior Court should have afforded the requested sufficiency review. In the present, relatively straightforward drug case, the evidentiary presentation spans a mere thirty pages of transcript. It may be possible in more complex criminal matters that the

common pleas court may require a more detailed statement to address the basis for a sufficiency challenge. Here, however, the common pleas court readily apprehended Appellant's claim and addressed it in substantial detail."); ***Commonwealth v. Smyser***, 195 A.3d 912, 916 (Pa.Super.. 2018) (addressing merits despite boilerplate 1925(b) statement because the appellant was convicted of multiple counts of a single offense and "his sufficiency challenge present[ed] a question of law that the trial court readily apprehended"); ***Commonwealth v. McCurdy***, 943 A.2d 299, 301 (Pa.Super. 2008) ("The trial court recognized that the statement was necessarily vague since counsel had not participated at trial and had not yet had the opportunity to review that proceeding, and it declined to find waiver. While we are aware of the case law providing that vague statements do not preserve issues on appeal, counsel in this case could not have been more specific. We therefore decline to find the issue waived." (citation omitted)).

B. Waiver: ***Commonwealth v. LeClair***, 236 A.3d 71, 76 (Pa.Super. 2020) ("Although Appellant was convicted of multiple crimes, Appellant's sufficiency claim did not specify which elements or even which conviction he sought to challenge on appeal."); ***Commonwealth v. Gibbs***, 981 A.2d 274, 281 (Pa.Super. 2009) (same where appellant convicted of PWID, possession, conspiracy, possession of paraphernalia, and three counts of receiving stolen property generically challenged the sufficiency of the evidence);: ***Commonweatlh v. Williams***, 959 A.2d 1252, 1258 n.9 (Pa.Super. 2008) (holding sufficiency challenge was not preserved where appellant was convicted of murder, robbery, possessing instruments of crime, and firearms violations, and failed to specify which elements he was challenging or why the evidence was insufficient).

3. **Overwhelmingly prolix statements.** The Rule provides that the statement "should not be redundant or provide lengthy explanations as to any error." Pa.R.A.P. 1925(b)(4)(iv). Remember, each issue identified "will be deemed to include every subsidiary issue that was raised in the trial court." Pa.R.A.P. 1925(b)(4)(v).

    a. Some cases are complex and have a voluminous record, such that a "concise" statement may be several pages long and include many clams. When the claims are stated in good faith and are not unnecessarily prolix, waiver will not result. ***See***, ***e.g.***, ***Maya v. Johnson & Johnson***, 97 A.3d 1203, 1211 n.4 (Pa.Super. 2014) (declining trial court's invitation to find waiver as a result of an eleven-page twenty-three-paragraph statement).

    b. However, waiver can result if a filing is voluminous, in bad faith, in an attempt to overwhelm the trial court. ***See***, ***e.g.***, ***Mahonski v. Engel***, 145 A.3d 175, 182 (Pa.Super. 2016) (holding, where the appellant stated eighty-seven claims of error, that included "flippant remarks demonstrating disrespect of the judicial process" and the trial court refused to address the "overly vague, redundant, and prolix" claims of error, that the record supported the trial court's finding that the "voluminous 1925(b) statements failed to set forth non-redundant, nonfrivolous issues in an appropriately concise matter"); ***Kanter v. Epstein***, 866 A.2d 394, 401 (Pa.Super. 2004) ("The Defendants' failure to set forth the issues that they sought to raise on appeal in a concise manner impeded the trial court's ability to prepare an opinion addressing the issues that the Defendants sought to raise before this Court, thereby frustrating this Court's ability to engage in a meaningful and effective appellate review process. By raising an outrageous number of issues [104], the Defendants have deliberately circumvented the meaning and purpose of Rule 1925(b) and have thereby effectively precluded appellate review of the issues they now seek to raise.").

C. *Per se* ineffective assistance of counsel exception to waiver in criminal cases

1. Subsection (c)(3) of the Rule provides: "If an appellant represented by counsel in a criminal case was ordered to file and serve a Statement and either failed to do so, or untimely filed or served a Statement, such that the appellate court is convinced that counsel has been *per se* ineffective, and the trial court did not file an opinion, the appellate court may remand for appointment of new counsel, the filing or service of a Statement *nunc pro tunc*, and the preparation and filing of an opinion by the judge."

    a. Although collateral proceedings through the PCRA are civil rather than criminal in nature, the subsection (c)(3) remand procedure applies in PCRA appeals. ***See Commonwealth v. Presley***, 193 A.3d 436, 442 (Pa. Super. 2018) (holding that PCRA cases, governed by the Rules of Criminal Procedure, should also be treated as criminal for purposes of the Rules of Appellate Procedure).

2. While direct appeal rights may be restored through the PCRA when they are lost based upon ineffective assistance, "the more effective way to resolve such *per se* ineffectiveness is to remand for the filing of a Statement and opinion." Pa.R.A.P. 1925, *Note*.

    a. Since efficiency in redressing *per se* ineffectiveness is the goal: "To avoid unnecessary delay, when a trial court orders the appellant in a criminal case to file a Rule 1925(b) statement and the appellant files it untimely, the trial court's Rule 1925(a) opinion should note the *per se* ineffectiveness of counsel, appoint new counsel if it deems it necessary, and address the issues raised on appeal. Similarly, where, as here, counsel fails to file a Rule 1925(b) statement before the trial court files a Rule 1925(a) opinion, the opinion should note the ineffectiveness of counsel, permit counsel to file a statement *nunc pro tunc* and address the issues raised in a subsequent Rule 1925(a) opinion. The trial court may appoint new counsel if original counsel fails to comply with the order because a failure to comply with the order would prohibit appellate review." ***Commonwealth v. Stroud***, 298 A.3d 1152, 1157 (Pa.Super. 2023) (cleaned up).

3. An attorney is *per se* ineffective when the appeal is **completely** foreclosed because a 1925(b) statement was not timely filed. ***See*** Pa.R.A.P. 1925, *Note*.

    a. If waiver applies to some, but not all, issues, for example because the statement was vague or an argued issue was not raised in the statement, this remand procedure is not applicable to correct the error. If relief is to be had, it will be through the PCRA. ***See Commonwealth v. Rosado***, 150 A.3d 425, 433 (Pa. 2016) (providing that errors "which only partially foreclose such review are subject to the ordinary [ineffectiveness] framework").

C. Remand to avoid waiver in civil cases

1. "Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing or service *nunc pro tunc* of a Statement or for amendment or supplementation of a timely filed and served Statement and for a concurrent supplemental opinion." Pa.R.A.P. 1925(c)(2).

    a. The Court will not *sua sponte* grant this relief. Rather, the appellant must apply for the remand and demonstrate good cause. ***See Greater Erie Indus. Dev. Corp. v. Presque Isle Downs, Inc.***, 88 A.3d 222, 227 n.7 (Pa.Super. 2014) (*en banc*) (citing standards for granting *nunc pro tunc* status).

    b. "If an appellant has a statutory or rule-based right to counsel, good cause shown includes a failure by counsel to file or serve a Statement timely or at all." Pa.R.A.P. 1925(c)(2).

IV. Conclusion

Rule 1925 serves an important purpose for the appellate court. It is not mere bureaucratic red tape or a waiver trap. Rather, it is the first step in framing the issues that will be presented in the appeal, culminating in the Pa.R.A.P. 2116 statement of questions involved included in the appellate brief. The Rule exists so that trial courts can give the Superior court the information it needs to effectively resolve claims of error on appeal. If you keep that purpose in mind when drafting your statements, your appeals are far more likely to rise or fall on their merits.