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COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
 VS. : OF TIOGA COUNTY, PENNSYLVANIA  
 JOSEPH WAIKSNIS : NO. 163 CRIMINAL ACTION 1993

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SENTENCING HEARING HELD: September 27, 1993, before  
 Honorable Robert E. Dalton Jr., President Judge, at the Tioga  
 County Courthouse, Tioga County, Wellsboro, Pennsylvania.

APPEARANCE:

John Cowley, Esquire  
 Tioga County District Attorney

Stephen Banik, Esquire  
 On behalf of the defendant, Joseph Waiksnis

1 MR. COWLEY: Joseph Waiksnis for  
2 sentencing. Mr. Waiksnis was previously tried by a  
3 jury on July 20 and found guilty on all counts. This  
4 would constitute the second offense for driving under  
5 the influence within seven years. A pre sentence  
6 investigation was prepared by the probation department  
7 by Douglas Smith. A copy of the same has been provided  
8 to the court and to defense counsel and we are here to  
9 sentence him on a charges of fleeing, eluding, careless  
10 driving and driving under the influence, second  
11 offense.

12 THE COURT: Alright, Mr. Waiksnis, you're  
13 appearing for sentencing this morning with your  
14 attorney, Stephen Banik. You have been furnished with  
15 a copy of the pre-sentence investigation and report to  
16 the court that was ordered. You will note that the  
17 findings in here would indicate that this is a second  
18 DUI offense conviction within the last seven years and  
19 as such carries certain minimum mandatory sentences  
20 which I'm sure your attorney has advised you of. But  
21 in this instance I will tell you again that there will  
22 be a minimum mandatory sentence to be imposed of thirty  
23 days incarceration for a second DUI conviction within  
24 seven years as a minimum. Are there any additions or  
25 corrections that you would like to make, Mr. Banik, at

1 this time, to the pre-sentence report?

2 MR. BANIK: No your Honor. It's entirely  
3 in order.

4 THE COURT: Then the court will accept the  
5 facts contained in the pre-sentence report and I will  
6 be adopting the report as well as the sentencing  
7 guideline form and CRN report attached thereto as part  
8 of the basis for the sentence to be imposed. Because  
9 there is a minimum mandatory sentence involved here and  
10 I see no reason to go outside that mandatory sentence,  
11 I'm going to not go through a lengthy sentencing  
12 colloquy, however I would give Mr. Banik and Mr.  
13 Waiksnis an opportunity if you wish to make any kind of  
14 comment at this time before I proceed to impose the  
15 mandatory sentence.

16 MR. BANIK: Your Honor, Mr. Waiksnis is  
17 aware of the minimum thirty day requirement. His  
18 version of the facts as set forth in the PSI, of  
19 course, he took it to a jury trial and we are here  
20 because the jury did not believe the stated version.  
21 Mr. Waiksnis intends to appeal this matter to Superior  
22 Court and we'd ask that the sentence imposed by the  
23 court to date be served at the conclusion of that  
24 appeal. He is on bail at this time. We are aware we  
25 will be sentenced at this time.

1 THE COURT: Have you filed a petition for  
2 release pending appeal?

3 MR. BANIK: Pardon? No I have not your  
4 Honor. The notice of appeal-- he's still on bail and I  
5 did not prepare that.

6 THE COURT: Mr. Cowley, any comment from  
7 the Commonwealth?

8 MR. COWLEY: The only comment I would  
9 make-- the Commonwealth has reviewed the post-trial  
10 motions. The court has refused those motions. It  
11 seems to the Commonwealth that this would be a ploy  
12 engaged in by many defendants if they wanted to prolong  
13 or procrastinate the sentencing. In this situation,  
14 based upon what's been filed, it does not look like the  
15 appeal has much merit. There's not a whole lot that can  
16 be appealed or that is going to probably result in a  
17 reversal because it's just credibility. And the other  
18 matter, I don't believe, has any merit at all. Based  
19 upon that I would ask the court to consider those  
20 factors when determining whether to allow him to remain  
21 free and avoid incarceration.

22 THE COURT: Thank you gentlemen. I'm  
23 going to proceed first on the matter of imposing  
24 sentence. As I've indicated, I'm going to be imposing  
25 the minimum mandatory sentence and the sentence will

1 read as follows. And now, September 27, 1993, the  
2 defendant Joseph Waiksnis, having been convicted at  
3 jury trial on July 7, 1993, is sentenced as follows:  
4 Count 1, the defendant is committed to the Tioga County  
5 Jail for a minimum period of thirty days, a maximum  
6 period of eighteen months. A fine in the amount of  
7 \$750.00 and costs of prosecution are hereby imposed.  
8 The defendant shall pay a supervision fee of \$35.00 per  
9 month and pay an administrative fee of \$20.00 per month  
10 for each month that he is under the supervision of the  
11 Tioga County Probation Department. The defendant's  
12 driving license and privileges are hereby suspended for  
13 a period of one year. The defendant shall be subject  
14 to the provisions of Act 122 regarding drug and alcohol  
15 abuse and pay any fees related thereto. And the  
16 defendant shall be subject to such special conditions  
17 of probation regarding drug and alcohol abuse that the  
18 probation office may impose.

19 Now, Mr. Waiksnis, you've heard the sentence  
20 the court has just imposed. We had a jury trial, you  
21 were found guilty, and your post-verdict motions have  
22 already been denied. You would have the right now to  
23 file a written motion to modify this sentence just  
24 imposed if you do so in writing within ten days from  
25 today. If you fail to file such a motion or if you

1 withdraw it after filing then you will waive or  
2 relinquish your right to appeal to the Superior Court  
3 on the grounds that your sentence should have been  
4 modified. You have the right to file an appeal to the  
5 Superior Court within thirty days from today on the  
6 following grounds; that your sentence is illegal, in  
7 which case if the Superior Court agreed you would be  
8 re-sentenced; or that this court did not have  
9 jurisdiction to hear the case, in which case if the  
10 Superior Court agreed, you would be discharged and the  
11 charge dismissed; or that this court's refusal to grant  
12 your post-verdict motions was in error in which case if  
13 the Superior Court agreed a new trial would be granted  
14 to you or the charge dismissed as the case may be. You  
15 have the right to the services of an attorney for  
16 filing such motions and for taking such an appeal and  
17 if you cannot afford an attorney the court would  
18 appoint one for you free of charge on your request or  
19 your appointed or private attorney you know have will  
20 continue to serve and represent you free of charge with  
21 respect to the filing of the appeal. I would caution  
22 you that only claims raised in this court may be raised  
23 on appeal. Do you understand what I've said?

24 MR. WAIKSNIS: Yes.

25 THE COURT: You should consult with your

1 attorney, Mr. Banik, should you have any questions  
2 about this matter.

3           On the matter of your request for release  
4 pending the appeal, this is a matter within the court's  
5 discretion and although from my knowledge of the case  
6 and the trial I think it's unlikely that you would  
7 prevail on the appeal given that your sentence is a  
8 mandatory thirty day sentence, you would be long  
9 completed with any jail sentence before the appeal  
10 likely would be heard and ruled upon by the Superior  
11 Court. So I will grant your request for release  
12 pending the appeal. You are on bail and will continue  
13 to remain on bail while that matter is processed. Upon  
14 the decision of the Superior Court, should they refuse  
15 to overrule the trial, the verdict, then you would have  
16 to report to begin your jail sentence immediately upon  
17 that ruling. I would just caution you and Mr. Banik  
18 that your application for release pending the appeal  
19 does not extend the time for the filing of the appeal  
20 so that runs from today's date. Mr. Banik, you should  
21 file a petition in writing pursuant to Appellate Rule  
22 1762 for the purposes of the record.

23           MR. BANIK:           Thank you your Honor.

24                                   End of Hearing

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the above entitled cause and that this copy is a correct transcript of the same.

*Susan Miller*

Court Stenographer

The foregoing record of the proceedings upon the hearing in the above entitled cause is hereby approved and directed to be filed.

*S/ Robert E. Dalton, Jr.*

Hon. Robert E. Dalton, Jr.

President Judge