

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	C.A. Nos. 0612011297
	)	0701012110
PATRICIA KOSTYSHYN,	)	
	)	
Defendant,	)	

Submitted: January 4, 2008  
Decided: January 29, 2008

**ORDER**

COMES NOW, the Court finds and decides as follows:

1) Defendant Patricia Kostyshyn was convicted and sentenced in Justice of the Peace Court No. 11 on October 18, 2007 for two counts of the following offenses:

(a) Violation of “*New Castle County Code § 0302 0083M*,” “Exterior Property Areas/Vehicles-Parking/Inoperable or Unregistered Vehicles,” in that she did permit to be stored on the premises a vehicle that is not properly registered and/or in operable condition (i.e., red Pontiac Sunbird without a tag displayed stored on the premises);

(b) Violation of “*New Castle County Code § 0302 0011 M*,” “Exterior Property Areas/Outside Storage of Debris,” in that “she did permit to be openly

stored on the premises items to be considered debris (i.e. cinder blocks, old sink, tub, pieces of plywood, tree debris, etc.)”; and

(c) Violation of *New Castle County Code § 0302 0042M*, “Prohibited Growth of Weeds-Grass/Developed Parcels” in that she did permit grass and weed to exceed a height of 8 inches on residentially zoned property.

2) The offenses in Case No. 0612011297 having occurred on November 15, 2006 and the offenses in Case No. 0701011423 having occurred on January 3, 2007.

3) In Case No. 0612011297, Patricia Kostyshyn was sentenced to pay fines and assessments in the amount of \$846.00.

4) In Case No. 0701012110, Patricia Kostyshyn was also sentenced to pay fines and assessments in the amount of \$846.00.

5) In each case, the fines were to be paid on an installment basis or could be discharged by participating in the work referral program.

6) On October 26, 2007, Patricia Kostyshyn docketed an appeal of both cases to the Court of Common Pleas in and for New Castle County, pursuant to *11 Del. C. § 5917(b)*.

7) Patricia Kostyshyn did not pay with the appeal the filing fee of \$125.00 per case as required by *Court of Common Pleas Criminal Rule 58*. She filed an application to proceed In Forma Pauperis.

8) On November 2, 2007, the Court denied the application to proceed In Forma Pauperis and ordered the fees paid by November 9, 2007. Notice of the

Court's Order was mailed to defendant on November 5, 2007. The Defendant denied that she received notice of the Court denying her petition.

9) Notwithstanding the Court's Order and failure of defendant to pay the required fee, the Clerk's Office in error scheduled both cases on December 7, 2007 for arraignment.

10) Arraignment was scheduled for January 4, 2008 where the Court again addressed the matter of defendant's failure to pay the filing fee as required by *Criminal Rule 58*.

11) On January 4, 2008 following defendant's renewed argument to proceed In Forma Pauperis, the Court for a second time denied the motion and ordered that the fee be paid within ten (10) days which would have been January 14, 2008.

12) Defendant failed to pay the filing fee as required by *Criminal Rule 58*, even after the petition to proceed In Forma Pauperis was denied.

13) The Justice of the Peace Court entered its order on October 18, 2007. The appeal was docketed in this Court on October 26, 2007. The provision of *11 Del. C. § 5917(b)* provides that every person convicted under this *Section* (i.e., violations of any ordinance, code or regulation of the government of their respective counties and municipalities) shall have five (5) days from the time of conviction to take an appeal. Further, "*Court of Common Pleas Criminal Rule 45(a)*" provides ". . . when the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation."

14) In these cases, the Justice of the Peace Court Orders were entered on October 18, 2007, therefore excluding the date of conviction, Saturday and Sunday, defendant was required to file the appeal in this court on or before October 25, 2007. While there are filings in the Justice of the Peace Court, such filings do not perfect an appeal in the Court of Common Pleas. As stated above, the appeal was filed in this Court on October 26, 2007.

Accordingly, the appeals in both cases are Dismissed for the following reasons:

- (1) Failure of defendant to timely pay the filing fee as required by the rule after denial of her petition to proceed In Forma Pauperis; and
- (2) The Appeal is time barred for failure to file within five (5) days of the time of conviction in Justice of the Peace Court No. 11.

The case is remanded to Justice of the Peace Court No. 11 to proceed consistent with its Sentencing Order of October 18, 2008.

SO ORDERED,

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Alex J. Smalls  
Chief Judge

Cc: Judge Donald Callendar  
J.P. Court No. 11

