

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1673-2016
	:	
v.	:	
	:	
BRIAN HOY,	:	1925a
Defendant	:	

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE**

Brian Hoy (Defendant) appeals from the Judgment of Sentence of June 20, 2017. He makes one allegation of error: that the Court abused its discretion in fashioning its sentence.

Background

On January 6, 2017, Defendant pled guilty to one count of Endangering the Welfare of a Child¹, a misdemeanor of the first degree. The terms of the plea agreement were that Defendant would be incarcerated at the county Pre Release Center for one (1) to two (2) years less one day with eligibility for Re-entry to be determined by the Court at sentencing. Count 2 was to be dismissed. Guilty Plea Colloquy, 1/19/2017.

The conviction arises out of an incident on June 24, 2016, whereby Defendant and his now deceased wife were caring for their nine year old son and one year old grandson. Defendant was found unresponsive on a street corner in Williamsport, PA. He had overdosed on heroin. When police went to the Defendant's address, they interviewed Defendant's wife who indicated that she and Defendant had snorted heroin that day. She expressed concern regarding the whereabouts of her son and

¹ 18 Pa.C.S. § 4303(a)(1).

grandchild. Both Defendant and his wife were charged with two counts of Endangering Welfare of a Child, a count for each child under their care and supervision that day.

On June 20, 2017, the Court sentenced the Defendant to the County Prison for a minimum of 12 months less one day and a maximum of 24 months less one day in accordance with the terms of the plea agreement. Sentence, 6/20/2017, at 1. At the time of sentencing, the Court did make the Defendant Re-entry eligible after serving six (6) months or one half (1/2) of his minimum sentence.

Matters Complained of an Appeal

Did the trial court abuse its discretion by sentencing Defendant to a manifestly excessive period of incarceration of one to two (1-2) years to be served at the Lycoming County pre-release center with “reentry” eligibility at six (6) months where compelling and necessitous reasons existed to make Defendant “reentry” eligible sooner?

Sentencing is within the sound discretion of the trial court. Commonwealth v. Walls, 926 A.2d 957 (Pa. 2007). The Court is at the time of sentencing able to make a Defendant “eligible to participate in a reentry plan at any time prior to the expiration of a minimum sentence or at the expiration of a specified portion of the minimum sentence”. 42 Pa.C.S. § 9756(b)(3) (minimum sentence). The Court is also bound to fashion a sentence that is “consistent with the protection of the public, the gravity of the offense as it related to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.” Walls at 962 citing 42 Pa.C.S. § 9721(b) (sentencing; general standards).

Defendant here challenges the discretionary aspects of his sentence and therefore on appeal must present to the appellate court “a substantial question that

the sentence imposed is not appropriate under [the Sentencing Code]. Title 42 Pa. CS § 9701 *et seq.* The appellate court may only vacate a sentence and remand for resentencing if it finds

- 1) that the court intended to sentence within the guidelines, but “applied the guidelines erroneously;”
- 2) a sentence was imposed within the guidelines “but the case involves circumstances where applications of the guidelines would be clearly unreasonable;” or
- 3) “the sentencing court sentenced outside the guidelines and the sentence is unreasonable.”

42 Pa.C.S. § 9781(c) (determination on appeal).

In this particular case, the Defendant pled guilty to one count of Endangering the Welfare of a Child, a misdemeanor of the first degree. A misdemeanor of the first degree is punishable by law to a maximum of 5 years’ incarceration and a \$10,000 fine. The offense gravity score for Endangering the Welfare of a Child is a “5”. 204 Pa.Code. § 303.15 (offense listing). At the time of sentencing, Defendant had a prior record score of “5”. The Basic Sentencing Matrix for a conviction with an offense gravity score of “5” and prior record score of “5 suggests a minimum sentence of 12-18 months Boot Camp. 204 Pa.Code § 303.16(a) (basic sentencing matrix).

Sentence of the Court was to 12 months less one day to a maximum of 24 months less one day. Order of Sentence, 6/20/2017. The Sentence of the Court was at the bottom end of the guideline range, so any suggestion that the Defendant should be released any sooner than the Court made him eligible to be released would need to be supported by mitigating factors. In fact in this case, the Court did make the Defendant eligible for release much earlier than the Sentencing Code would provide, as it was within its statutory authority to do.

The Court considered all of the needs and compelling reasons that Defendant presented and made him eligible for Reentry at 6 months. Sentence, 6/20/2017, at 15. The Court has known Defendant and his family through their various contacts with the criminal justice system including Defendant's time in Drug treatment court. The Court recognized the grief that Defendant was suffering due to the loss of his wife and that the Defendant had been drug and alcohol free since the time of the aforementioned incident which resulted in Defendant's conviction. The Court balanced the progress that Defendant had been making and fashioned a punishment that reflected the progress Defendant had been making in his recovery while also still holding him accountable for the underlying criminal behavior. Additionally, the Court made the Defendant Work Release Eligible and he is currently housed at the Lycoming County Pre Release Center and was able to continue being employed during his six month period of incarceration.

Because the Court finds it fully considered all required factors in fashioning its sentence, the sentence in the above captioned matter should be affirmed.

BY THE COURT,

DATE: _____

Nancy L. Butts, P.J.

cc: DA (NI)
Julian Allatt, Esq.
Gary Weber, Esq.