

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**RANDELL PETERSON,  
Defendant**

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**CR-1367-2014**

**POST SENTENCE MOTION**

**OPINION AND ORDER**

Randell Peterson (Defendant), through Counsel, filed Post Sentence Motions on April 5, 2017. A court conference was scheduled for June 22, 2017, and after preparation of the sentencing transcript of March 30, 2017, the following is the Opinion and Order of the Court.

**Background**

Defendant was charged with Delivery of a Controlled Substance<sup>1</sup>, Possession with Intent to Deliver (three counts)<sup>2</sup>, Possession of a Controlled Substance (two counts)<sup>3</sup>, and Possession of Drug Paraphernalia (two counts)<sup>4</sup>.

On July 18, 2016, Defendant pled guilty under the above captioned document number and under CR-652-2015. The agreed upon sentence for CR-652-2015 was for a minimum of 24 months and maximum of 5 years to a state correctional institution. The plea agreement included that Defendant would waive eligibility for RRRI, waive boot camp, and that he would plead open under the above captioned docket number and whatever sentence he served would be consecutive to the sentence in CR-1367-2014.

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<sup>1</sup> 35 P.S. § 780-113(a)(30).

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 35 P.S. § 780-113(a)(16).

<sup>4</sup> 35 P.S. § 780-113(a)(32).

On September 27, 2016, the Court proceeded to sentence Defendant as outlined above on CR-652-2015. Order, 9/27/2016, at 1. At the time set for sentencing, Defendant stated that he did not understand that the plea agreement did not encompass the charges in 1367-2014, and requested that he be able to withdraw his guilty plea in that docket number and proceed to trial. The Court appointed counsel to represent Defendant on his Motion to Withdraw Guilty Plea, and on the date set to hear such motion, Defendant agreed to be sentenced on CR-1367-2014 rather than pursue the Motion to Withdraw.

Sentence of the Court on CR-1367-2014, was to an aggregate of a minimum of forty-five (45) months, and a maximum of ninety-six (96) months i.e. eight (8) years. The sentence was ordered to run consecutive to any sentence that the Defendant may be serving i.e. CR-652-2015. Defendant was made RRRRI eligible by the Court on CR-1367-2014 and the Court calculated his RRRRI sentence at a minimum of thirty-seven (37) months and fifteen (15) days. Sentence-State, 3/20/2017, at 2.

## **Discussion**

***Whether the Court should modify its sentence as it was unreasonable and excessive.***

Defendant had a prior record score of a "5" at the time of sentencing. Sentence, 3/30/2017, at 8. The Defendant was sentenced on Count 1, Delivery of a controlled substance; Count 2, Possession with intent to deliver (cocaine, 0.84 grams); and Count 6, Possession with the Intent to Deliver (Heroin 1-<10 grams), the Court having found that the other counts to which Defendant pled guilty merged for sentencing purposes. The Court sentenced the Defendant to the bottom end of the standard guideline range and to a maximum much less than allowable by law,

however, it made clear in the Order of Sentence that the Defendant is not boot camp eligible, which was also suggested by the guidelines. *Id.* The Defendant could have received a maximum sentence of 35 years for the crimes for which he pled guilty, however his maximum term of incarceration is eight (8) years.

Sentencing is within the sound discretion of the trial court judge. Commonwealth v. Allen, 24 A.3d 1058, 1065 (Pa. Super. 2011). The Court did have the benefit of a presentence investigation prior to sentencing and considered all relevant factors in fashioning its sentence. Sentence, 3/30/2017, at 5.

At the post sentence motion, Defense Counsel brought to the Court's attention the Defendant's learning disability and the Defendant has continued to apprise the Court of it through a *pro se* letter to the Court. Order, 7/25/2017. The Court was aware at the time of sentencing of the learning disability and his Counsel stated in open court that "it's not a defense". Sentence, 3/20/2017, at 24. Defendant and his counsel referenced his learning disability throughout the sentencing hearing. *Id.* at 12, 13.

The Commonwealth requested at post sentence motions for the Court to amend its order of sentence to remove the RRRI reduction in minimum sentence. The Court will not grant the Commonwealth's request as the Court believes the sentence it gave Defendant as it factors in the circumstances surrounding the crimes for which he pled guilty and is consistent with protection of the public, the gravity of offense, and the rehabilitative needs of Defendant. Allen at 1065. Defendant at the time of his sentence was already serving a state sentence on CR-652-2016 and taking advantage of the drug rehabilitation programming at the state correctional institution. The Court gave due consideration of the various procedural issues that occurred

during the adjudication of the above captioned docket matter including continued attempts to withdraw the guilty plea and the Commonwealth's threat of perjury charges ensuing if Defendant were to withdraw his plea. As Defendant was sentenced at the bottom of the guideline range, and far below the maximum sentence available, he is serving a sentence that is clearly within reason and not excessive and will not be modified.

**ORDER**

**AND NOW**, this 2nd day of August, 2017, based on the foregoing opining, the Defendant's Post Sentence Motion is hereby DENIED.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of entry of this Order; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal *in forma pauperis* and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

BY THE COURT,

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Nancy L. Butts, P.J.

cc: Trisha Hoover Jasper, Esq. Defense Counsel  
Nicole Ippolito, Esq. ADA  
Gary Weber Esq. Lycoming Law Reporter