

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1592 – 2015
	:	
vs.	:	CRIMINAL DIVISION
	:	
RONELL WYLIE,	:	
Defendant	:	

**OPINION AND ORDER**

Before the Court is Defendant’s Post-Sentence Motion, filed January 17, 2017, and his Supplement to Post-Sentence Motion, filed January 19, 2017. Argument was heard February 6, 2017.

Following a non-jury trial on November 16, 2016, Defendant was convicted of possession of a firearm with altered manufacturer’s number, firearms not to be carried without a license, possession with intent to deliver heroin, attempted escape, resisting arrest, possession of a controlled substance (heroin), possession of a small amount of marijuana, possession of drug paraphernalia and disorderly conduct. On January 12, 2017, Defendant was sentenced to an aggregate term of incarceration of six to twelve years followed by one year of supervision by the state, and a \$200 fine.

In his post-sentence motion, Defendant seeks (1) a judgment of acquittal based on his contention the evidence was insufficient to support the altered firearm charge, (2) a new trial based on his contention the motion to suppress was denied in error, and (3) a modified sentence based on his contention that certain portions of the sentence should have been made concurrent rather than consecutive. These issues will be addressed seriatim.

First, Defendant argues that in order to be found guilty of the charge of possession of a firearm with altered manufacturer's number the court must find that the serial number was illegible. Defendant cites Commonwealth v. Smith, 146 A.3d 257, 264 (Pa. Super. 2016) in support of his contention because there, the Court stated: "This degree of degradation of the number - rendering it illegible by ordinary observation - satisfied the statutory requirement that an alteration or change to the number be apparent on the firearm." This court does not believe Smith should be read as broadly as Defendant urges, however.

The statute provides: "No person shall possess a firearm which has had the manufacturer's number integral to the frame or receiver altered, changed, removed or obliterated." 18 Pa.C.S. Section 6110.2(a). Only the latter two conditions of the serial number involve illegibility. Altering or changing does not necessarily result in illegibility. Indeed, in Smith the number was still legible (under magnification) and the Court likely relied on expert testimony presented by the Commonwealth that "someone has clearly taken some kind of a tool, and through abrasion, taken the tip of this off. ... [I]n my opinion, someone took a tool and tried grinding this part off." Smith, *supra*.

In the instant case, even if the number was legible, and *that* is subject to debate, it has clearly been altered by abrasion. No expert testimony is needed to see that:



Therefore, the charge was supported by sufficient evidence and Defendant is not entitled to a judgment of acquittal.<sup>1</sup>

In response to Defendant's contention the court erred in denying his motion to suppress, the court will rely on the Opinion issued in support of that order, by the Honorable Nancy L. Butts, dated February 29, 2016. No new trial will be granted.

Finally, Defendant argues that since the charges of possession of a firearm with altered manufacturer's number and firearms not to be carried without a license both involve the possession of a firearm, the court should not have made the sentences for those convictions consecutive but, rather, concurrent. The court believes, however, that the degree of harm to society is greater where a person possesses a firearm with an altered serial number as opposed to simply possessing a firearm. Running the sentences concurrent would eliminate the punishment for that increased harm. Therefore, the court declines to modify Defendant's sentence.

**ORDER**

AND NOW, this 8<sup>th</sup> day of February 2017, for the foregoing reasons, Defendant's Post-Sentence motion (as supplemented) is hereby DENIED.

BY THE COURT,

cc: DA  
Peter T. Campana, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson

Dudley N. Anderson, Judge

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<sup>1</sup> For purposes of anticipated appeal, the court has attached the original photograph, Commonwealth Exhibit 7, to this opinion and order. The firearm itself was not introduced into evidence.