IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1031 - 2012
	:	
vs.	:	
	:	
JEFFREY STACKHOUSE,	:	
Defendant	:	CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDER OF JANUARY 16, 2018,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

On January 9, 2013, Defendant pled guilty to one count of driving under the influence of alcohol (highest rate, third DUI in ten years) and was sentenced to five years of county supervision in the Intermediate Punishment Program, effective January 23, 2013, with the first year to be served at the Pre-Release Center with up to six months of electronic monitoring. Defendant was also placed on DUI Court at that time. Defendant was released from prison following the six month period.

Violations of the intermediate punishment program were addressed on September 11, 2013, December 17, 2014, April 8, 2015, June 17, 2015 and March 31, 2016 (at which time Defendant was removed from the DUI Court program). Although the Adult Probation Office recommended that Defendant's IP sentence be revoked in May 2016, the Court instead imposed a ninety-day period of electronic monitoring with use of an alcohol monitoring unit.

The revocation underlying the sentence at issue here was initiated by Defendant's failure to report to the Adult Probation Office as directed in October 2017,[1] his failure to appear for a costs and fines hearing on November 2, 2017,

1 When Defendant was issued a notice to appear for a costs and fines hearing, the probation officer delivered the notice to his residence and at that time observed a beer bottle on his front porch. The officer therefore left a note for Defendant to report to the Office on the following day. *See* N.T., November 30, 2017 at page 2.

and his failure to report as regularly scheduled on November 14, 2017. When Defendant did report to the Office on November 15, 2017, he was tested and the test showed cocaine use, which resulted in his detention that day. A preliminary violation hearing was held November 30, 2017, at which time Defendant admitted the violation but requested the preparation of a pre-sentence investigation. Based upon the Court's suggestion, and with Defendant's approval, a supervision history was instead requested from the Adult Probation Office.

On January 16, 2018, the Court reviewed Defendant's supervision history and revoked the IP sentence based on its belief that there were no additional programming opportunities for the Defendant to continue on county supervision. It is from this revocation and re-sentencing that Defendant now appeals.

In his Statement of Matters Complained of on Appeal, Defendant contends the Court (1) erred in failing to vacate the January 16, 2018 sentence (i.e., in denying his motion for reconsideration), and (2) abused its discretion in re-sentencing him to two to five years' incarceration where he had "nearly completed his five-year intermediate punishment supervision and he had already served a substantial portion of [the] incarceration [component]."[2]

With respect to the motion for reconsideration, in which Defendant asked the Court to vacate the January 16, 2018 sentence and hold a final probation violation hearing, since Defendant had admitted the cocaine use at the preliminary violation hearing and had not thereafter sought a final hearing until after sentencing, the Court believed Defendant waived his right to a final hearing and the motion was therefore denied on that basis.

As for the sentence itself, Defendant argued in support of reconsideration

2 *See* Defendant's Concise Statement of Matters Complained of on Appeal Pursuant to Rule 1925(B) Order, filed March 16, 2018.

that the sentence was unnecessarily harsh in light of Defendant's need for rehabilitation, and he now points to the fact that he had "nearly completed" the five-year period of supervision. With respect to the second point, it bears emphasizing that "completing" necessarily implies *successful* completion, and Defendant's history shows that he was far from successful. Not only did Defendant commit multiple violations throughout the course of his supervision, he was provided with numerous opportunities through the DUI Court program but did not take advantage of those opportunities was eventually removed from that program. As noted at the time of re-sentencing, Defendant was in Phase 3 of the program for more than one year, evidencing the court's attempt to "get to the root of the problem".[3] In spite of that attempt, Defendant did not successfully complete the program.

Contrary to Defendant's assertion now, the Court did consider his need for rehabilitation. As the Court noted at sentencing, however, most of the opportunities for rehabilitation are "self-reporting" and Defendant's failure to "self-report" prevented his taking advantage of those opportunities.[4] Given the numerous times this issue was addressed in dealing with the multiple violations committed by Defendant throughout his supervision, the Court did not believe that the "sudden" interest in rehabilitation expressed by Defendant at sentencing was sincere.

A review of the matter clearly showed that all county-level efforts at rehabilitation had been exhausted. Although Defendant suggested a psychological evaluation, that had already been done, and thereafter Defendant failed to participate in the recommended counseling. When the Court inquired of

3 *See* N.T., January 16, 2018 at page 12.
4 Id.

Defendant what other avenues could be pursued, Defendant was unable to identify any. The instant sentence does provide Defendant with the opportunity to participate in drug and alcohol treatment while incarcerated, and he will be able to pursue further treatment upon release to supervision. Considering the credit for time already served, the Court believes the two year sentence is not "unnecessarily harsh."

Dated:_____ Respectfully submitted,

Nancy L. Butts, President Judge

cc: DA
PD
Gary Weber, Esq.