

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 98-11,584;
	:	98-11,585
	:	
	:	
vs.	:	CRIMINAL
	:	
DARRYL BAKER,	:	
Defendant	:	

ORDER

AND NOW, this day of June, 1999, the Court DENIES the defendant's Post-Sentence Motion. The deadly weapon enhancement is found in 204 Pa.Code §303.10(a). Section 303.10(a) indicates an offender has **used** a deadly weapon if it was "employed by the offender in a way that threatened or injured another individual or in furtherance of the crime. . . ." The Court notes there are numerous references in the sentencing transcript which supported adding the enhancement to the guideline ranges for the use of a deadly weapon as opposed to possession thereof. For example, the Pre-Sentence Investigation stated, "When the clerk couldn't open the register quick enough he [the defendant] lifted the crowbar over his head stating he was going to smash the cash register." N.T., April 8, 1999, at p.3. Although the clerk stated the defendant did not say he was going to smash the cash register, he did brandish the crowbar, causing her to fear for the her safety and that of the other individuals in the store. N.T., at pp. 22-25. Moreover, the defendant's own statement at sentencing indicates the weapon was used as that term is defined for purposes of the deadly weapon enhancement. See N.T., at p. 10 ("About the robbery I did with the crowbar, like I say, I just used it to like, you know, so I wouldn't – it

would be less resistance.”).

Furthermore, contrary to the defendant’s assertions, the Court did consider the mitigating circumstances. The Court noted the defendant’s clean record, his drug addiction, an his ability to be rehabilitated, among others. N.T. at pp. 27-32. In light of those factors, the Court sentenced the defendant to a minimum sentence that was at the bottom end of the standard range. However, the Court did not run the two robberies concurrent or sentence in the mitigated range because to do so would minimize the fear the defendant caused by brandishing a crowbar and the fact that there were two separate robberies involving separate victims and separate communities.

Finally, in light of the above discussions, the Court does not believe the sentence was unduly harsh.

By The Court,

Kenneth D. Brown, J.

cc: Nicole Spring, Esquire (APD)
Daniel Holmes, Esquire (ADA)
Work file