

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 98-12,087

VS :

JOHN COOKE :

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

The Defendant appeals this Court's Order dated June 22, 1999. Pursuant to that Order, the Defendant was sentenced to undergo incarceration for a minimum of sixty (60) months and a maximum of one hundred twenty (120) months for the charge of robbery; a minimum of thirty (30) months and a maximum of one hundred twenty (120) months for the charge of kidnapping; and a minimum of eighteen (18) months and a maximum of sixty (60) months for the charge of conspiracy. These sentences were imposed consecutively for an aggregate period of incarceration of a minimum of one hundred eight (180) months and a maximum of twenty-five (25) years. The Defendant was additionally sentenced to undergo incarceration for a minimum of one (1) month and a maximum of twelve (12) months for the charge of receiving stolen property, and a minimum of eighteen (18) months and a maximum of thirty-six (36) months for the charge of robbery of a motor vehicle. These sentences were imposed concurrent with the sentences for robbery, kidnapping, and conspiracy. This sentence was imposed after the Defendant pled guilty to the charges by Order dated March 19, 1999.

The Defendant filed a Notice of Appeal on July 22, 1999. On July 26, 1999, this Court directed that the Defendant file a concise statement of matters complained of on appeal in accordance with Pa.R.A.P. 1925(b). To date, the Defendant has not

submitted a statement of matters complained of. In absence of the statement, and due to the fact that there were no pre-trial rulings or trial issues, the Court will assume that the Defendant is solely challenging his sentence.

42 Pa.C.S.A. § 9721(b) sets forth the general standards for the imposition of sentences. It provides that

. . . the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. *The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing).* In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.

(emphasis added)

Instantly, the Court considered the Sentencing Guidelines and mandatory minimums in determining the time of incarceration for the Defendant's offenses. The Defendant was found to have, and the Defendant does not dispute that he has a prior record score of one (1). For the offense of robbery,¹ which carries an offense gravity score of 10, the standard minimum recommendation is thirty (30) to forty-two (42) months. In this case, however, the Defendant committed a crime of violence while he visibly possessed a firearm. His possession of the firearm placed the victim in reasonable fear of death or serious bodily injury, during the commission of the offense. The Defendant was therefore subject to the mandatory minimum sentence of five (5)

¹ 18 Pa.C.S.A. 3701(a)(1)(ii)

years pursuant to 18 Pa.C.S.A. § 9712². The Court therefore finds that the imposition of a sentence of sixty (60) to one hundred twenty (120) months (or five to ten years) was proper in this case.

The offense of kidnapping³ carries an offense gravity score of ten. With a prior record score of one (1), the standard sentencing recommendations would be thirty (30) to forty-two (42) months. The Court therefore finds that the imposition of a minimum sentence of thirty (30) months was in accordance with the statutory standards. Additionally, the maximum sentence permitted by law for this felony one offense is twenty (20) years. The Court finds that the imposition of a maximum of one hundred twenty (120) months (or ten years) was not an abuse of discretion.

The offense of conspiracy to commit robbery carries an offense gravity score of nine.⁴ The standard recommendation for this offense would be eighteen (18) to thirty (30) months. The Court finds that the imposition of a minimum sentence of eighteen (18) months was in accordance with the statutory standards. Additionally the statutory maximum period of incarceration for this offense is twenty (20) years. The Court finds that a maximum sentence of sixty (60) months, (or five years) was not an abuse of discretion.

² 18 Pa.C.S.A. § 9712 provides in pertinent part “[A]ny person who is convicted in any court of this Commonwealth of a crime of violence as defined in section 9714(g) (relating to sentences for second and subsequent offenses), shall, if the person visibly possessed a firearm or a replica of a firearm, whether or not the firearm or replica was loaded or functional, that placed the victim in reasonable fear of death or serious bodily injury, during the commission of the offense, be sentenced to a minimum sentence of at least five years of total confinement notwithstanding any other provision of this title or other statute to the contrary. Such persons shall not be eligible for parole, probation, work release or furlough.”

³ 18 Pa.C.S.A.2901(a)(2)

⁴ Convictions for conspiracy to commit an F1 offense receive an offense gravity score of one point less than the offense which was the object of the conspiracy. See § 303.3(c)(1)

The offense of receiving stolen property⁵ carries an offense gravity score of three. The standard recommendation for this offense would be restorative sanctions to six (6) months. The Court finds that the imposition of a minimum sentence of one (1) month was within the Guidelines. Additionally, the statutory maximum sentence for this offense is seven (7) years. The Court finds that the imposition of a maximum of twelve (12) months in the instant case was not an abuse of discretion.

The offense of robbery of a motor vehicle carries an offense gravity score of twelve (12). The standard recommendation for this offense would be fifty-four (54) to seventy-two (72) months. The Court finds that the Defendant's sentence of eighteen (18) to thirty-six (36) months on this offense was within the standard guidelines.

The Court additionally disclosed, and made a part of the record, the reasons for the sentence imposed in accordance with 42 Pa.C.S.A. § 9721. See *N.T. 6/22/99*, pp. 22-27. Based on the foregoing opinion, the Court finds the Defendant's argument that his sentence was improper is without merit.

Dated: December 9, 1999

By The Court,

Nancy L. Butts, Judge

xc: Jay Stillman, Esquire
Kenneth Osokow, Esquire
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges

⁵ The object stolen was a handgun valued at \$400.00, which is classified as a misdemeanor one.