

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 93-10619**
 :
vs. :
 :
 :
CHRISTOPHER JOHN GROB, :
Defendant : **1925(a) Opinion**

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

This opinion is written in support of this Court's Order issued January 29, 1999, wherein the Court denied the Defendant's pro se Motion for Modification of Sentence Nun Pro Tunc.

The relevant facts are as follows: On or about April 15, 1993, the police filed a criminal complaint against the defendant for two counts of Rape, one count of Statutory Rape, one count of Involuntary Deviate Sexual Intercourse, one count of Indecent Assault and one count of Corruption of Minors. The complaint alleged these offenses occurred at diverse times between 1989 and 1992 and were perpetrated against a child whose date of birth was September 9, 1983. Therefore, the victim was between six and nine years of age. A preliminary hearing was held on or about April 27, 1993, and all the charges were held for court.

On or about September 22, 1993, the defendant pled guilty to count 1, Rape; count 3, Statutory Rape; count 4, Indecent Assault; count 5, Corruption of Minors; and count 6, Involuntary Sexual Intercourse. The terms of the plea agreement were that the Commonwealth would waive the five (5) year mandatory minimum and agree to a three (3) year minimum sentence. On November 24, 1993, the Court sentenced the defendant in accordance with the plea agreement to

incarceration at a state correctional institution for an indeterminate period of time, the minimum of which shall be three (3) years and the maximum of which shall be twenty (20) years. The defendant was also given credit for time served from April 19 through August 11, 1993.

On January 20, 1999, the defendant filed his Motion for Modification of Sentence Nunc Pro Tunc. The basis for the modification is that the defendant served his minimum sentence, completed a drug and alcohol program, completed a stress and anger program, obtained his GED, and has been a very good inmate, but he has not been paroled. In an Order issued January 29, 1999, the Court sua sponte denied the defendant's motion.

The Court denied the motion for several reasons. First and foremost, the defendant essentially wanted the Court to parole him which we do not have the authority to do. 61 P.S. Section 331.17 (The board shall have the exclusive power to parole....); see also Bowman v. Pennsylvania Board of Probation and Parole, 709 A.2d 945, 948 (Pa.Comm. 1998) ("parole is not a right but rather a matter of grace lying solely within the discretion of the Board.") Second, the defendant was sentenced in accordance with the plea agreement. Finally, the Court found that the sentence was appropriate given the nature and circumstances of the crimes to which the defendant pled guilty. The defendant pled guilty to Rape, Statutory Rape, Involuntary Deviate Sexual Intercourse, Indecent Assault, and Corruption of Minors involving a nine year old child. Although the defendant has no prior record, the Court believes a sentence with a minimum of three (3) years incarceration and a maximum of twenty (20) years should not be vacated or modified downward.

For the foregoing reasons, the Court sua sponte denied the defendant's Motion for Modification of Sentence Nun Pro Tunc.

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: District Attorney
Superior Court (original & 1)
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