

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 99-10,367
:	:	
vs.	:	CRIMINAL DIVISION
	:	
SEAN FORD,	:	
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 Judgment of Sentence dated December 2, 1999 and docketed December 6, 1999. The procedural history is as follows. The defendant was charged with burglary, criminal trespass, theft and receiving stolen property. On October 12, 1999, the defendant pled nolo contendere to the theft charge, a misdemeanor of the first degree for which the statutory maximum is five (5) years. The Court sentenced the defendant to undergo incarceration at a state correctional institution for a minimum of fourteen (14) months and a maximum of five (5) years. The defendant filed a motion for reconsideration of sentence which asserted the imposition of a five (5) year maximum was excessive. The Court summarily denied the defendant's motion, stating the maximum was consistent with the defendant's need for supervision. On December 23, 1999, the defendant filed a notice of appeal from the Court's Judgment of Sentence.

The sole issue on appeal is whether the defendant's maximum sentence of

five (5) years is unduly excessive. An appeal regarding the maximum sentence imposed is a challenge to the discretionary aspects of a sentence. Only if the trial court manifestly abuses its discretion will the sentence be disturbed. Abuse of discretion consists of overlooking pertinent facts, disregarding the force of the evidence, committing an error of law, or imposing a sentence which exceeds the statutory maximum. Commonwealth v. McFarlin, 587 A.2d 732, 735 (Pa.Super. 1991). The Court submits it did not abuse its discretion by imposing a five (5) year maximum. The statutory maximum for a misdemeanor of the first degree is five (5) years. The facts of this case justified imposition of the statutory maximum. The defendant is thirty (30) years old and has been involved in the juvenile and criminal justice systems since he was fourteen (14). His prior record score was RFEL. Although he has drug and alcohol problems, he has shown a disregard for rehabilitation by his escapes and parole violations. Thus, the Court believed the statutory maximum was necessary for the benefit of society and the defendant. Society will be protected because the defendant will serve a significant portion of his maximum sentence and the defendant will benefit from supervision because his drug and alcohol use and other activities will be monitored for the next five (5) years.

DATE: _____

By The Court,

Kenneth D. Brown, J.