

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA:	98-10,333	99-11,064
	98- 10,429	99-11,529
VS	: 98-10,561	99-11,857
	98-10,599	99-11,701
RICHARD HIBBLER	: 98-10,600	

OPINION AND ORDER

Before the Court is Defendant's Amended Motion for Post Conviction Collateral Relief, filed August 18, 2000. Argument on the motions was held December 8, 2000. In his motion, Defendant alleges that his counsel was ineffective for failing to appeal his sentence following his parole violation hearing, where the sentencing order did not comport with the sentence orally pronounced by the Court. Defendant argues that while at his parole violation hearing, the Court orally pronounced a six months to one year period of incarceration. The Sentencing Order – dictated at a later time – sentenced him to a one (1) year to four (4) year period of incarceration.

The Court reviewed the transcript from the hearing. The relevant portion provides:

The Court: Right, but I think he and I talked on Monday , but so I understand what your attorney is saying I am going to give you a sanction though because you were on supervision though at the time these offenses were committed albeit for a short period of time and it's for that reason that I'm going to not go along totally with the Adult Probation Office recommendation and I'm going to give you the minimum absconder sentence of six months to one year, but that's going to run consecutive to the sentence that I imposed on you on Monday, okay.

The Defendant: All right.

The Court: Can I not dictate that? I'll tell you that's what it's going to be I'll go through each of the cases one month on one case another one on another case it looks like he has

six cases I'll revoke everything I'll reimpose a one to two probable and then have it run on each of the cases. Okay.

(Whereupon, the Order was dictated at a later time.)
N.T. 12/15/99, p.6

The transcript does reveal that the Court intended to impose a six months to one year sentence. However, at the very end, the Court says "1-2 probable" and has no recollection of whether that meant months or years. At this time, the Court is unaware of any reasons why the dictated Sentencing Order did not comport with the Court's thoughts during the hearing. The Court can only surmise that the complexity of the number of cases and counts caused the Court to inadvertently dictate a different sentence.

As a general rule, a court is without power to modify or rescind an order after this thirty-day statutory limitation has expired. Commonwealth v. Wesley, 455 Pa.Super. 343, 688 A.2d 201, *citing* 42 Pa.C.S.A. § 5505; Commonwealth v. Quinlan, 433 Pa.Super. 111, 639 A.2d 1235 (1994), appeal granted, 540 Pa. 648, 659 A.2d 986 (1995)(*citing* Commonwealth v. Martin, 346 Pa.Super. 129, 499 A.2d 344 (1985)). One of the exceptions to the general rule exists to permit the court to modify a sentence in order to amend records, to correct mistakes of court officers or counsel's inadvertencies, or to supply defects or omissions in the record...." Quinlan, 433 Pa.Super. at 118, 639 A.2d at 1239 (*citing* Commonwealth v. Fiore, 341 Pa.Super. 305, 491 A.2d 276 (1985)). In that regard, where a mistake is obvious and patent, the inherent power of the court to correct it is not eliminated even though the thirty-day appeal period has passed. See Commonwealth v. Cole, 437 Pa. 288, 263 A.2d 339 (1970) (affirming trial court order entered three and one-half months after entry of

original order, where trial court's original order granting defendant's motion for a new trial and arrest of judgment was viewed as patently erroneous). In the instant case, the Court finds that the inadvertent mistake in the dictation, as is evidenced by the clear and unequivocal statements of the Court during the proceeding, should be corrected at this time.¹

¹ The Commonwealth has argued that the oral statements made by the judge in passing the sentence, but not incorporated in the written judgment signed by her, are not part of the judgment of sentence. See [Commonwealth v. Hodge](#), 246 Pa.Super. 71, 82, 369 A.2d 815, 820 (1977), quoting [Commonwealth v. Foster](#), 229 Pa.Super. 269, 271, 324 A.2d 538, 539 (1974). The Court has reviewed the line of cases using this rationale. The Court finds these cases are distinguishable from the case at bar, in that, in those cases the courts—usually after realizing that an error had been made—intentionally changed the sentence. In the case at bar, the Court does not recall intending to make the sentence longer than what it had previously stated.

ORDER

AND NOW, this ____ day of January, 2001, Defendant's Petition for Post Conviction Collateral Relief is GRANTED. The Court Sentencing Order is Amended to read as follows:

Sentence of the Court as to 98-10,333 as to Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, and 35, Theft by Deception, each misdemeanors of the third degree, the Defendant shall undergo incarceration in a State Correctional Institutional for an indeterminate period of time, the minimum of which shall be one (1) month and the maximum of which shall be two (2) months. Each of these sentences shall be concurrent to one another.

Sentence of the Court as to 98-10,429 as to Counts 1 through 23, Theft by Deception, a misdemeanor of the second degree; counts 24 through 46, Receiving Stolen Property, misdemeanors of the second degree, is that the Defendant shall undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be one (1) month and the maximum of which shall be two (2) months.

Sentence of the Court under 98-10,561 as to the consolidated count of Forgery, a felony of the second degree, the consolidated count of Theft by Deception, a misdemeanor of the first degree, is that the Defendant shall undergo incarceration in a State Correctional Institute for an indeterminate period of time, the minimum of which shall be one (1) month and the maximum of which shall be two (2) months. Each of these sentence shall run concurrent to one another.

Sentence of the Court as to 98-10,599 under Courts 1, 7, 10, 13, 16, 21, 25, 29, 33, 37, 44, 45, 49, 55, 57, 61, 65, Theft by Deception, each misdemeanors of the second degree; Counts 4,67,71, Theft by Deception, each misdemeanors of the third degree; Counts 19, 20, 23, 24, 27, 28, 31, 32, 36, 39, 40, 43, 44, 47, 48, 51, 52, 55, 59, 60, 63, 64, 70, forgery, each a felony of the second degree, the Defendant shall undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be one (1) month and the maximum of which shall be two (2) months. Each of these sentences shall run concurrent to one another.

Under 98-10,600, Bad Check, a misdemeanor of the third degree, the Defendant shall undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be two (2) months and the maximum of which shall be four (4) months.

Each of these sentences imposed this date shall run sonsecutive to one another for an aggregate sentence having a minimum of six (6) months and a maximum of which shall be twelve (12) months and this sentence shall run consecutive to the sentence imposed by this Court under 99-11,701.

In all other respects, the Sentencing Order dated December 15, 1999 shall remain unchanged.

By The Court,

Nancy L. Butts, Judge

xc: DA
Matthew Ziegler, Esq.