

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 99-10,721; 99-10,835  
VS : 99-10,982; 99-11,036  
THOMAS KERSTETTER : 99-11,073; 99-11,684

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

Defendant appeals from the sentence imposed by this Court on December 13, 1999, after he pled guilty to various charges contained in the six separate captions listed above. Defendant was sentenced to an aggregate minimum sentence of three (3) years and aggregate maximum sentence of six (6) years in a state correctional institution, and a consecutive ten (10) year period of probation supervision. On November 19, 2001, Defendant filed a Petition for Post Conviction Collateral Relief, alleging, *inter alia*, that despite his requests, his attorney failed to file an appeal on his behalf. On January 29, 2002, after conference, this Court granted Defendant's petition, and permitted him to file his appeal *nunc pro tunc*. Defense Counsel filed a notice of appeal May 7, 2002.<sup>1</sup> On May 9, 2002, this Court requested a statement of matters complained of on appeal. The same was submitted by Defense counsel on May 23, 2002.

***Plea Unlawfully Induced***

On appeal, Defendant first asserts that his plea was unlawfully induced. Specifically, Defendant argues that he was misinformed about the sentencing exposure

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<sup>1</sup> The Court notes that an extension of time was permitted, as Defendant's counsel withdrew as a member of the county's conflicts counsel, and new counsel was assigned to the case at that time.

that he would have faced if convicted at trial. The Court does not agree. At the time of his plea, Defendant completed a written colloquy which shows the charges and the sentence exposure faced by each charge if he were to go to trial. Additionally, during the guilty plea hearing, the Court conducted an oral colloquy of the Defendant, in which all of the charges were discussed, including the elements the Commonwealth would need to prove if the case were taken to trial, and the maximum punishments associated with each charge. (N.T. 9/2/99, pp. 3-8 and N.T. 12/13/99, pp. 2-8) The Court therefore rejects this argument.

### ***Plea Agreement***

Defendant next argues that he was not sentenced in accordance with his plea agreement. The agreement entered at the time of Defendant's plea on caption 99-10,721, was that in exchange for entering the plea to the counts listed, the remaining counts would be dismissed. It was also agreed that the range of the sentence would remain open, but that it would be in the standard range for the charges. (Guilty plea colloquy, 99-10,721, p. 1) At the time of taking Defendant's plea on the remaining captions, a specific agreement had been arranged between the Commonwealth and the Defense. The Court specifically reviewed the plea agreement with the Defendant as follows:

THE COURT: the Commonwealth through Mr. Holmes has offered you kind of like a package agreement that you would receive a three year minimum sentence, you would be eligible for boot camp and that would encompass all the cases today, not just those I've gone over with you, but also 99-10,721, which I had taken a plea from you previously that was scheduled for sentencing today.

THE DEFENDANT: Yes.

(N.T. 12/13/99, p. 8)

The Court therefore rejects Defendant's assertion that his sentence was not in accordance with his plea agreement.

### ***Excessive Sentence***

Defendant last asserts that his sentence was excessive. The Court disagrees. In determining Defendant's appropriate sentence, the Court was cognizant of the standards set forth in 42 Pa.C.S.A. § 9721(b). That section 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)

The Court considered the Sentencing Guidelines in determining the time of incarceration for the Defendant's offense. The Court also considered other factors, including the rehabilitative needs of the Defendant in fashioning the sentence. Given the number of files and the nature of the offenses contained therein, the sentence could have well exceeded the amount of time provided for in the agreement. The Court

therefore considered a sentence of three to six years very reasonable under the circumstances. The Court therefore rejects Defendant's argument.

Dated:\_\_\_\_\_

By The Court,

Nancy L. Butts, Judge

xc: Kyle Rude, Esquire  
Kenneth Osokow, Esquire  
Honorable Nancy L. Butts  
Law Clerk,  
Gary Weber, Esquire