

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 vs. : NO. 02-11,710  
 :  
 ANDREW T. KOCH, :  
 :  
 Respondent : 1925(a) OPINION

*Date: June 27, 2003*

**OPINION IN SUPPORT OF THE ORDER OF MAY 2, 2003 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Andrew T. Koch, has filed an Appeal from this Court's Sentencing Order of May 2, 2003. The Appeal was filed on May 23, 2003. The Court filed a 1925(b) Order on May 23, 2003, directing that the Concise Statement of Matters Complained of on Appeal be filed within fourteen days. As of the date of issuing this Opinion the Statement has not been filed. Accordingly, this Court believes this Appeal should be dismissed. Nevertheless, this Court will attempt to provide the Superior Court with sufficient information, which would justify the dismissal of the Appeal on the merits in the following brief Opinion.

This sentence was imposed following a reconsideration of the sentence that had been granted by the Order of April 9, 2003 following Defendant's Guilty Plea and original sentence entered March 20, 2003.

The Court's sentence of May 2, 2003 was under Count 1 of the Information, a consolidation of Counts 1 and 2, into a single forgery offense, graded as a felony in the third degree. Defendant was sentenced to serve a minimum of six months and a maximum of 36 months in a State Correctional Institution. Defendant at the same time and under the same Order was sentenced under Count 8, a consolidation of Counts 8 and 10 into a single receiving

stolen property offense graded as a misdemeanor 1. The sentence under Count 8 was that Defendant serve a minimum of three months and a maximum of 36 months in a State Correctional Institution. The sentences under Count 1 and Count 8 were made concurrent.

The issue presented by Defendant at the time of the sentencing and reconsideration hearings and presumably in this appeal is whether or not he was sentenced in accordance with the plea agreement made in the case. At the time of sentencing Defendant asserted he should be allowed to withdraw his plea of guilty because the Court's sentence as imposed did not conform to the terms of the plea agreement. This request was refused.

The essential, factual and procedural history of the case is set forth in the transcript of the proceedings of May 2, 2003, the sentencing hearing, at pages 5-11. The Court discussed at that time the issues relating to the disagreement as to the plea agreement, which was also the basis for granting a reconsideration of the original sentence, which led to the May 2<sup>nd</sup> sentencing hearing. At that time the Court indicated that it found the terms of the plea agreement did not set a maximum sentence that was to be imposed, but that the terms of the plea agreement only provided that the minimum sentence would be at the lowest end of the standard sentencing range. This Court imposed the sentences referenced above using the lowest month of the standard sentence range for each offense as the Court's minimum sentence as provided by the plea agreement. At all the proceedings below this Court determined that at most Defendant had an expectation he would receive a county as opposed to a state sentence upon entering a guilty plea. There was no agreement the Court would abide by any maximum sentence restriction.

The reason for the Court's decision that the maximum sentence was not part of the plea agreement is set forth in the sentencing transcript from pages 11-17, particularly at 17. Although not specifically stated that that part of the transcript it is clear from the record of the original sentencing hearing held March 20, 2003 and the reconsideration of the sentencing hearing held April 9, 2003 the Court also considered the plea agreement provisions as stated on the face of the written Guilty Plea Colloquy (attached to the Guilty Plea Order of March 20, 2003) and the Guilty Plea Colloquy itself that was held on March 20, 2003.

This Court believes that its sentence is unarguably a lawful sentence and that adequate reasons for the sentence were stated on the record (*see*, for example, pp. 15-17 and 20-21). Accordingly, for the reasons set forth at the time of the sentencing hearing on May 2, 2003, the sentence should be affirmed and the Appeal dismissed.

BY THE COURT,

William S. Kieser, Judge

cc: Don Martino, Esquire ADA  
James Cleland, Jr., Esquire  
Judges  
Christian Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)

Note: Chris and Court Reporters – To perfect the record in this case we need to have the transcript of proceedings of March 20, 2003 sentencing; April 9, 2003 reconsideration, as well as March 20<sup>th</sup> guilty plea proceeding transcribed. Those should be requested and filed promptly and Bill Burd immediately notified to send the record up. Somebody other than myself will have to sign because I won't be here.