IN THE COURT OF COMMON PLEAS FOR
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH	:	
	:	
v.	:	**No: 98-11,488; 98-11,653**
	:	
AARON ADAMS,	:	
Defendant	:	

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

Defendant appeals this Court's Order of Sentence dated December 3, 2002. He specifically raises two issues for review by the Pennsylvania Superior Court. First, he claims that this Court erred by failing to find that he was entrapped for sentencing purposes in that he was lured into a school zone. Second, he claims that the sentence imposed by this Court was unduly harsh and excessive.

On March 4, 1999, Defendant pled guilty to Criminal Conspiracy under Information number 98-11,653 and to two counts of Delivery of a Controlled Substance under Information number 98-11,488. He was sentenced on August 17, 1999 to an aggregate sentence of thirty (30) to sixty (60) months of incarceration. In sentencing, this Court took into consideration an applicable school zone enhancement and imposed a sentence based on the enhancement to the Criminal Conspiracy charge. Defendant appealed his sentence, arguing that this Court had erred in applying the school enhancement, that he had been entrapped for sentencing purposes and that his sentencing was in violation of former Pennsylvania Rule of Criminal Procedure Rule 1405(a). The appellate court issued an opinion on

September 12, 2000 holding that there had been no violation of 1405(a), and that Defendant had not in fact proven than he had been entrapped. Additionally, the appellate court remanded Defendant's cases for resentencing, holding that this Court should not have applied the school enhancement to the inchoate crime of conspiracy. However, the Superior Court also noted that "(t)he trial court apparently did not consider the school zone enhancement for either of the two delivery charges although defense counsel conceded one of these deliveries took place in a school zone." Opinion of the Superior Court, September 12, 2000, footnote 4, p. 13. This Court then resentenced Defendant on December 3, 2002 to an aggregate sentence identical to that imposed on August 17, 1999, but placing the school zone enhancement upon one of the deliveries to which Defendant pled guilty under Information 98-11,488 instead of the conspiracy charge to which Defendant entered a guilty plea under Information 98-11,653. Defendant filed a timely notice of appeal.

In his first matter complained of on appeal, Defendant again asserts that this Court erred by failing to find that he was entrapped for sentencing purposes because he had allegedly been lured into a school zone. This issue was addressed by the Superior Court in its September 12, 2000 opinion and this Court will not in any way disturb the findings and opinion of that Honorable Court. The Superior Court opined that while the principles underlying a sentencing entrapment theory were accepted in the case of Commonwealth v. Petzold, 701 A.2d 1363 (Pa.Super. 1997), the standard applied in such cases is "the existence of "outrageous governmental conduct" or "extraordinary governmental misconduct" which is designed to and

results in an increased sentence for the convicted defendant." Opinion of the Superior Court, Id., at 13, citing Petzold, Id. The Superior Court then made a specific finding in Defendant's cases that "the record is devoid of outrageous behavior or extraordinary misconduct on the part of the police or the CI." Id., at 14. Consequently, Defendant's claim that this Court erred by failing to find that he was entrapped for sentencing purposes must fail.

Defendant's second claim of error is that this Court imposed a sentence that is unduly harsh and excessive. Traditionally, the trial court is afforded broad discretion in sentencing criminal defendants because of the perception that the trial court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances. Commonwealth v. Mouzon, 812 A.2d 617 (Pa.Super. 2002); Commonwealth v. Ward, 524 Pa. 48, 568 A.2d 1242 (1990). The Pennsylvania Sentencing Code, found at 42 Pa.C.S.A. Section 9701 et. seq., requires that the trial court 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." Id., at Section 9721(b). This Court has taken into consideration the individual facts of Defendant's cases and has issued a sentence which comports with the sentencing guidelines.

Under Information 98-11,653, Defendant received a sentence of costs, restitution, and, on the charge of Criminal Conspiracy, imprisonment in a State Correctional Facility for an indeterminate period of time, the minimum of which

shall be nine (9) months and the maximum of which shall be eighteen (18) months. Under Information 98-11,488, Defendant was again assessed costs and restitution and then sentenced on the two offenses of Delivery of a Controlled Substance (cocaine) to concurrent indeterminate periods of incarceration in a State Correctional Facility, the minimum of which shall be twenty-one (21) months and the maximum of which shall be forty-two (42) months. The sentences imposed under Information 98-11,488 run consecutively to the sentence imposed under Information 98-11,653. Therefore, Defendant's total aggregate sentence of incarceration is an indeterminate period of time, the minimum of which is thirty (30) months and the maximum of which is sixty (60) months.

An examination of whether Defendant's sentence is unduly harsh and excessive must begin with an examination of the applicable sentencing guideline ranges. Here, each offense for which the Defendant was sentenced carries an Offense Gravity Score of 6. The Defendant himself on his guilty plea colloquy lists his Prior Record Score as a 2. This is the Prior Record Score that was used in determining Defendant's sentence. According to the Guidelines promulgated by the Commonwealth of Pennsylvania Commission on Sentencing, an Offense Gravity Score of 6 with a Prior Record Score of 2 yields a standard range of nine (9) to sixteen (16) months incarceration for sentencing purposes, without any consideration of a school zone enhancement. If the school zone enhancement is added to the standard range, it becomes twenty-one (21) to fifty-two (52) months of incarceration.

Under Information 98-11,653, the charge for which Defendant received his sentence was Criminal Conspiracy. As explained in the Superior Court Opinion

of September 12, 2000, no school enhancement should apply to a sentence imposed for an inchoate offense such as this. Therefore, the appropriate sentencing guideline range is nine (9) to sixteen (16) months. Defendant received a minimum sentence of nine (9) months for that offense. Under Information 98-11,488, the Defendant was sentenced on two counts of Delivery of a Controlled Substance (cocaine). However, as noted above, for at least one of these two counts, the Defendant conceded that the transaction in question occurred within a school zone for sentencing purposes. The sentencing guidelines would therefore include the school enhancement and would properly be twenty-one (21) to fifty-two (52) months. Defendant received two concurrent sentences under that information, both of which had a minimum of twenty-one (21) months. Clearly, Defendant received sentences which were at the bottom of the applicable standard range. The Court made a decision at the time of sentencing to run the sentences under the two informations consecutively. This is a decision solely within the discretion of the Court, and certainly was not an abuse of that discretion. The transactions detailed in the criminal cases against the Defendant occurred on separate dates and were, in fact, wholly separate transactions. They have been sentenced separately. Although this Court did opt to show some leniency to the Defendant in that sentences on two of the charges were run concurrently, there is no abuse of discretion that all of the sentences were not run concurrently. Additionally, this Court chose to sentence the Defendant at the bottom of the standard range on each offense. The sentencing ranges provided by the Pennsylvania legislature could easily have supported a sentence of much greater duration. This Court finds that the circumstances particular to the Defendant's cases do not warrant

an aggregate sentence any less than that which was in fact imposed. Accordingly, the Court rejects Defendant's contention that his sentence was unduly harsh and excessive.

By the Court,

_____ J.
Nancy L. Butts, Judge

xc: Nicole J. Spring, Esquire
DA
Honorable Nancy L. Butts
Diane L. Turner, Esquire
Gary Weber, Esquire