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

COMMONWEALTH	:	
	:	
v.	:	**No.: 02-11,456**
	:	
DANIEL JOSEPH SNYDER,	:	
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 November 4, 2003, filed November 12, 2003, which imposes upon the Defendant an aggregate sentence of fifty-four (54) months to one hundred and eight (108) months of state incarceration. Defendant's trial attorney failed to perfect an appeal on this case. However, on May 7, 2004, this Court assigned new counsel to the Defendant and permitted Defendant to file an appeal to the Superior Court nunc pro tunc. New counsel filed a timely notice of appeal but also informed the Court that he had a conflict of interest with this case. On June 7, 2004, this Court ordered that the Defendant provide the Court with a Concise Statement of Matters Complained of on Appeal within fourteen days. On June 14, 2004, Attorney William Kovalcik was appointed to represent the Defendant. A Concise Statement of Matters Complained of on Appeal was filed on September 24, 2004.

In the Concise Statement of Matters Complained of on Appeal, the Defendant raises four issues. First, he claims that the evidence in the case

was insufficient to support the verdict of the jury. Second, he asserts that his appeal should be permitted nunc pro tunc. Third, he asserts that his prior record score was incorrectly calculated. Finally, he alleges that the Court erred in sentencing him pursuant to 18 Pa.C.S.A. §6317 and 204 Pa.Code 303.10.

Addressing his issues in the order in which they were presented, the Court finds that the evidence presented by the Commonwealth in this case was sufficient for the jury to find beyond a reasonable doubt that the Defendant is guilty of counts one through six of the information, namely two counts of Conspiracy, two counts of Criminal Use of a Communication Facility and two counts of Delivery of a Controlled Substance, in one instance loricet, a Schedule III controlled substance, and in the other heroin, a Schedule I controlled substance.

The testimony in the case shows that Corporal Scott Heatley of the Pennsylvania State Police testified that on January 10, 2002 he purchased twenty-seven pills from Deborah Jean Yednak which contained dihydrocodeinone, a Schedule III Controlled Substance. N.T. August 26, 2003, p. 14. He further testified that at the time of the purchase, he provided her with cash for a future delivery of heroin. Id. On January 11, 2002, Deborah Jean Yednak delivered to the Corporal the five bags of heroin for which he had already paid, as well as an additional four bags of heroin for which the Corporal gave her the money at the time of the transaction. Id. at p. 54. These transactions were arranged over the telephone. Id. at pp. 42 -

44, 50. On both of these occasions, the Defendant participated in telephone calls to set up the transactions and make sure that Ms. Yednak and the Corporal would meet. Id. at pp. 42, 44, and 54. The Corporal also testified that he observed the Defendant with Ms. Yednak in her vehicle just prior to the transaction on January 10, 2002. Id. at p. 45.

Ms. Yednak also testified to the information outlined above, including the telephone calls between the Defendant and the Corporal, id. at p. 13, and additionally presented evidence that that the Defendant was with her on January 10, 2002 when she went to deliver the pills to the Corporal, id. at p. 14, and when she drove to Baltimore to obtain heroin using the money from the sale of the pills and the additional money from the Corporal. Id. She testified that she and the Defendant were both heroin users and that they used heroin together. Id. at 16.

Based upon the above information, the Court finds that any claim by the Defendant that the evidence in his case was insufficient to convict him must fail.

The second issue raised by the Defendant is his claim that his appeal should be allowed nunc pro tunc. This claim is moot. The Court allowed the Defendant a right to appeal nunc pro tunc on May 7, 2004 and it is this appeal that is presently before the Court.

Third, Defendant claims that his prior record score was incorrectly calculated. At the time of sentencing, the Court determined a prior record score of RFEL for the Defendant, based upon his prior record of four

convictions for F-1 burglary. Each burglary gave him a total of three points toward his prior record score. Because the total number of points for F-1 burglary exceeds six, his Prior Record Score is statutorily an RFEL. After a discussion of the weight of the controlled substances delivered, the Court found that the offense gravity score to be used in this case is a 6, making the bottom of the standard range 27 months. N.T. November 4, 2003, at p. 11. This is the correct calculation of the Defendant's prior record score. His second assertion of error must therefore fail.

Finally, the Defendant claims that this Court erred in sentencing him pursuant to 18 Pa.C.S.A. §6317 and 204 Pa.Code 303.10. These provisions pertain to the school zone enhancement which can be applied to a sentence if certain criteria are met. In this case, the Commonwealth filed a notice on August 28, 2003 that it intended to request that a school zone enhancement be imposed in this case. As noted above, at the time of sentencing, the Court found that the Defendant's Prior Record Score was a RFEL and the offense gravity score in his case was a 6. Application of a school zone enhancement in this case would therefore have resulted in a sentence with its minimum between 39 and 76 months and a maximum of at least double the minimum. From a review of the transcript, it appears to the Court that following an in depth discussion of whether the weight of the controlled substances involved should result in an increased sentence, the Court inadvertently neglected to apply the school zone enhancement to the actual sentence. Neither the Commonwealth nor the Defendant's attorney

brought this error to the Court's attention at the time of sentencing, nor at any time since that date. The Defendant has therefore benefited from the Court's error by receiving a sentence which was not enhanced by a School Zone Enhancement. The minimum sentence the Defendant received on the two counts upon which he was sentenced consecutively was twelve months on each count, or 24 months aggregate, less than the sentence called for at the bottom of the sentencing guideline range applicable in the Defendant's case. His fourth allegation of error in his case is therefore moot.

By the Court,

_____ J.
Nancy L. Butts, Judge

xc: DA
William Kovalcik, Esquire
Hon. Nancy L. Butts
Gary Weber, Esquire
Law Clerk