IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 04-10,919
	:
vs.	:
	:
IAN M. FILLMAN,	:
Defendant	:

OPINION IN SUPPORT OF ORDER OF AUGUST 8, 2005,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order of August 8, 2005, which sentenced him on one count of aggravated assault to twelve to sixty months incarceration, and on one count of burglary to a concurrent term of eighteen to sixty months incarceration, following his plea of "no contest" to the first count[1] and "guilty" to the second. In his Concise Statement of Matters Complained of on Appeal,[2] Defendant complains that his sentence "was so manifestly excessive it constitutes too severe a punishment."

Initially, the Court wishes to point out that the sentences on both counts were run concurrently (against the recommendation of the Commonwealth), and moreover, Defendant was sentenced on both counts *in the middle of the standard range*.[3] The Court therefore fails to see how such could be characterized as "manifestly excessive".

With respect to Defendant's assertions that the Court failed to adequately consider certain personal factors, the Court points out that it did consider that Defendant never accepted responsibility for his role in the crime, and that he lied to the Court and cannot be said to have completely cooperated with the authorities in resolving this matter. These factors weigh against a sentence any more lenient than that imposed. And, with respect to his argument the

1 Initially, Defendant pled guilty to a count of aggravated assault with a deadly weapon, indicating that he possessed and fired the gun involved. When he recanted this testimony, indicating instead that someone else in the group possessed and fired the gun, the Court allowed him to withdraw his plea to this count. He then entered a plea of "no contest" to aggravated assault, without the deadly weapon component.

2 The Court notes the Statement was not served on the Court. Thus, although the Statement was filed October 28, 2005, the Court did not become aware of such until November 15, 2005, when out of caution the docket was checked before entering an Order indicating no statement had been filed.

3 The standard range for the aggravated assault was 9 to 16 months, and for the burglary, 12 to 24 months.

Court should have considered the sentences imposed on others involved in the crime, as the Court noted at sentencing, if those sentences were more lenient, the injustice was more likely in the other Courtrooms.

Accordingly, the Court believes Defendant's appeal to be without merit, and respectfully suggests the Order of August 8, 2005, should be affirmed.

Dated: November 15, 2005

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: DA
Eric Linhardt, Esq.
Gary L. Weber, Esq.
Hon. Dudley Anderson