

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO.	02-12,047
	:		03-10,060
VS.	:		03-10,053
	:		
TODD HILLMAN	:		

OPINION AND ORDER

Before the Court is Defendant's Motion to Reconsider Sentence or to Withdraw Guilty Plea filed November 4, 2004. Pursuant to a negotiated plea agreement with the Office of the District Attorney, Defendant entered a plea of guilty on April 15, 2004 to one count of Aggravated Indecent Assault (02-12,047), a second count of Aggravated Indecent Assault (03-10,060), and one count of Corruption of the Morals of a Minor (03-10,053). A hearing on the present Motion was held on February 2, 2005.

Defendant's Motion argues that the plea agreement was for probation under 03-10,053 to run concurrent with the sentence imposed under the Aggravated Indecent Assault charges. However, this argument fails upon review of the transcript of the guilty plea. The Court initially read the agreement to be that the probation for 03-10,053 would run concurrently with the Aggravated Indecent Assault charges as the present Motion suggests. However, after discussion between counsel, the Court and Defendant, it was determined that the probation was to be consecutive:

Mr. Poplaski [counsel for Defendant]: May I interrupt Your Honor. Actually there's an error on the last statement it would be for the two counts of aggravated indecent assault

to run concurrent to each other, the corruption of minors that would be consecutive.

The Court: Okay. The letter I received from your office stated that the - - that it would be also consecutively, that's what Mr. Hardaway also said, am I correct in saying Mr. Hardaway, that sentence for the corruption of minors would run concurrently also with the sentence?

Mr. Mitchell [Commonwealth]: He told me consecutive, it's [sic] probation would be consecutive

Mr. Poplaski: He's saying consecutive.

Defendant: That's fine. I understand that now.

(N.T. 04/15/2004 p. 4). The transcript demonstrates that the plea agreement was properly clarified and understood by the Court, counsel and Defendant.

Defendant next argues that he is entitled to credit for three months served on the Global Positioning System. However, there has been no evidence presented to indicate that Defendant was in fact on Intensive Supervised Bail/Electronic Monitoring.

Defendant argues that he was not given credit for four days in jail. However, at the time of the hearing, it was clarified that the four days for which Defendant seeks credit were in fact credited to him. The four days; 12/13/02, 11/06/02, 08/21/02, and 08/22/02 were specifically credited to Defendant in the Order of Sentence imposed November 2, 2004.

Defendant raised an additional issue involving the Court's imposition of sentence at the time of the hearing. However, the Commonwealth correctly objected to the argument on the basis that it had not been raised in the motion and was therefore not properly before the Court.

ORDER

AND NOW, this _____ day of February, 2005, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: DA (KO)
J. Poplaski, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire