

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1873-2003
 : (03-11,873)
vs. :
 :
 :
 :
 :
SCOTT MULL, :
 Defendant : 1925(a) Opinion

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

This opinion is written in support of this Court's judgment of sentence dated June 16, 2005 and docketed June 30, 2005. The relevant facts follow.

Appellant was arrested and charged with possession with intent to deliver heroin, possession of heroin, possession of drug paraphernalia, and conspiracy. Appellant spent approximately 10 months in the Lycoming County prison in pretrial custody. On June 16, 2005, the Commonwealth and Appellant entered a plea agreement whereby the Commonwealth would dismiss the possession with intent to deliver and conspiracy charges and Appellant would plead guilty to possession of heroin and possession of drug paraphernalia for an aggregate sentence of 1 to 2 years incarceration in a state correctional institution with credit for 5 months time served (from October 22, 2003 to March 22, 2004). See Written Guilty Plea Colloquy cover sheet, attached hereto as Exhibit A. During the guilty plea hearing, the court discussed the issue of credit for time served with Appellant and his counsel. Counsel stated that as part of the plea agreement, Appellant agreed to waive his right to receive credit for 5 of the 10 months he had served. N.T., June 16, 2005, at 2. The

court asked Appellant if that was his understanding of the agreement, and Appellant replied in the affirmative. Id. at 3. After advising Appellant of the elements of the offenses to which he was pleading guilty and the maximum penalties for those offenses and explaining to him the rights he was giving up by pleading guilty, the court accepted Appellant's guilty plea and sentenced him in accordance with the plea agreement. On June 23, 2005, Appellant filed a Motion for Reconsideration of Sentence, which the court summarily denied on July 1, 2004.

On July 27, 2004, Appellant filed a notice of appeal. Appellant's sole allegation on appeal is that "his plea was not entered in a knowing, intelligent and voluntary manner in that Appellant did not understand that when he waived his right to five (5) months credit for time to which he was legally entitled, this time would not be credited to either his minimum or maximum sentence."

The court believes Commonwealth v. Byrne, 833 A.2d 729 (Pa.Super. 2005) governs this case. In Byrne, the Commonwealth and the defendant entered a plea agreement whereby the Commonwealth dismissed a first degree murder charge in exchange for the defendant's plea of guilty to third degree murder for a sentence of 10 to 20 years imprisonment with credit for only 1 year and the defendant's waiver of credit for the balance of the approximately 9 years of imprisonment actually served. The trial court accepted the defendant's guilty plea and sentenced him in accordance with the plea agreement. Subsequently, the defendant filed a Post Conviction Relief Act (PCRA) petition requesting credit for time served. The defendant argued he could not waive his right to credit for time served and/or the sentence without such credit was violative of his double jeopardy rights. The Superior Court rejected the defendant's arguments and found the defendant could waive his right to credit and, in fact, did so.

Here, the transcript of the guilty plea hearing and the written guilty plea colloquy show that Appellant knowingly, intelligently and voluntarily waived his right to 5 months credit for time served in exchange for the Commonwealth's dismissal of the charges of possession with intent to deliver heroin and conspiracy.¹

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Kenneth Osokos, Esquire (ADA)
Donald Martino, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

1 The court notes Appellant possessed approximately 38 bags of heroin, which weighed about 1.8 grams. N.T., April 7, 2004, at 37, 168. If convicted of possession with intent to deliver, Appellant would have been facing a maximum sentence of up to 15 years imprisonment. The standard guideline range for his minimum sentence would have been 24-30 months. By waiving his right to 5 months of the 10 months credit and accepting the plea agreement, Appellant ensured that he would spend no more than 19 months in a state correctional institution.