

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

<b>COMMONWEALTH</b>	:	
	:	
v.	:	<b>No: 04-11,637</b>
	:	
<b>JEREMY RITTER,</b>	:	
<b>Defendant</b>	:	

**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 May 3, 2005. He specifically alleges that the Court erred when it did not merge the charge of aggravated assault into attempted robbery. Defendant also challenges the discretionary aspects of his sentence, namely that the sentence for aggravated assault should have been set to run concurrently with the sentence for attempted robbery.

The facts are as follows. On September 28, 2004, Pennsylvania State Police (PSP) were dispatched to Uni-Mart on River Avenue in Williamsport for an attempted robbery. The victim was the store’s clerk, who reported that he had been sweeping the floor when Defendant entered waving a knife and stated, “[Y]ou know what I want.” Defendant approached the cash register but could not get it open. Defendant approached the clerk, still waving the knife, and the clerk began pushing Defendant away with his broom. The clerk grabbed for the telephone and dialed 911 as Defendant left the scene. A few hours later, Defendant was taken into custody. Defendant’s trial commenced January 25, 2005. However, Defendant decided to plead guilty to the charges midway through the proceedings. Defendant pleaded guilty to two counts of attempted robbery, two counts of aggravated assault, simple assault, possession of drug paraphernalia, possession of a small amount of

marijuana, attempted theft, recklessly endangering another person, and summary harassment. On May 3, 2005, Defendant was sentenced to five and one-half years to eleven years state incarceration on the first count, attempted robbery. Sentence as to count three, aggravated assault, was a consecutive period of supervision of twenty years. Defendant was sentenced to one year supervision on count six, possession of drug paraphernalia, to run consecutively to counts one and three. A \$25 fine was imposed for possession of a small amount of marijuana, and all other counts merged for purposes of sentencing. Defendant filed a notice of appeal on June 6, 2005 and a concise statement of matters complained of on appeal on June 22, 2005.

The Court will first address Defendant's claim that aggravated assault should have merged with attempted robbery at sentencing. "In all criminal cases, the same facts may support multiple convictions and separate sentences for each conviction except in cases where the offenses are greater and lesser included offenses." *Commonwealth v. Anderson*, 538 Pa. 574, 579, 650 A.2d 20, 22 (1994), *as cited in Commonwealth v. Rodriguez*, 449 Pa.Super. 319, 328-29, 673 A.2d 962, 967 (1996). In *Commonwealth v. Rodriguez*, the Superior Court held that aggravated assault did not merge with robbery. In *Commonwealth v. Ennis*, 394 Pa.Super. 1, 574 A.2d 1116 (1990), the Court held that these two offenses did merge for purposes of sentencing. The determining factor in the above cases was whether or not actual injury had been established. When serious bodily injury was inflicted, all the elements of the lesser crime of aggravated assault, causing serious bodily injury to another, were included within the greater crime of robbery, inflicting serious bodily injury upon another in the course of committing a theft. *Rodriguez*, 673 A.2d at 968. However, under the facts of *Rodriguez*, the Commonwealth presented no evidence of actual injury. Therefore, to prove aggravated assault, it was required that they show the defendant acted

with specific intent to inflict serious bodily injury. The element of specific intent is not included in the greater offense of robbery and therefore the sentences did not merge. “Specifically, although an accused must act with specific intent to cause serious bodily injury to be convicted of aggravated assault when serious bodily injury is not inflicted, an accused need not act with such specific intent to be convicted of robbery as defined in subsection (a)(1)(ii).” *Id.* Because each crime required proof of at least one element which the other did not, the sentences did not merge.

The facts of the present case align it with the reasoning set forth in *Rodriguez*. Defendant did not inflict any actual injury in the commission of the offenses. In regard to robbery, Defendant pled to acting in the course of committing a theft, an element not included in aggravated assault. In regard to aggravated assault, Defendant pled to specifically intending to cause serious bodily injury to another, an element not included in robbery. The sentences for these offenses therefore did not merge.

Defendant also challenges the discretionary aspect of his sentence. He asserts that the sentence was overly harsh and that the Court should have sentenced the aggravated assault concurrently with the sentence for the robbery conviction. When imposing a sentence, the sentencing court must take into account "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." 42 Pa.C.S. § 9721 (b). The court shall also consider any guidelines. *Id.*; *Commonwealth v. Whitman*, 2005 PA Super 277 (2005).

The Court disagrees with Defendant’s challenge to the exercise of its sentencing discretion. Defendant was sentenced within the standard range on the robbery conviction and based on several factors ran the aggravated assault sentence consecutive. These factors

were explained directly to Defendant at the time of sentencing, focusing mainly on protection of the public and the rehabilitative needs of the Defendant. (N.T. 5/3/05, pp 17-22).

By the Court,

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Nancy L. Butts, Judge

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Date

xc: PD  
DA  
Honorable Nancy L. Butts  
William Burd, Prothonotary  
Judges  
Law Clerk  
Gary Weber, Esquire