

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

COMMONWEALTH

VS.

**VERNON ROBINSON,
Defendant**

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NO. 03-11,848

OPINION AND ORDER

Before the Court are Defendant's Post-Sentence Motions, argued before the Court December 21, 2004. Defendant's motions include a Motion for a New Trial Based on Suppression of Evidence, and two distinct Motions for Reconsideration of Sentence. Defendant was found guilty following a non-jury trial of eight counts involving violations of the Controlled Substances Act and two counts of Criminal Use of a Communications Facility. Defendant was sentenced to two consecutive terms of thirty to sixty months.

Motion for a New Trial Based on Suppression of Evidence.

The Motion for a New Trial Based on Suppression of Evidence challenges the chain of custody of proffered evidence due to shipment by commercial carrier. While the Commonwealth bears the burden of demonstrating some reasonable connection between the proffered exhibits and the true evidence, it need not establish the sanctity of its exhibits beyond a moral certainty. The Commonwealth's evidence must establish a reasonable inference that the identity and condition of the exhibits have remained the same from the time they were first received until the time of trial. *Commonwealth v.*

Cugnini, 307 Pa. Super. 113, 116; 452 A.2d 1064, 1065 (1982). Further, any gaps in the chain of custody go to the weight to be given the evidence, not to its admissibility. *Commonwealth v. Copenhefer*, 553 Pa. 285, 312; 719 A.2d 242, 256 (1998). The Commonwealth met the burden of showing a reasonable inference that the identity and condition of the exhibits remained the same throughout custody. Any potential imperfections in that chain of custody were considered in weighing the evidence.

Motion for Reconsideration of Sentence: School Zone Enhancement

Defendant next asserts that the increased sentence due to the school zone enhancement was improperly added. Specifically, Defendant contends that no specific finding of fact was made regarding the occurrence of the crimes in a school zone. Defendant relies on the Supreme Court cases, *Blakely vs. Washington*, 159 L.Ed. 2d. 403; 124 S.Ct. 2531 (2004), *Apprendi v. New Jersey*, 590 U.S. 466 (2000), and *Ring v. Arizona*, 536 U.S. 584 (2002). Defendant argues that his sentence enhancement was “post-trial judicial fact finding” and prohibited by the holdings in the above cases.

In *Apprendi*, the Supreme Court held that, “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi*, 590 U.S. at 489. However, Defendant in the present case was not sentenced beyond the statutory maximum; *Apprendi* is inapplicable. The *Apprendi* Court specifically stated, “[w]e have often noted that judges in this country have long exercised discretion of this nature in imposing sentences *within the statutory limits* in the individual case.” *Id.* at 481; see also *Commonwealth v. Bromley*, 2004 Pa.Super. 422, P6 (2004).

Ring likewise held that fact-finding on which sentences *exceeding the maximum* were based violated the Sixth Amendment. *Ring*, 536 U.S. at 602 (“A defendant may not be exposed to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone”). Defendant was not exposed to a penalty exceeding the statutory maximum.

Blakely is similarly inapplicable in the present case. This Commonwealth employs an indeterminate sentencing scheme, unlike Washington, and the Supreme Court specifically addressed the distinction. The Court noted that indeterminate sentencing schemes,

Increase judicial discretion, to be sure, but not at the expense of the jury’s traditional function of finding the fact essential to lawful imposition of the penalty. Of course indeterminate schemes involve judicial factfinding, in that the judge (like a parole board) may implicitly rule on those facts he deems important to the exercise of this sentencing discretion. But the facts do not pertain to whether the defendant has a legal right to a lesser sentence--and that makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned. In a system that says that judge may punish burglary with 10 to 40 years, every burglar knows he is risking 40 years in jail. In a system that punishes burglary with a 10-year sentence, with another 30 added for use of a gun, the burglar who enters a home unarmed is *entitled* to no more than a 10-year sentence –and by reason of the *Sixth Amendment* the facts bearing upon that entitlement must be found by a jury.

Blakely, 124 S.Ct. at 2540; *as quoted in Bromley*, at P9.

The above-described Supreme Court cases apply to sentencing schemes that mandate a particular sentence that can be exceeded only pursuant to specific findings of fact. However, under this Commonwealth’s indeterminate sentencing scheme, there

is no promise of a specific sentence, and the judge exercises discretion within the statutory limits. See *Bromley*, at P12.

Motion for Reconsideration of Sentence: Overly Harsh Sentence

Defendant's third issue is presented in the Motion for Reconsideration of Sentence, which contends the sentence imposed is overly harsh. Defendant was sentenced to two consecutive terms of 30 to 60 months on two counts of Delivery of a Controlled Substance, to wit: cocaine. The remaining Controlled Substance counts were merged therein and the counts of Criminal Use of a Communication Facility carried concurrent sentences of one year each.

"Traditionally, the trial court is afforded broad discretion in sentencing criminal defendants 'because of the perception that the trial court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it.'" *Commonwealth v. Mouzon*, 571 Pa. 419, 423 (2002) (plurality); quoting *Commonwealth v. Ward*, 524 Pa. 48; 568 A.2d 1242 (1990). "Under Pennsylvania's Sentencing Code, 42 Pa.C.S. § 9701 et seq., a trial court must 'follow the general principle 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.'" *Mouzon*, at 423; 42 Pa.C.S. § 9721(b). "The court must also consider the statutory Sentencing Guidelines, which were promulgated in order to address the problems associated with disparity in sentencing. " *Mouzon*, at 423-24.

The Court did not abuse its discretion in sentencing Defendant. The sentence was justified by several factors including the above-discussed permissibility of the school zone enhancement. Also taken into consideration were the quantities of cocaine (2.8 grams and 3.4 grams), which the Court does not consider “small” or insignificant. Further influencing the sentence is the recognition that two separate and distinct transactions were involved, and no evidence of mitigating circumstances.

ORDER

AND NOW, this _____ day of January, 2004, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant’s Post Sentence Motions are DENIED.

By The Court,

Nancy L. Butts, Judge

cc: DA
D. Chester, Esq.
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esq.