

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1303-1995
 :
 PAUL BORUCH, :
 :
 Defendant : 1925(a) OPINION

Date: November 21, 2006

**OPINION IN SUPPORT OF THE ORDER OF FEBRUARY 2, 2006 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Paul Boruch has appealed this court’s February 2, 2006 sentencing order. Defendant Boruch’s appeal should be denied. The court did not err in revoking Defendant Boruch’s probation. The court did not abuse its discretion in imposing a sentence of total confinement.

I. FACTS

A. Original Sentence, Probation Violation, and Re-sentence

On August 28, 1995, Defendant Paul Boruch (hereafter “Boruch”) entered a plea of guilty to Count 1 Criminal Trespass, 18 Pa.C.S.A. § 3503(a)(1); Count 2 Theft by Unlawful Taking or Disposition, 18 Pa.C.S.A. § 3921(a); and Count Four Terroristic Threats, 18 Pa.C.S.A. § 2706. On February 6, 1996, Defendant was sentenced as to Count 1 to undergo incarceration at a state correctional institution for a minimum of two years and a maximum of four years by President Judge Kenneth D. Brown. This sentence was suspended, and Boruch was placed on probation for a period of five years. This five year probation sentence was to be served consecutive to the sentence Boruch was serving in another Lycoming County case, specifically Case No. 1614-1995. As to Count 2, Boruch was sentenced to two years of

probation, which was to be served concurrently with the sentence under Count 1. As to Count 4, Boruch was sentenced to a period of two years probation, which was also to be served concurrently with the sentence under Count 1.

On February 2, 2006, Boruch made a counseled admission to having violated the terms of his probation. Boruch admitted that he traveled outside of Pennsylvania without having obtained the permission of his probation officer. On April 18, 2005, Boruch had absconded from probation supervision. It was determined that Boruch was in Tennessee. On January 13, 2006, the Pennsylvania Board of Probation and Parole issued a warrant for his arrest. On January 18, 2006, Boruch waived extradition from Tennessee. Following Boruch's admission, the court sentenced Boruch under Count 1 Criminal Trespass, 18 Pa.C.S.A. § 3503(a)(1), to incarceration at a state correctional institution for a minimum of two years and a maximum of four years.

B. Post Conviction Relief Act Petition and Appeal

On July 6, 2006, Boruch filed a Motion to Reinstate Appeal Rights *Nunc Pro Tunc*. Following a hearing regarding the Motion on July 28, 2006, this court entered an order stating that, by stipulation of the Commonwealth, the court would treat the Motion as a Post Conviction Relief Act Petition. Due to a factual issue concerning whether Boruch requested his counsel to appeal the February 2, 2006 sentence, an evidentiary hearing was scheduled to address the matter. On October 13, 2006, based upon the Commonwealth not opposing the relief requested by Boruch, the court entered an order granting Boruch's Post Conviction Relief Act Petition. Boruch was granted the right to file an appeal *nunc pro tunc*. Boruch was required to file that appeal within thirty days of the date of the order.

On October 16, 2006, Boruch filed his notice of appeal. On October 23, 2006, the court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Boruch to file a concise statement of matters complained of on appeal within fourteen days of the order. Boruch filed his Concise Statement of Matters Complained of on Appeal on November 6, 2006. In the Statement of Matters, Boruch asserts that:

... the court abused it's (sic) discretion in revoking his probation for a technical violation and further abused its discretion by re-sentencing him to his original sentence of two (2) to four (4) years in a State Correctional Institution.

Boruch's Concise Statement of Matters Complained of on Appeal, ¶ 6.

II. ISSUES

Boruch's Statement of Matters raises two issues on appeal. They are:

- (1) Whether the court erred in revoking Boruch's probation when he left the state of Pennsylvania without first having obtained his probation officer's approval?
- (2) Whether the court abused its discretion by imposing a sentence of incarceration at a state correctional institution for a minimum of two years and a maximum of four years after revoking Boruch's probation?

III. DISCUSSION

The discussion section of this opinion will be divided into two parts. First, we will set forth why it was appropriate to revoke Boruch's probation. Second, we will set forth why it was not an abuse of discretion to sentence Boruch to total confinement at a state correctional institution for a minimum of two years and a maximum of four years.

A. Revoking Boruch's Probation was Appropriate

A court may revoke an order of probation upon proof that the defendant violated a specific condition(s) of the probation. 42 Pa.C.S.A. § 9971(b). Probation may be revoked if a defendant “ ‘should commit offenses of such nature as to demonstrate that he is unworthy of probation and that granting of the same would not be in subservience to the ends of justice and the best interests of the public, or the defendant.’” *Commonwealth v. Wendowski*, 420 A.2d 628, 630 (Pa. Super. 1980) (quoting *James v. United States*, 140 F.2d 392, 394 (5th Cir. 1944)). Technical probation violations are sufficient to trigger the revocation of probation. *Commonwealth v. Sierra*, 752 A.2d 910, 912 (Pa. Super. 2000).

The court did not err in revoking Boruch's probation. Boruch committed a technical violation of his probation when he went to Tennessee without the prior approval of his probation officer. An explicit term of Boruch's probation precluded him from traveling outside of Pennsylvania without first obtaining the permission of his probation officer. Boruch's counseled admission demonstrates a clear violation of this term.

In addition to being a technical violation of the terms of his probation, Boruch's flight to Tennessee demonstrates that he is unworthy of probation. Boruch willingly removed himself from supervision and secreted himself for ten months. This demonstrates contempt for not only the rules and regulations of the probation process, but also for its rehabilitative focus. By absconding from supervision, Boruch refused to avail himself of all the rehabilitative programs that the probation process had to offer. Boruch's actions demonstrate that he has little regard for the probation process or the purposes it serves.

B. The Sentence of Total confinement was not an Abuse of Discretion

The imposition of sentence following the revocation of probation is vested in the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion. *Commonwealth v. Coolbaugh*, 770 A.2d 788, 792 (Pa. Super. 2001); *Sierra*, 752 A.2d at 913. An abuse of discretion is more than an error in judgment. *Sierra*, 752 A.2d at 913. An abuse of discretion occurs only if the record discloses that the court's exercise of judgment with regard to the sentence was manifestly unreasonable or the result of partiality, bias, or ill-will. *Commonwealth v. Smith*, 673 A.2d 893, 895 (Pa. 1996).

Upon the revocation of a defendant's probation, the court possesses the same sentencing options that were available at the time of the original sentencing. 42 Pa.C.S.A. § 9771(b); *Commonwealth v. Ware*, 737 A.2d 251, 254 (Pa. Super. 1999), *app. denied*, 747 A.2d 900 (Pa. 1999). Once a defendant's probation has been revoked, a sentence of total confinement may be imposed only if: (1) the defendant has been convicted of another crime; or (2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or (3) such a sentence is essential to vindicate the authority of the court. 42 Pa.C.S.A. § 9771(c); *Coolbaugh*, 770 A.2d at 792.

The court did not abuse its discretion in sentencing Boruch to total confinement at a state correctional institution for a minimum of two years and a maximum of four years. Such a sentence is required to vindicate the authority of this court. Boruch has flouted the authority of this court by willfully disregarding the terms of his probation. Boruch removed himself from supervision for almost ten months, and likely would have remained outside of supervision if he was not discovered and returned to Pennsylvania. Boruch's actions demonstrate an utter

disregard for the probation process and this court; therefore, a sentence of total confinement was appropriate.

IV. CONCLUSION

The order of February 2, 2006 should be affirmed and Boruch's appeal denied.

BY THE COURT,

William S. Kieser, Judge

cc: Paul Petcavage, Esquire
DA
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)