

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : CR-1836-1998
vs. : (98-11,836)
 : CRIMINAL DIVISION
 :
 :
MUHAMMAD LEACH, :
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 order dated February 15, 2006 and docketed February 23, 2006. The relevant facts follow.

On October 25, 1999, a jury found Appellant guilty of possession of a controlled substance, possession with intent to deliver a controlled substance, possession of drug paraphernalia, and conspiracy to deliver a controlled substance. The controlled substance was 13.7 grams of cocaine. On December 29, 1999, the court sentenced defendant to pay a fine of \$15,000 and to undergo imprisonment in a state correctional institution for 3-8 years for the possession with intent to deliver conviction. Both the amount of the fine and minimum term of incarceration were mandatory pursuant to 18 Pa. C.S. §7508. The court imposed a concurrent 15 to 36 months for the conspiracy conviction a fine for the paraphernalia conviction. The Court imposed a fine on the paraphernalia conviction. The sentencing Order incorrectly stated that the fine on the paraphernalia conviction was \$15,000.

On or about February 8, 2006. Appellant filed a motion to modify court fines

nunc pro tunc. Appellant requested that the court lower the outstanding fines to \$1,000 or make it paid in full since he had paid \$900. When the court looked at Appellant's file, it realized the fine for the paraphernalia conviction was a typographical error because the maximum fine for that offense is \$2,500. Since that fine was illegal and an obvious typographical error, the Court amended the sentencing order on February 15, 2006 to state the correct fine amount of \$50.00. In all other respects, the court lacked jurisdiction to change the fines imposed because more than thirty (30) days had elapsed since the order was entered.

Appellant appealed the February 15, 2006 order. The sole issue raised on appeal is whether Appellant was denied due process and equal protection under the Fifth and Fourteen Amendment by the Trial Court imposing a fine without a hearing to determine whether Appellant was able to pay on said fine.

The court could not impose a lesser fine on the possession with intent to deliver conviction. Appellant possessed 13.7 grams of cocaine with the intent to deliver it. The Commonwealth asked for the mandatory sentence under 18 Pa.C.S. §7508(a)(3)(ii).

This section states in relevant part:

A person who is convicted of violating Section 13(a) (14), (30) or (37) of the Controlled substance, Drug, Device and Cosmetic Act where the controlled substance is coca leaves ... except decocainized coca leaves or extracts of coca leaves which (extracts) do not contain cocaine or ecgonine shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection: ... (ii) when the aggregate weight of the compound or mixture containing the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15, 000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity....

Therefore, the Court could not impose a fine of less than \$15,000 or amend its sentencing

order to reduce the amount of the fine. Furthermore, the Pennsylvania Appellate Courts have found that “[t]here is no constitutional requirement that invalidates the imposition of an otherwise valid fine merely because a defendant lacks the immediate ability to pay it, or would have difficulty in doing so.... The ability of a sentencing court to permit a fine to be paid off in reasonable installments, where necessary and appropriate, avoids in our view, any claim of constitutional infirmity.” Commonwealth v. Church, 513 Pa. 534, 540-41 522 A.2d 30, 33-34 (1987); see also Commonwealth v. Gipple, 418 Pa.Super. 119, 613 A.2d 400 (Pa.Super. 1992) (imposition of mandatory fine under 18 Pa. C.S. §7508 does not violate excessive fines provision of Pennsylvania a Constitution); Commonwealth v. Perez, 400 Pa.Super. 611, 576 A.2d 1136; Pa.Super. 1990) (same); Commonwealth v. Hoover, 343 Pa.Super. 372, 379-380, 494 A.2d 1131, 1135 (Pa.Super. 1985) (sentencing court does not have to inquire into the defendant’s ability to pay when imposing a mandatory fine; rather, the proper focus of due process inquiry is on what procedural safeguards exist in the event the defendant is unable to pay a ‘legislatively mandated fine.’). In this case, the court has not incarcerated Appellant for his failure to pay his fines; he is serving his sentence for possessing cocaine with the intent to deliver it. The Collections/Costs and Fines Office also has not filed a contempt petition against Appellant or otherwise pursued collection of the entire amount of the fines in this case. In fact, the court believes the Collection’s office has been accepting small, sporadic payments from Appellant.

Based on the foregoing, the court believes Appellant’s argument is meritless.

DATE: _____

ByThe Court,

Kenneth D. Brown, P. J.

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