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

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| **COMMONWEALTH** | **:** | **No. CR-069-2005 (05-10069)** |
| | **:** | |
| **vs.** | **:** | **CRIMINAL DIVISION** |
| | **:** | |
| | **:** | |
| **JEFFREY T. MOORE,** | **:** | |
| **Appellant** | **:** | **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 docketed September 23, 2005 and its Order denying reconsideration of sentence entered October 19, 2005.

The court notes that Appellant has failed to pay for a transcript of the sentencing proceedings. Appellant has had months to pay for the transcript, as his appeal was filed on November 17, 2006. In May, the court received a notice that the record in this case was overdue. The court spoke to the court reporter about the status of the transcript. The court reporter informed the court that the transcript was not completed because Appellant had not paid the deposit for the transcript. At the direction of the court, the court reporter spoke to defense counsel on or about May 12, 2006 and informed him that the court would ask the appellate courts to dismiss the appeal if Appellant did not pay for the transcript by May 22, 2006. Appellant still has not paid the deposit.

Rule 1911(a) of the Rules of Appellate Procedure states: "The appellant shall request any transcript required under this chapter in the manner and make any necessary

payment or deposit therefor in the amount and within the time prescribed by Rules 5000.1 et seq. of the Pennsylvania Rules of Judicial Administration (court reporters)." Pa.R.App.P. 1911(a). Subsection (d) further provides that if the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the appellate court may take appropriate action, including dismissal of the appeal. Pa.R.App.P. 1911(d). The court requests the appellate court to dismiss this appeal. Appellant has had ample time to pay for the transcript, but has failed to do so. During the sentencing hearing, the court discussed the facts of the case and the reasons why the court sentenced Appellant to incarceration in a state correctional institution as opposed to the county prison. The court would rely on its statements made during the sentencing hearing and add the following:

The sole issue raised on appeal is that the court's sentence of incarceration in a state correctional institution for 3 to 6 years was excessive and the court should have sentenced Appellant to 2 ½ to 5 years in the county prison, work release eligible. The court cannot agree.

First, a 2 ½ year minimum sentence would be in the mitigated range of the guidelines. There is nothing mitigating about this case. To the extent Appellant would argue his lack of prior record and use of alcohol on the night in question are mitigating factors, they are offset by the physical and psychological impact Appellant and his co-defendants had on the victims in this case. Second, the maximum would have to be less than 5 years for Appellant to serve his sentence in the county prison. 42 Pa.C.S.A. §9762(1)("All persons sentenced to total or partial confinement for: (1) maximum terms of five or more years shall be committed to the Bureau of Corrections for confinement"). Third, Appellant would not be

eligible for work release. Work release is an intermediate punishment (IP) program. Appellant is not eligible for IP because of his pleas to kidnapping and aggravated assault. 42 Pa.C.S.A. §9802. Therefore, the court could not sentence Appellant to county prison with work release. Furthermore, the county prison does not have the programs that the state correctional institutions have. Appellant would just sit at the county prison for years and would not have as many educational opportunities as he does at a state correctional institution. The court could not parole him at his minimum because the Pennsylvania Board of Probation and Parole has the exclusive parole authority when the maximum sentence is 2 years or more. Fourth, the court does not accept Appellant's contentions that he was significantly less involved than his co-defendants or his family's arguments that Appellant was simply following the directives of Mr. Martin and Mr. Fisher. When Mr. Breon was injured, neither Mr. Martin nor Mr. Fisher was present. Mr. Breon testified at the preliminary hearing that he begged and pleaded with Appellant to get him medical attention, but Appellant refused. The court, however, did believe Appellant was slightly less involved than Mr. Martin, who also had a prior record score of zero and, accordingly, it gave Appellant a sentence that was 6 months shorter than Mr. Martin's.

In summary, the court weighed Appellant's lack of prior record, willingness to cooperate and use of alcohol against the seriousness of the offenses, the use of weapons, and the impact the offenses had on the victims. After considering all those factors, the court sentenced Appellant to a minimum of sentence of 36 months, which was the bottom of the standard range. The court also gave Appellant the lowest maximum sentence possible given that minimum sentence. See 42 Pa.C.S.A. §9756(b)("The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence

imposed.”). The court could have imposed a maximum sentence of up to 20 years. Quite frankly, if it weren’t for Appellant’s lack of prior record and his willingness to cooperate against his co-defendants, the court would have imposed a significantly longer sentence.

DATE: _____ By The Court,

_____
Kenneth D. Brown, P. J.

cc: District Attorney
Kyle Rude, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)