

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-260-2004
vs. : (04-10,260)
 : CRIMINAL DIVISION
 :
 :
 :
 :
 : 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 entered December 15, 2004, and its Order entered January 28, 2005, in which the Court found Defendant in violation of the intermediate punishment program and re-sentenced him to incarceration in a state correctional institution for a minimum of 10 months and a maximum of 2 years. The relevant facts follow.

On or about April 15, 2004, Appellant pleaded guilty to unauthorized use of a motor vehicle, a misdemeanor of the second degree. The Court sentenced Appellant to supervision by the adult probation office for a period of 18 months under the Intermediate Punishment Program. This sentence was consecutive to the sentence Appellant was serving at the Lycoming County prison.¹ One of the conditions of Appellant's supervision was: "I will make every effort to obtain and maintain employment and support my dependents. I

¹ On or about April 7, 2004, the Court revoked Appellant's parole in case number 03-10,933 and sentenced him to undergo incarceration in the Lycoming County prison to his new maximum date of November 29, 2004, DUE TO Appellant's history of violations. Appellant sought reconsideration, but the Court denied Appellant's request because the county authorities' attempts to work with Appellant were unsuccessful due to the lack of compliance. For the benefit of the appellant courts, the court will attach the orders of April 20, 2004 and April 7, 2004 as well as the supervision history/summary from file 03-10933 as Exhibits 1-2, A-2, and A-3.

will obtain permission prior to changing my employment. If I lose my employment I will immediately notify my Probation Officer and cooperate with any effort they make to obtain employment for me.”

Despite Appellant’s history of parole violations, the Court continued to sentence the Appellant to the Lycoming County Prison system and Appellant was incarcerated at the Lycoming County Pre-Release Center.

The Court gave Appellant an opportunity to receive specialized training in the area of fiber optics by allowing Appellant in participate in a ten (10) week fiber optics training program while at the Pre-Release Center. See N.T., December 15, 2004, p 6. Significant resources were allocated to train the Appellant in the field of fiber optics. See N.T., December 15, 2004, p. 23.

The special fiber optics training program was run by Brown Technical Institute. Ellis Brown was the coordinator of this program and he also worked with graduates of the fiber optics training to help them find employment with a fiber optics company upon a graduate’s release from the Lycoming Prison system.

Appellant successfully completed the fiber optic training. Upon Appellant’s release from the Lycoming County Prison system in late November 2004, he contacted Ellis Brown to help him obtain employment in the fiber optics field. Since fiber optics employment was available in the area of Chambersburg, Pennsylvania, Mr. Brown pointed out that Appellant would need to relocate. Appellant confirmed to Mr. Brown that he would do this. See N.T., December 15, 2004, p. 8.

Mr. Brown then arranged for an employment interview for Appellant and another fiber optic graduate with company in the Chambersburg area. The job would have

paid a significant hourly rate and, after three (3) years, would have paid more than \$50.00 per hour. See N.T., December 15, 2004, p. 4.

Robert McCullough, the Chief Probation Officer of Lycoming County, personally talked with Appellant and Appellant indicated he had transportation to the job interview. See N.T., December 15, 2004, p. 4.

The Adult Probation Office and Mr. Brown also started a process of obtaining housing for Appellant in the Chambersburg area. An apartment was obtained for the Appellant and the second Lycoming County individual who was being considered for employment. See N.T., December 15, 2004, p. 5.

Mr. Brown tried to confirm Appellant's transportation to the interview as well as transportation for the second Lycoming County individual. When Appellant did not return his phone calls, on the morning of the scheduled interviews, Mr. Brown left Chambersburg at 3:00 a.m. to come to Williamsport to provide transportation. See N.T., December 15, 2004, p. 4.

Mr. Brown talked to Appellant's mother on the telephone on the night before the interview, but the Appellant did not telephone him. See N.T., December 15, 2004, p. 5. Mr. Brown picked up the second individual in Williamsport and transported him to the interview. Mr. Brown was not able to make contact with Appellant, so he could not take him to the interview. Appellant did not appear for the interview. The second man who attended the interview obtained employment with the Chambersburg company. See N.T., December 15, 2004, p. 11.

Appellant, age 25, did not attend the interview because his Mother told him

not to go to the interview. See N.T., December 15, 2004, p. 22.²

The Court found Appellant violated the conditions of his Intermediate Punishment sentence and re-sentenced him to incarceration in a state correctional institution for a minimum of 10 months and a maximum of 2 years.

On May 11, 2005, Appellant filed a Post Conviction Relief Act (PCRA) petition, in which he asserted he asked his attorney to appeal the Court's orders regarding his probation revocation. In an order dated July 14, 2005 (which was docketed July 15, 2005), the Court reinstated Appellant's right to appeal his probation revocation.

Appellant raises three issues in this appeal. First, Appellant asserts his rights were violated by the failure of the Lycoming County Adult Probation Office or the Court to provide written notice of the probation violations alleged against him prior to the hearing held on December 15, 2004. This issue lacks merit. The Adult Probation Office gave written notice of the violations on or about December 10, 2004. See Preliminary Hearing Technical Probation/Parole/IP Violation dated 12/10/2004 attached hereto as Exhibit B.³ It also appears Appellant had actual notice of the violations alleged against him, because he had his mother present at the hearing to speak on his behalf.

Appellant next contends the Court incorrectly found him violation of the conditions of his probation requiring he maintain employment while released when he had

² Appellant testified at the parole violation hearing that he did not go to the interview at the urging of his mother because he did not want to leave his young son. The Court was very skeptical of the testimony of Appellant and his Mother in trying to justify his behavior. Appellant has long history of non-cooperation with Lycoming County Supervision authorities who have made tremendous efforts to work with Appellant. See p. bottom of Exhibit A to this opinion under the caption Recommendation, where Appellant's parole officer describes his frustration with Appellant's long-term lack of cooperation under county supervision. The sentence Appellant was serving in this matter when he received the fiber optics training was as a result of a prior violation of parole.

only been released on probation for a period of ten (10) days. Appellant also claims the evidence presented was insufficient to support the violation. Since these issues are interrelated, if not one and the same, the Court will address them together.

The condition at issue required Appellant to make **every effort to obtain** and maintain employment. Mr. Brown and the Adult Probation Office went to some lengths to arrange an interview for Appellant. The prospective job was a golden opportunity for Appellant, as it had a great income potential, more than most jobs an individual with a criminal record could obtain. Mr. Brown offered transportation to the interview and had arranged for housing in the event Appellant got the job. Despite this opportunity of a lifetime and a requirement that he make every effort to obtain employment, Appellant made **no** effort to attend the interview or to contact Mr. Brown. Appellant was physically able to attend the interview, but he made a conscious choice not to attend or to let Mr. Brown know he would not attend. If Appellant had attended the interview but not gotten the job, he would not have been in violation because he would have done everything he could to get the job. Instead, he made no effort whatsoever to obtain a good paying job that was practically being handed to him.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: District Attorney
Donald Martino, Esquire

3 Although this document was not docketed, the origin was located in the criminal case file.

Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)