

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR-1730-2004
:
vs. : CRIMINAL DIVISION
:
RONALD FOUST, :
Defendant : Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant's Post-Sentence Motion, filed October 17, 2005.

Argument on the motion was heard January 6, 2006.

After a jury trial held August 25, 2005, Defendant was convicted of retail theft and theft by unlawful taking. On October 10, 2005, Defendant was sentenced to 16 months to five years incarceration on the theft count, the retail theft count having merged with the theft count for sentencing purposes. In his post-sentence motion, Defendant contends the evidence was insufficient to support the conviction, the verdict was against the weight of the evidence, and the sentence was excessive. These will be addressed seriatim.

With respect to the first contention, Defendant specifically argues the evidence was insufficient to prove his intent to deprive the store owner of the merchandise.¹ The evidence will be determined sufficient to support a conviction if, viewing all the evidence admitted at trial, together with all reasonable inferences drawn therefrom, in the light most favorable to the Commonwealth as verdict-winner, the jury could have found defendant's guilt was established beyond a reasonable doubt. Commonwealth v. Collins, 702 A.2d 540 (Pa. 1997). In the instant case, the evidence showed Defendant entered a sporting-goods store with a gun in a case, made arrangements to sell the gun to the store owner, thus removing his own gun from the case, then asked to step behind a display counter to view the guns displayed for sale, placed one of the guns for sale into his own gun case and closed the case, and walked toward the front of the

¹ A person is guilty of theft by unlawful taking if he "unlawfully takes, or exercises unlawful control over, movable property of another with the intent to deprive him thereof." 18 Pa.C.S. Section 3921(a). A person is guilty of retail theft if he "takes possession of, carries away, transfers ... any merchandise displayed ... for sale by any store ... with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof." 18 Pa.C.S. Section 3929(a)(1).

store with the gun in his case. When the owner walked toward the front of the store as well, Defendant turned toward a display area along the side of the store, removed the gun from his case and placed it on the shelf, in a different location from where it had been removed at the back of the store. The owner then told Defendant he did not want to do business with him and reversed the prior purchase of Defendant's gun, following which Defendant left the store. Defendant did not explain to the owner why he had placed the gun in his case. The Court believes this evidence sufficient to support a finding that Defendant intended to steal the gun.

With respect to the second issue, that the verdict was against the weight of the evidence, such a claim requires a new trial only where the verdict is so contrary to the evidence as to shock one's sense of justice. Commonwealth v. Dougherty, 679 A.2d 779 (Pa. Super. 1996). In the instant case, the Court finds the verdict entirely consistent with the evidence, and not shocking at all.

Finally, regarding his contention the sentence is excessive, Defendant asks this Court to look only at his convictions in the most recent twenty-year period, contending his prior record score with respect to only those convictions would be a "2" rather than the "5" that it actually is, and even if the Court is not inclined to do so, that in any event, it should be considered that his most recent conviction was in 1996. With respect to calculating a prior record score based on convictions entered in only the last twenty years, the Court knows of no authority for such a proposition and, indeed, such would seem to contradict the purpose of a prior record score. Further, even though Defendant's last conviction may have been in 1996, he was convicted in 1985, 1990, and 1996 of retail theft and/or theft, thus indicating a continuing course of conduct which appears to have eluded any previous rehabilitation efforts on the part of the criminal justice system. Considering these factors, and that Defendant did not express remorse for the crime,² the Court does not believe its sentence, which falls within the standard range of 12 to 18 months, is excessive.

² As explained to Defendant at the argument on January 6, 2006, even were the Court to accept his statement that he did not express remorse because he had no recollection of the events to which the Commonwealth's witnesses testified, the Court would expect Defendant to assume responsibility for his actions after being confronted with the evidence against him, including a videotape of the events underlying the charges.

ORDER

AND NOW, this 11th day of January 2006, for the foregoing reasons, Defendant Post-Sentence motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson