

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

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,465
	:
vs.	: CRIMINAL DIVISION
	:
BRIAN YASIPOUR, SR.,	:
Defendant	: Post-Sentence Motion

**OPINION AND ORDER**

Before the Court is Defendant’s Post-Sentence Motion, filed June 9, 2006. Argument on the motion was heard August 4, 2006.

After a non-jury trial, Defendant was found guilty but mentally ill of third degree murder, possession of an instrument of crime and tampering with evidence, in connection with the killing of his five-year-old daughter. By Order dated June 2, 2006, Defendant was sentenced to twenty to forty years incarceration on the count of murder, one to five years on the count of possession of an instrument of crime, and six months to two years on the count of tampering with evidence. All sentences were directed to run consecutively, for an aggregate sentence of twenty-one and one-half to forty-seven years. In the instant motion, Defendant challenges the Court’s finding regarding insanity and the sufficiency of the evidence of tampering, alleges an abuse of sentencing discretion, and argues the verdict is against the weight of the evidence. These issues will be addressed seriatim.

First, Defendant contends “the evidence at trial failed to prove beyond a reasonable doubt that the Defendant was legally sane at the time he killed his daughter.” Initially, the Court notes the burden is not on the Commonwealth to prove sanity beyond a reasonable doubt. Rather, Defendant bears the burden of proving insanity, by a preponderance of the evidence. 18 Pa.C.S. Section 315. And, while Defendant did present evidence in support of his claim of insanity, the Court was not able to conclude in light of all the evidence in the matter, that more likely than not, Defendant was insane at the time of the killing. The Court thus finds his claim to be without merit.

Next, Defendant contends the evidence was insufficient to establish the crime of

tampering with evidence, specifically indicating that “Defendant’s behavior of cleansing the victim did not impair the availability of any evidence to the police.” The Court did not base its verdict of guilty of this count on Defendant’s behavior of washing the blood from his daughter’s body after the murder, however. Rather, the Court found Defendant guilty of this crime on the basis of his actions in washing the knives used to commit the murder, and also his actions in laundering the bedclothes. This claim, therefore, also has no merit.

Next, Defendant alleges an abuse of the Court’s discretion in sentencing, arguing that his prior record score of zero was not adequately taken into account, and that the reasons given for sentencing beyond the aggravated range on the two misdemeanor counts, were inadequate. Defendant also contends the Court failed to adequately weigh his severe mental disability. Initially, the Court notes the mental disability was considered in the verdict itself, whereby the Court found Defendant guilty but mentally ill, and also failed to find the requisite specific intent necessary to support a charge of first degree murder. As noted at sentencing, the Court considered the victim’s age, the position of trust occupied by Defendant with respect to the victim, the brutality of the killing, the impact on others, especially the victim’s mother, the potential safety hazard to the public, and the lack of an acceptance of responsibility for the crime. Upon further review at his time, the Court continues to believe the sentence appropriate and this claim without merit.

Finally, Defendant contends the verdict with respect to the charges of murder<sup>1</sup> and tampering with evidence was against the weight of the evidence. At the time of trial, the Court carefully considered and weighed all of the evidence, and considers its verdict to be well-established by the evidence. The Court does not believe that upon review, an appellate court’s sense of justice would be shocked by the verdict, and thus does not find merit to Defendant’s final claim.

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1 Necessarily, the finding that Defendant was not insane at the time of the killing.

**ORDER**

AND NOW, this 21<sup>st</sup> day of August 2006, for the foregoing reasons, Defendant's Post-Sentence Motion is hereby DENIED.

By the Court,

Dudley N. Anderson, Judge

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