

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 599-2005
 :
 ALEC CAJKA, :
 :
 Defendant : 1925(a) OPINION

Date: October, 18 2007

**OPINION IN SUPPORT OF THE ORDER OF JULY 17, 2007 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Alec Cajka has appealed from this court's July 17, 2007 sentencing order. This court sentenced Cakja to serve a sentence of six months to five years at a state correction institution. Cajka contends that this sentence is excessive and manifestly unreasonable. The court maintains that it did not abuse its discretion by imposing this sentence and that the appeal should therefore be denied and the sentence affirmed.

On April 8, 2005, a criminal complaint was filed charging Cajka with having committed the following crimes: Counts 1 through 4 Simple Assault, 18 § 2701(a)(1); Counts 5 through 8 Simple Assault, 18 § 2701(a)(3); Counts 9 and 10 Possession of an Instrument of a Crime, 18 § 907(a); Counts 11 and 12 Corruption of Minors, 18 § 6301(a)(1); and Count 13 Criminal Mischief-Damage to Property, 18 § 3305(a)(5).

On October 4, 2005, Cajka entered a plea of guilty before Judge Nancy Butts to all Counts with the exception of Count 10 which was dismissed. The court then imposed a sentence for the remaining counts. In regards to the consolidated Simple Assault Counts 1 through 8, Cajka received a sentence of incarceration in the Lycoming County Prison for a minimum of six

months and a maximum of twelve months. The sentence for Count 9, Possession of an Instrument of Crime, was incarceration in the Lycoming County Prison for a minimum period of one month and maximum of six months. These two sentences were to run consecutively for a minimum period of seven months and a maximum of eighteen months. The sentence became effective March 30, 2005. In regards to the consolidated counts of Corruption of Minors, Counts 11 and 12, Cajka was placed under the supervision of the Adult Probation Office of Lycoming County for a period of three years. This sentence ran consecutively to all sentences previously imposed. Sentence in regards to Count 13, Criminal Mischief, was the performance of 500 hours of Community Service. Special conditions of supervision were also imposed requiring Cajka to attend any program referred to him by Adult Probation, including submitting to drug and alcohol evaluation and the Breaking Barriers Program.

On January 25, 2006, a bench warrant was issued for Cajka pursuant to a parole violation occurring on November 22, 2005. The bench warrant was vacated on April 4, 2006 when he was apprehended. Written charges of the violation of supervision dated April 4, 2006 were then filed alleging that Cajka violated Condition #1, Reporting Regularly, Condition #2, Complying with all Municipal, State and Federal Criminal laws as well as the provisions of the Vehicle Code and Liquor Code, and Condition #3, Community Service. The charges asserted Cajka violated Condition #1 by failing to report to the Lycoming County Adult Probation on December 5, 2005 which resulted in the issuance of a bench warrant on January 25, 2006; violated Condition #2 by being arrested in November 2005 for Driving Under Suspension; violated condition #3 was by failing to comply with the Community Service Program. On April 5, 2006 Cajka appeared before Judge Dudley Anderson regarding the above stated probation/parole violations. The court found that violations of Conditions #1 and #3 had occurred as alleged. Violation of Condition #2

was withdrawn by the Commonwealth. Judge Anderson ordered that Cajka undergo a six month setback on the probation/parole portion of his sentence. This sentence became effective on March 31, 2006. As a special condition Cajka was to undergo drug and alcohol assessment and faithfully comply with all recommendations of that program.

On December 13, 2006, written probation violations were again filed against Cajka alleging that he violated probation Condition #1, Reporting Regularly, and Condition #3, Complying with all Municipal, State and Federal Criminal laws as well as the provisions of the Vehicle Code and Liquor Code. Cajka allegedly violated Condition #1 by failing to report to the Lycoming County Adult Probation Office on November 30, 2006 and December 7, 2006 as well as failing to respond to a verbal order over the phone on December 7, 2006 to report to the Probation Office. Cajka allegedly violated Condition #3 by committing acts on December 5, 2006 resulting in charges being brought by the South Williamsport Police Department for Possession of an Instrument of Crime, three counts of Simple Assault, one count of Criminal Conspiracy, and three counts of Disorderly Conduct. On December 13, 2006 Cajka appeared again before Judge Anderson on a preliminary intermediate punishment violation and a probation violation regarding the new pending charges. Judge Anderson found that probable cause existed that the violations occurred as charged and entered an order to that effect on December 13, 2006.

On July 16, 2007, Cakja appeared before this court for a final hearing regarding the December 16, 2006 alleged supervision violations and made a counseled admission to having violated supervision conditions as set forth in the December 13, 2006 written charges. Cajka also acknowledged in the July 16, 2007 hearing that he had again been arrested and charged with offenses under case No. 393-2007, to which Cajka had entered and then withdrawn his guilty plea.

The court entered an order on July 17, 2007 finding beyond a reasonable doubt that Cajka had again violated his probation supervision. In review of the July 17, 2007 order, however, this court finds that an error was made in the heading of that order. The order states that its issuance is in regards to written charges of supervision violations from April 4, 2006, when in fact the order was made with regards to the subsequent December 13, 2006 violations that were heard as a preliminary matter before Judge Anderson.

As a sanction for the December 13, 2006 violations, in the July 17, 2006 order the court revoked the prior probation sentence dated October 4, 2005 as to Counts 11 and 12, Corruption of Minors. We then re-sentenced Cajka to serve a period of incarceration in a State Correctional Institution, for a minimum period of six months and a maximum period of five years. This sentence was deemed effective from December 8, 2006. Cajka was given credit for time served from that date.

On August 17, 2007, Cajka filed a Motion for Sentence Reconsideration which we denied on August 25, 2007. Cajka then filed a Notice of Appeal from this court's July 17, 2007 sentencing order on September 13, 2007. On September 14, 2007, this court issued an order in compliance with the Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Cajka to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the order. On October 2, 2007, Cajka filed his Concise Statement of Matters.

In the Concise Statement of Matters, Cajka asserts the following issue on appeal:

- 1) The Defendant avers that the trial court abused its discretion by imposing a manifestly unreasonable and excessive sentence without considering the fundamental norms underlying the sentencing process.

Contrary to his assertion, this court did not abuse its discretion by imposing an unreasonable and excessive sentence upon Cajka because: (1) there was a history of supervision

violations before the court; (2) the violations were of a serious nature; and (3) the sentence was within the standard range.

When Cajka appeared before this court for sentencing on July 17, 2007, the court had before it two supervision violations (new pending charges under Case No. 393-2007). These admitted violations were the second time Cajka had violated his supervision. In imposing its sentence, this court considered the similarity of the violations from April 4, 2006 and the sentence imposed for that violation by Judge Anderson on April 5, 2006.

The sentence for violation given by this court is within the standard sentence guideline range of RS-9 for the Corruption of Minors (combined counts 11 and 12) taking into consideration Cajka's prior record score of one, offense gravity score.

In conclusion, although Cajka is only 21 years of age, this court recognized that he has a demonstrated history of serious supervision violations and an inability to follow probation directives.

Accordingly, Cajka's appeal should be denied and the order of July 17, 2007 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Jeana A Longo, Esquire
APO (SM)
Alec Cajka-c/o LCP
Judges
Rebecca Penn, Esquire (Law Clerk)
Gary L. Weber, Esquire (Lycoming Reporter)