

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 03-10,638
	:	CRIMINAL DIVISION
LAWRENCE COOK,	:	
Defendant	:	APPEAL

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 June 12, 2007 Judgment of Sentence. The Court imposed said sentence after the Defendant, on November 13, 2003, pleaded guilty to nine drug related offenses and after the Court, on June 12, 2007, conducted a hearing on the applicability of the mandatory minimum sentence enhancement provision located at 18 P.S. § 6317 (hereinafter “enhancement provision”). In his August 9, 2007 Concise Statement of Matters Complained of on Appeal, the Defendant raises one broad issue on appeal: whether this Court erred, lacked sufficient evidence, or abused its discretion by imposing the enhancement provision. For the following reasons, the Court finds that the Defendant’s contentions are without merit.

Background

On April 17, 2003, using a confidential informant, an undercover police officer set-up a controlled purchase of narcotics from the Defendant. On that date, the officer and the informant met the Defendant on the corner of Pine Street and 6th Avenue in the City at which time the officer handed the Defendant prerecorded buy money. The Defendant entered the vehicle and directed the officer (who was driving the vehicle) to drive to the intersection of Little League Boulevard and Mulberry Street in the City at which time the Defendant handed the informant

several bags containing what tests later revealed to be marijuana and cocaine. The Defendant directed the officer to then head north on Mulberry Street to the 10 block of Washington Boulevard in the City where the Defendant exited the vehicle. After parting with the Defendant, the officer contacted the arrest team with a description of the Defendant and, after a short chase, the team apprehended the Defendant. The team located, after tip from a resident at the scene of the arrest, the prerecorded buy money a block from where the team apprehended the Defendant.

On November 13, 2003, the Defendant pled guilty to four felony and five misdemeanor drug offenses. On that same date, the Court deferred sentencing to January 17, 2004 to allow for the preparation of a pre-sentence investigation report. The Defendant failed to appear at the January 2004 sentencing date and a bench warrant was issued. Over three years later, the Defendant was picked-up in another state, transported to Lycoming County, and on June 12, 2007, this Court, after a hearing on the applicability of the mandatory minimum sentencing enhancement provision located at 18 P.S. § 6317, sentenced the Defendant to a term of imprisonment, the minimum being two (2) years and the maximum being ten (10) years with a consecutive probationary period of seven (7) years.

On June 15, 2007, the Defendant filed a Post Sentence Motion challenging this Court's imposition of the enhancement provision. Specifically, the Defendant contends that his offenses did not occur within 1000 feet of a school zone and that the Commonwealth failed to establish that his offenses occurred within 1000 feet of a school zone by the requisite preponderance of the evidence standard. The Court denied the Defendant's Motion on July 26, 2007.

On July 26, 2007, the Defendant filed his timely Notice of Appeal and, pursuant to this Court's Order of July 27, 2007, filed a timely Concise Statement of Matters Complained of on

Appeal in which he alleges that the Court erred, lacked sufficient evidence, and/or abused its discretion by imposing the enhancement provision.

Discussion

Section 6317 of the Crimes Codes states, in relevant part, that

[a] person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision of this title, The Controlled Substance, Drug, Device and Cosmetic Act or other statute to the contrary.

18 P.S. § 6317(a). The statute goes on to state, in relevant part that,

. . . [n]otice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

18 P.S. § 6317(b).

Instantly, the Defendant, on November 13, 2003, pleaded guilty to nine counts under The Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §§ 780-101, *et seq.*, including delivery of controlled substance (cocaine, less than two grams), possession with intent to deliver a controlled substance (cocaine), delivery of a controlled substance (marijuana), and possession with intent to deliver (marijuana), all of which are prohibited acts enumerated in section 780-113(a)(30) of the Act. At the time of the Defendant's guilty plea, the Commonwealth notified the Court, and the Defendant, that it intended to seek the mandatory minimum sentence under 18 P.S. § 6317.

Immediately preceding the Defendant's June 12, 2007 sentencing, a hearing was conducted on the applicability of enhancement provision. At said hearing, the Commonwealth

presented the testimony of two witnesses, Detective Ed McCoy and Officer James Douglas. Detective McCoy testified that because of his law enforcement experience, which included arrests on the school property at issue (i.e. Lycoming College), he is familiar with the location of the crime (i.e. the intersection of Little League Boulevard and Mulberry Street in the City) and that the intersection is clearly within a thousand feet of the school. N.T. 06/12/07, pp. 4-9. Detective McCoy also testified that the northeast and northwest corners of the intersection and the north side of Little League Boulevard are all school property and, as obvious to the naked eye, within 1000 feet of the crime. *Id.*, p.5. Lastly, in response to the Court's inquiry, Detective McCoy testified that, even if the crime occurred on the southwest corner of the intersection (which is not school property), that area is also within 1000 feet of the school. *Id.*, p.9.

Officer Douglas' testimony substantiated Detective McCoy's testimony: "any one of the four corners [of the intersection at issue] are [within] a thousand feet". *Id.*, p. 11. On cross-examination, Officer Douglas stated that his experience as a sniper in the Williamsport Bureau of Police Special Response Team has allowed him to "become fairly adept at identifying distances." *Id.*, p. 12.

Following the aforecited testimony and argument from the Commonwealth and Defense counsel, the Court found that the Commonwealth had proven, by a preponderance of the evidence, that the Defendant's crime had occurred within 1000 feet of a school zone and that it would apply the mandatory minimum sentence enhancement pursuant to 18 P.S. § 6317.

Although there were no actual measurements taken at the intersection at issue, it is clear from the testimony (and, it should be noted, the Court and nearly all parties involved are familiar with the location of the crime) that the intersection of Little League Boulevard and Mulberry Street in the City, which is directly abutted to the east, north, and southeast corners by school

property, that the crime occurred within 1000 feet of a school zone thereby making the enhancement provision applicable in the instant matter. Additionally, viewing the decision in a light most favorable to the Commonwealth “verdict winner” the evidence presented at the hearing on the enhancement provision issue, was sufficient for the Court, under a preponderance of the evidence standard, to apply said enhancement.

Lastly, as explained above, it is clear to almost everyone involved in this matter, that the intersection at issue, no matter which part of the intersection one utilizes as a reference point, is within 1000 feet of a school zone; therefore, the Court believes that its decision to apply the enhancement provision does not “shock the conscience”.

Conclusion

For the foregoing reasons, the Court respectfully suggests that its judgment of sentence be affirmed and the Defendant’s appeal denied.

By the Court,

Nancy L. Butts, Judge

xc: DA
PD
Judges
Hon. Nancy L. Butts
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)