

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : NO. 1087-2005  
 :  
 STEPHEN LYONS, :  
 :  
 Defendant : 1925(a) OPINION

Date: February 20, 2007

**OPINION IN SUPPORT OF THE ORDER OF DECEMBER 12, 2006 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Stephen Lyons has appealed from this court's order of December 6, 2006 in which we sentenced Lyons to serve a period of incarceration in the Lycoming County Prison, for a minimum of three months and the maximum of six months. The court sentenced Lyons following a final intermediate punishment violation hearing held on December 6, 2006. On appeal, Lyons asserts that the court committed three errors at that hearing. The court must concede that it did commit one of Lyons's three enumerated errors, but the error was harmless, and Lyons's appeal should be denied.

On December 22, 2005, Officer James Dorman of the Muncy Borough Police Department pulled Lyons over under suspicion of driving under the influence. Following the traffic stop, Lyons was transported to the Lycoming County DUI Center where a sample of Lyons's blood was taken. The blood was tested and revealed a blood alcohol content of .12%. Lyons was charged with driving under the influence of alcohol (incapable of safe driving), 75 Pa.C.S.A. § 3802(a)(1), driving under the influence alcohol (blood alcohol content .10 % to < .16%), 75 Pa.C.S.A. § 3802(b), and careless driving, 75 Pa.C.S.A. § 3714.

Lyons pleaded guilty to driving under the influence alcohol (incapable of safe driving), 75 Pa.C.S.A. § 3802(a)(1). On April 28, 2006, this court sentenced Lyons as to that offense. Lyons received a sentence of six months intermediate punishment under the supervision of the Lycoming County Adult Probation Office. Lyons was to serve four days at the Lycoming County prison or Pre-release Center as part of the restrictive intermediate punishment portion of the sentence. The court also imposed a fine of \$500.

On August 2, 2006, Lyons appeared before the Honorable Dudley N. Anderson for a preliminary intermediate punishment violation hearing. Judge Anderson found that probable cause existed to believe that Lyons committed the alleged violations of his intermediate punishment sentence conditions, specifically, requiring Lyons to abstain from alcohol. Probable cause as to a violation was established by evidence from an investigation of a motor vehicle accident in which Lyons was a passenger in one of the vehicles involved revealed that Lyons had a blood alcohol content of .16%. Judge Anderson required that Lyons be placed on an alcohol detection device, a SCRAM Unit or Sleep Time Unit, for a period of ninety days. Judge Anderson also prohibited Lyons from entering any establishment that engaged in the commercial sale of alcoholic beverages. Judge Anderson released Lyons on \$1500 ROR bail pending a final hearing. The matter was kept at a preliminary hearing stage, with either party being able to request a final hearing.

On November 8, 2006, Lyons again appeared before Judge Anderson for an intermediate punishment violation hearing concerning his use of alcohol on September 1, 2006. Judge Anderson found that Lyons had used alcohol on this date and it was a violation of one of the intermediate punishment sentence conditions. Judge Anderson revoked the intermediate

punishment sentence of April 28, 2006. Judge Anderson sentenced Lyons to six months of intermediate punishment under the supervision of the Lycoming County Adult Probation Office. Ninety days of that sentence were to be served at the Lycoming County Prison or Pre-release Center. Lyons was made eligible for placement on electronic monitoring/SCRAM or any other suitable device after serving ninety days of the sentence. The incarceration portion of the sentence was deferred until November 24, 2006.

On November 29, 2006, Lyons appeared before the Honorable Richard A. Gray for a preliminary intermediate punishment violation hearing. Judge Gray found that probable cause existed to believe that a violation of the intermediate punishment sentence conditions had occurred. Specifically, Lyons had used marijuana and had failed to comply with the guidelines of the Sleep Time Unit program. Judge Gray set bail in the amount of \$10,000 cash bail. Judge Gray also imposed a condition on bail that if Lyons was released, then he had to report to the Lycoming County Adult Probation Office to be placed on a SCRAM Unit. Judge Gray stated that a final hearing on the intermediate punishment sentence violation would be scheduled upon the request of either Lyons or the Adult Probation Office.

On December 6, 2006 Lyons appeared before this court for a final hearing regarding the alleged violation of the intermediate punishment sentence conditions that were the subject of the hearing before Judge Gray. Lyons waived his right to a final hearing and entered a counseled admission to the alleged violations of the intermediate punishment sentence conditions. This court revoked the November 8, 2006 sentence. The court sentenced Lyons to a period of incarceration at the Lycoming County Prison, the minimum of which was to be

three months and the maximum of which was to be six months. Lyons was made eligible for parole at an earlier date provided he qualified for entry into the Drug Court Program.

On January 5, 2007, Lyons filed a notice of appeal from the December 6, 2006 order. On January 8, 2007, this court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Lyons to file a concise statement of matters complained of an appeal within fourteen days of the order. On January 19, 2007, Lyons filed his concise statement of matters.

In his concise statement of matters, Lyons raises three issues. They are:

- (1) The Defendant avers the Trial Court erred by refusing to continue (sic) his request to continue his final intermediate punishment violation hearing in order to obtain private counsel.
- (2) The Defendant avers the Trial Court erred by failing to inquire whether or not the Defendant admitted alleged violations of his intermediate punishment sentence.
- (3) The Defendant avers the Trial Court erred by failing to advise him of his appeal rights following intermediate punishment violation hearing.

Lyons's Concise Statement of Matters Complained of on Appeal Pursuant to Rule 1925(B) Order.

As to the first issue, the court did not err in denying Lyons's request for a continuance of the final intermediate punishment violation hearing so that he could obtain private counsel. Lyons never requested a continuance of the final intermediate punishment violation hearing on the basis of trying to obtain private counsel. At the final intermediate punishment violation hearing, Lyons requested a continuance so that he could apply for Drug Court. Notes of Testimony, 6, 8 (12/6/06). Lyons never raised the issue of obtaining private counsel, so the

court never considered it when addressing his request for a continuance. Since Lyons never raised the issue of a continuance based upon his attempt to obtain private counsel, the court could not have denied a continuance request made on that basis. Consequently, the court could not err by doing something it never did.

As to the second issue, the court did inquire as to whether or not he admitted the alleged violations of his intermediate punishment sentence conditions. During the final intermediate punishment violation hearing, the court specifically asked Lyons whether he violated the conditions of his sentence.

THE COURT:           So noted. Mr. Lyons, do you acknowledge that you have violated your conditions of supervision as stated by Mr. Shoemaker? Do you acknowledge that you have violated your conditions as stated by Mr. Shoemaker?

MR. LYONS:           Yes, I do, your Honor.

N.T., 10. This court asked Lyons point blank whether he had violated the conditions of his intermediate punishment sentence, and he responded that he had.

As to the third issue, Lyons is correct that the court erred. Once a court sentences a defendant following a final intermediate punishment revocation hearing, the trial court is required to advise a defendant of the right to file a motion to modify sentence and to appeal, the time limits within which he must exercise those rights, the right to the assistance of counsel in preparing the motion and appeal, and the right to proceed *in forma pauperis*, if indigent. Pa.R.Crim.P. 708(C)(3)(a), (b). The court failed to advise Lyons at the final intermediate punishment violation hearing of his right to appeal. However, this error has not prejudiced Lyons.

Lyons was sentenced on December 6, 2006. Lyons filed his notice of appeal from that sentencing order on January 5, 2007. Lyons filed the notice of appeal within the thirty day time period. *See*, Pa.R.A.P. 903(a) (notice of appeal must be filled within thirty days after entry of the order appealed from). So despite not being advised of his appeal rights, Lyons was still able to file a timely appeal of the December 6, 2006 sentencing order. As such, the court's failure to advise Lyons at the final intermediate punishment violation hearing of his appeal rights was a harmless error that did not impact upon Lyon's appeal rights.

Accordingly, Lyons's appeal should be denied and the order of December 6, 2006 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Nicole J. Spring, Esquire  
DA  
Judges  
Christian Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)