

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1624-2006
 :
 JOHN MESSERLY, :
 :
 Defendant : 1925(a) OPINION

Date: March 7, 2007

**OPINION IN SUPPORT OF THE ORDER OF JANUARY 5, 2007 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant John Messerly has appealed from this court's January 5, 2007 sentencing order. This court sentenced Messerly to serve two consecutive sentences of three months to seven years at a state correction institution. This sentence resulted in an aggregate sentence of six months to fourteen years. Messerly contends that this sentence is contrary to the plea agreement accepted by the court.

On August 22, 2006, a criminal complaint was filed charging Messerly with having committed the following crimes: Count 1 Burglary, 18 Pa.C.S.A. § 3502(a); Count 2 Burglary, 18 Pa.C.S.A. § 3502(a); Count 3 Criminal Trespass, 18 Pa.C.S.A. § 3503(a)(1)(i); Count 4 Criminal Trespass, 18 Pa.C.S.A. § 3503(a)(1)(i); Count 5 Theft by Unlawful Taking or Disposition, 18 Pa.C.S.A. § 3921(a); Count 6 Theft by Unlawful Taking or Disposition, 18 Pa.C.S.A. § 3921(a); Count 7 Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a); Count 8 Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a); Count 9 Criminal Mischief, 18 Pa.C.S.A. § 3304(a); Count 10 Obstructing Administration of Law or other Governmental Function, 18

Pa.C.S.A. § 5101; and Count 11 Tampering with or Fabricating Physical Evidence, 18 Pa.C.S.A. § 4910.

On October 23, 2006, Messerly entered a plea of guilty to Counts 3 through 11. The plea agreement Messerly had entered into called for him to enter a plea of guilty to Counts 3 through 11. Per the agreement, Messerly would receive a minimum sentence at the bottom end of the standard range. The sentences for Counts 3 and 4 would run consecutive to each other, while the sentences for Counts 5 through 11 would run concurrently. The remaining charges would be dismissed.

On January 5, 2007, this court sentenced Messerly. As to Count 3, the court sentenced Messerly to confinement at a state correctional institution for a minimum term of three months and a maximum term of seven years. Messerly was also sentenced to pay a fine of \$1,000. As to Count 4, the court sentenced Messerly to confinement at a state correctional institution for a minimum term of three months and a maximum term of seven years. Messerly was also sentenced to pay a fine of \$1,000. The sentences for Counts 3 and 4 were made to run consecutive to each other. As to Counts 5 through 11, the court entered an adjudication of guilt without further penalty. The resulting aggregate sentence was incarceration at a state correctional institution for a minimum of six months and a maximum of fourteen years.

On January 30, 2007, Messerly filed his Notice of Appeal from this court's January 5, 2007 sentencing order. On February 5, 2007, this court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Messerly to file a concise statement of matters complained of on appeal within fourteen days of the order. On February 16, 2006, Messerly filed his concise statement of matters.

In the concise statement of matters, Messerly asserts the following issue on appeal:

The Defendant submits that the court abused its discretion in imposing a sentence on January 5, 2007 of 3 months to 7 years to each charge of Criminal Trespass for a total sentence of 6 months to fourteen years, as the Court indicated that Defendant was being sentenced in accordance with the plea agreement of Bottom End of Standard Range, which calls for a minimum sentence of incarceration of 3 months on each charge of Criminal Trespass for a total sentence of 6 months minimum incarceration.

Messerly's Concise Statement of Matters Complained of on Appeal.

Contrary to his assertion, the court did sentence Messerly in accordance with the terms of the plea agreement. The plea agreement called for Messerly to receive a sentence for the criminal trespass counts at the bottom end of the standard range. As alleged, the criminal trespass offenses were third degree felonies, and carried a maximum sentence of seven years each. The offense gravity score for each criminal trespass offense was a three, and Messerly's prior record score was a five. This put Messerly's minimum sentence for the criminal trespass counts in the range of six to sixteen months with an aggravated or mitigated range of plus or minus three months.

The court gave Messerly a sentence in the bottom end of the standard range for each of the criminal trespass counts. As to Count 3, the court sentenced Messerly to confinement at a state correctional institution for a minimum term of three months and a maximum term of seven years. As to Count 4, the court sentenced Messerly to confinement at a state correctional institution for a minimum term of three months and a maximum term of seven years. Per the terms of the plea agreement, the sentences as to Counts 3 and 4 were made to run consecutively. As such, the resulting aggregate sentence of six months to fourteen years incarceration is in accordance with the terms of the plea agreement.

Accordingly, Messerly's appeal should be denied and the order of January 5, 2007 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Robert Cronin, Esquire
DA (KO)
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)