

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-464-2000 (00-10,464)  
: vs. : CRIMINAL DIVISION  
: :  
: :  
LAMAR MORTON, :  
Defendant : 1925(a) Opinion

**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 entered on or about October 25, 2005, which revoked Appellant's probation and sentenced him to six months to three years incarceration in a state correctional institution. The relevant facts follow.

On or about August 17, 2000, Appellant pleaded guilty to possession with intent to deliver a controlled substance (PWID) and criminal conspiracy, both ungraded felonies with a maximum penalty of 10 years incarceration. The Court sentenced Appellant to undergo incarceration in a state correctional institution for 26 to 60 months on the PWID and imposed 7 years probation for criminal conspiracy consecutive to the PWID.

Appellant was paroled on or about March 2, 2004. Some of the conditions of Appellant's parole were that he report to his parole officer on the second Monday of each month and he could not change his residence without written permission. Appellant failed to report in February 2005. His parole officer made several attempts to locate Appellant, including making phone calls to his mother, his sister, and his girlfriend.<sup>1</sup> The parole officer

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<sup>1</sup> Appellant's mother indicated to the parole officer that Appellant was residing with his girlfriend.

left a message with Appellant's girlfriend to have Appellant contact him. When no response was forthcoming, the parole officer declared him delinquent retroactive to February 14, 2005, the day he was supposed to report.

On or about September 6, 2005, Philadelphia police observed individuals shooting dice. One of the individuals at the dice game was Appellant. The police realized there was a warrant for Appellant's arrest for absconding from supervision, so they took him into custody. The Parole Board made Appellant serve the remainder of his PWID sentence.<sup>2</sup> Thereafter, Appellant was transported to Lycoming County for a probation violation hearing.

On October 25, 2005, the Court held a probation violation hearing and re-sentenced Appellant on his criminal conspiracy conviction to 6 months to 3 years incarceration in a state correctional institution, which was substantially below the standard minimum guideline range of 21-27 months and considerably less than his previously imposed maximum sentence of 7 years.

On June 26, 2006, Appellant filed a pro se Post Conviction Relief Act (PCRA) petition. In his petition, Appellant raised three issues: (1) the court revoked probation and imposed total confinement in violation of 42 Pa.C.S. §9771(c); (2) the court failed to consider relevant sentencing factors as required by the Pennsylvania Sentencing Code, 42 Pa.C.S. §9721(b); and (3) trial counsel rendered ineffective assistance of counsel in failing to present and appeal these errors in sentencing.

With the agreement of the prosecutor, the Court reinstated Appellant's right to appeal from his probation violation re-sentencing in an Order entered on February 8, 2007. Appellant filed a notice of appeal on February 16, 2007. The Court ordered Appellant to file

a concise statement of matters complained of on appeal. Appellant filed such a statement on March 6, 2007.

The first issue raised by Appellant is that the Court revoked probation and imposed total confinement in violation of 42 Pa.C.S. §9771(c). The Court cannot agree. Section 9771 (c) states: “The court shall not impose a sentence of total confinement upon revocation unless it finds that: (1) the defendant has been convicted of another crime; or (2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or (3) such a sentence is essential to vindicate the authority of the court.” In this case, the sentence was necessary to vindicate the authority of the court. Appellant attempted to minimize his conduct by claiming he only failed to report to his parole officer on one occasion. Although Appellant had less than one month left on his parole supervision when he missed his February 2005 appointment, he still had seven years of probation supervision yet to serve. Appellant stopped making his monthly appointments and did not have regular contact with his parole/probation officer for more than seven months. The one thing all sentences of probation in Lycoming County have in common is the requirement that the probationer make periodic reports to his supervising officer, whether in person, by phone, or in writing, as the case may be. Appellant’s failure to have regular contact with his parole/probation officer after his January 2005 appointment and his attitude at the probation violation hearing showed he thought he could do whatever he wanted and he did not have to submit to the Court’s authority to impose conditions on his freedom during his seven year probationary period and demonstrated his unworthiness for continued probation. In fact, Appellant acknowledged that he would need to report to the same officer

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<sup>2</sup> Appellant only had about 16 days or so left on his parole when he failed to report.

for probation after he was done with his parole. N.T., at p.21. Despite this knowledge, Appellant failed to report to his parole officer for over seven months.

Appellant's remaining issue on appeal is the Court failed to consider relevant sentencing factors as required by the Pennsylvania Sentencing Code, 42 Pa.C.S. 9721(b). This contention lacks merit. Section 9721(b) provides in relevant part: "the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing..." The Court discussed on the record the underlying facts of the conspiracy to deliver controlled substances. N.T., at pp. 9-12. The Court noted Appellant's prior record score was a five. N.T., at p. 12. The Court considered the sentencing guidelines, which suggested a standard range of 21 to 27 months and a mitigated range of 15 to 21 months. N.T., at p. 12. The Court also considered the fact that Appellant regularly reported to his parole officer from approximately March 2004 through January 2005. See, N.T., at 3, 24, 28. Furthermore, the Court noted the typical punishment in Lycoming County for absconding from supervision/failing to report is six months. N.T., at p. 29. The Court balanced the seriousness of the underlying offense, the guidelines for that offense, the nature of the violation, and the typical punishment for such a violation and re-sentenced Appellant to six months to three years incarceration. N.T., at pp. 28-32. While the Court did not think Appellant was worthy of probation any longer, it also did not think Appellant needed as lengthy a sentence as suggested by the sentencing guidelines to vindicate the authority of the Court or for Appellant to "get the message."

DATE: \_\_\_\_\_

By The Court,

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Kenneth D. Brown, P. J.

cc: Kenneth Osokow, Esquire (ADA)  
Paul Petcavage, Esquire  
Lamar Morton, GK-2501  
PO Box 1000, Houtzdale PA 16698-1000  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)