

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 1478 - 2004
	: CR – 150 - 2006
vs.	: CR – 1603 - 2005
	: CR – 577 - 2006
MICHAEL ANDRUS,	: CR – 1477 - 2005
Defendant	:

OPINION IN SUPPORT OF ORDER OF DECEMBER 26, 2006,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Order of December 26, 2006, which sentenced him on three counts of forgery and one count of burglary to four concurrent terms of one to five years incarceration, and on one count of DUI to a concurrent term of ninety days to sixty months incarceration,¹ following his guilty pleas on May 8, 2006, and May 30, 2006.² In his Concise Statement of Matters Complained of on Appeal, Defendant contends the Court erred in its sentence, alleging there was a plea agreement for a sentence of twenty-four months State Intermediate Punishment.

The face page of the written guilty plea colloquy indicates a plea agreement for all concurrent sentences on the forgery counts and the burglary count, for a sentence at the bottom end of the standard range³, and that “12 months is BESR on burglary”. The colloquy also indicates an agreement for a mandatory minimum of ninety days on the DUI. While the assistant district attorney stated that he thought there was “an *offer* for 24 months State I.P., minimum sentence”, N.T. December 26, 2006, at 2 (emphasis added), it was never indicated that there had been an *agreement* for such a sentence, nor that Defendant would have been eligible for such a sentence. Further, when the Court indicated its belief that the correct standard range for the burglary was “a 12 to 18 minimum” and that “everything is to run concurrent to that”, *Id.* at 3, defense counsel responded “[t]hat was the deal with the collective guilty plea on May 8th, it looks like.” *Id.* When the Court told Defendant he was “going to get

1 Although the Order of December 26, 2006, states that the DUI sentence is to run consecutive to the others, such was determined to be an error in transcription, and corrected by Order dated April 3, 2007.

2 Sentencing was originally scheduled for July 5, 2006, but Defendant failed to appear and a bench warrant was issued. He was picked up on that warrant on September 3, 2006, and sentencing was re-scheduled for October 4, 2006. Defendant again failed to appear and another bench warrant was issued. He was picked up on that warrant on December 21, 2006, and because of his failure to twice appear, he was sentenced on the next available date.

state incarceration of 12 months to five years” and that “[e]verything else is going to run concurrently because that’s the deal that you made. All right?”, Defendant did not object, merely stating “I know that” in response to the Court’s additional question: “You know what? You didn’t treat us well.”, referring to his numerous failures to appear. The Court is thus hard-pressed to find that there was an agreement for a twenty-four month State Intermediate Punishment sentence, and thus believes the sentence was in keeping with the plea agreement.

Dated: June 8, 2007

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: DA
Greg Drab, Esq.
Gary L. Weber, Esq.
Hon. Dudley Anderson

³ The colloquy is marked “BE/SR”.