

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : NO. 617-2006  
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 :  
 JAMES BORTZ, :  
 :  
 :  
 Defendant : 1925(a) OPINION

Date: **March 18, 2008**

**OPINION IN SUPPORT OF THE ORDER OF JULY 5, 2006 IN COMPLIANCE WITH  
RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant James Bortz, (hereafter “Bortz”), has appealed this court’s sentencing order of July 5, 2006, arguing that the court erred in rejecting his plea agreement for a county sentence and abused its discretion by imposing a state sentence of 8 months to 10 years. Bortz’s appeal should be denied and the sentencing order affirmed.

**I. BACKGROUND**

On May 8, 2006, Bortz pleaded guilty to Count 1 Statutory Sexual Assault, 18 Pa.C.S.A. § 3122.1, and Count 4 Corruption of Minors, 18 Pa.C.S.A. § 6301(a)(1). Within the guilty plea findings and order, the court ordered a presentence investigation, (“PSI”), be completed by the Adult Probation Officer prior to sentencing.

On July 5, 2006, this court sentenced Bortz under count 1, to a term of confinement at a state correctional institution for a minimum of eight months and a maximum of ten years. As to count 4, Bortz was sentenced to a twenty-four month probation under the supervision of the Pennsylvania Board of Probation and Parole. These sentences were to be served consecutive to

each other and concurrently with a sentence Bortz was serving under another Lycoming County case, Case No. 03-11, 906.

On July 17, 2006, a Notice of Appeal Motion to the Superior Court was filed. On July 31, 2007 this court filed an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Bortz to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the order. On September 1, 2006, this court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(a), acknowledging that counsel had failed to file a concise statement. On October 11, 2006 all documents were transmitted to the Superior Court pending an appeal. On January 5, 2007, the appellate court dismissed Bortz's appeal for counsel's failure to file a brief. The original record for the case was returned to this court on March 20, 2007.

In an order dated January 14, 2008, this court reinstated Bortz's appeal rights through newly appointed counsel in the Public Defender's Office. Counsel for Bortz filed a new Notice of Appeal to the Superior Court on February 7, 2008. On February 8, 2008 this court filed an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Bortz to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the order. On February 12, 2008, counsel filed a concise statement.

In the Concise Statement of Matters, Bortz asserts the following issues on appeal:

- (a) The court erred by rejecting his plea agreement for a county sentence.
- (b) The court abused its discretion when imposing a state sentence of 8 months to 10 years.

## **II. DISCUSSION**

The court disagrees with Bortz's assertions of err on the grounds that the plea agreement allowing for county incarceration did not afford an appropriate sentence under the

facts and circumstances of the case. The court stated on the record its reasons for rejecting the plea agreement. The court noted that the state sentence was more appropriate because (1) the severe gravity of the offenses committed by Bortz; (2) the court's view upon review of a PSI and history of similar sexual offenses, that a term in county prison would do nothing to rehabilitate Bortz but would in all likelihood exacerbate his sexual offender behavior making him a greater threat for re-offense upon his release; and (3) the court's recognition that only state incarceration could provide Bortz with any treatment as a sexual offender. Most importantly, both Bortz and his counsel expressed both Bortz's desire to receive such treatment and his current frustration at not receiving it through his county sentence.

Moreover, the court displayed a reasonable degree of sensitivity to Bortz's needs during sentencing proceedings. First, the court did not wholly disregard the plea agreement, but made an effort to conform the state sentence to the plea bargain. Secondly, Bortz was given the chance by the court at his sentencing to withdraw his guilty plea and have a trial upon the court's rejection of his plea bargain. Bortz understood this choice, refused the court's offer upon consulting with counsel and his mother, and elected to proceed with sentencing. Lastly, the sentence imposed was allowed to run concurrent with the previous sentence being served under case No. 03-11, 906.

Sentencing is a matter vested in the discretion of the trial court and it will not be disturbed absent an abuse of that discretion. *Commonwealth v. Miller*, 2003 PA Super 395, 835 A.2d 377, 380 (Pa. Super. 2003). An abuse of discretion is not merely an error in judgment, but occurs when the record discloses that the sentencing court misapplies or overrides the law, exhibits partiality, bias or ill will, or reaches a conclusion that is manifestly unreasonable. *Commonwealth v. Smith*, 543 Pa. 566, 673 A.2d 893 (1996). “[A]

sentencing court must state on the record its reasons for imposing sentence.” *Id.*; 42 Pa.C.S.A. § 9721(b). “Nevertheless, a lengthy discourse on the trial court’s sentencing philosophy is not required.” *Commonwealth v. McAfee*, 2004 PA Super 143, 849 A.2d 270, 275 (Pa. Super. 2004). Rather, the record as a whole must reflect the court’s reasons and its meaningful consideration of the facts of the crime and the character of the offender. *Commonwealth v. Anderson*, 2003 PA Super 290, 830 A.2d 1013, 1018, 1019 (Pa. Super. 2003).

The seriousness of Bortz’s offenses rendered the plea agreement an inappropriately short sentence and did not afford Bortz with the proper supervision. The plea agreement entered into by Bortz provided that he was to receive a county sentence at the lower end of the standard range for count 1, statutory sexual assault, and a consecutive probation for two years under count 4, corruption of minors. Notes of Testimony, 7/5/2006, pg. 5. The court noted that given Bortz’s current confinement under a previous sentence, the effect of the plea agreement would be to keep him incarcerated in county prison for nine months and add another four years to his already imposed eight years of supervision. *Id.* The court noted that it had “difficulty” with such a sentence given the seriousness of the offense and Bortz’s history of sexually offending children within his own family, which the court viewed as an aggravating circumstance. *Id.*

The court recognized that a term in county prison offered no treatment for sexual offenders and as such would do nothing to rehabilitate him. The sentence imposed by the court was devised after the court consulted the PSI, reviewed past notes and recollections from the case and the guilty plea proceedings, as well as other documents in the file. N.T. 9. The court referenced the PSI on the record and confirmed that Bortz was not currently receiving any treatment in the county system for his sexual offender behaviors. N.T., pg. 6. The court also

confirmed that as long as Bortz remained in the county prison he would not be receiving the necessary treatments. *Id.* It was the court's view that such a lack of treatment would simply "warehouse" Bortz, thereby building his sexual frustrations with a high likelihood of releasing a much more violent and uncontrollable offender into the community. *Id.* Finally, the court considered Bortz's mother's testimony at sentencing, where she explained once more that her son had mild forms of mental disabilities and as such could not comprehend the seriousness of his offenses. N.T. 10. In response the court noted that many sexual offenders exhibit an inability to understand the seriousness of their offenses and therefore treatment of the type offered within the state system, is all the more necessary under this circumstance. *Id.*

At sentencing Bortz agreed with the court's determination that treatment was an indispensable aspect of the sentence. N.T. 9. Counsel even expressed Bortz's lack of access to treatment at the county level and that this had been "a great source of frustration for him." *Id.* Counsel further stated that Bortz "does want to address the underlying problems here." *Id.*

In contrast to the county prison, the court acknowledged that state prison affords sexual offenders programming as well as sexual offender correction houses upon release. N.T. 6. The court viewed that given the high risk to the community Bortz would present if released without any type of treatment, the only "fair" sentence was one of state prison were such treatment was offered within the prison and upon release. *Id.* The court expressed that a state sentence is "the only real long-range hope for our community and its protection from [Bortz] as well as to hold [Bortz] accountable and possibly give [him] rehabilitation..." N.T. 7.

The court did consider Bortz's needs and crafted a sentence with reasonable accommodations for him. In fashioning his minimum sentence, the court made an effort to conform to the previously offered plea agreement of nine months of county incarceration. The

court offered a minimum of eight months in state incarceration, which was noted by the court to be at the lower end of the standard range and about the same amount of time of incarceration. *Id.* This effort on behalf of the court to conform its sentence to the plea agreement in some manner displays a reasonableness of judgment and not an abuse of discretion.

The court gave Bortz the option of refusal to proceed with the sentencing upon the court's rejection of his plea agreement, giving him the option to withdraw his guilty plea and ask for a trial. *Id.* The court requested that Bortz consult with his attorney on the matter. *Id.* Bortz consulted with both his attorney and his mother who was present at the sentencing. *Id.*, 10-11. Bortz informed the court that he wished to proceed with the sentencing regardless of the fact that his plea agreement was not to be accepted. N.T. 8. Upon hearing this, the court informed Bortz of his right to appeal and on what grounds an appeal may be filed. *Id.*

Lastly, the court allowed for the sentence imposed to run concurrent to the sentence currently being served under case No. 03-11, 906. N.T. 11. The court noted that it did not want to stack two sentences one upon the other, but wanted to strike a balance between punishment and the best interest of the community. *Id.* To meet both ends the court determined that a longer supervision period would suffice to show that this sentence was for a separate offense but was a provision which would also serve to protect the community. N.T. 11-12.

These efforts on behalf of the court to craft a sentence sensitive to the particular needs of the Defendant balanced against those of the community, shows the court was reasonable in its sentencing of Bortz and that the sentence was appropriate given the facts and circumstances of the case.

For the foregoing reasons, the court's sentencing order of July 5, 2006 should be affirmed and Bortz's appeal dismissed.

BY THE COURT,

William S. Kieser, Judge

cc: Nicole J. Spring, Esquire  
DA  
Judges  
Rebecca Penn, Esquire (Law Clerk)  
Gary L. Weber, Esquire (Lycoming Reporter)