IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**NO. 310-2008**
	:	
vs.	**:**	
	:	
CAMERON BELLE,	**:**	
Appellant	**:**	**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 judgment of sentence dated March 16, 2009 and its Order denying Appellant's motion to modify sentence. The relevant facts follow.

Appellant was charged with one count of perjury, a felony of the 3rd degree, 18 Pa. C.S.A. §4902(e). The perjury was premised on the allegation that Appellant made two inconsistent statements under oath. The statements pertain to a prior case filed against Appellant, Lycoming County case 846-2004 where Appellant was accused of several deliveries of cocaine and conspiracy.

In case 846-2004 Appellant pleaded guilty on January 10, 2006[1] to two deliveries of cocaine and one count of conspiracy. The plea was entered before the Honorable Dudley Anderson. Pursuant to the plea agreement between the parties, Judge Anderson

[1] Appellant is no stranger to the Lycoming County criminal justice system. He has had many prior criminal cases over the years. He pleaded guilty on this same case, 846-2004, on April 21, 2005. The plea agreement at that time was a 4-20 year sentence. Appellant then filed a Motion to Withdraw the April 2005 plea and this motion was granted by the Court by order of November 7, 2005. The plea on April 21, 2005 was to conspiracy and four counts of delivery. Appellant's guilty plea on January 10, 2006 was his second guilty plea on this case.

sentenced Appellant to a 3-6 year state incarceration sentence and 14 years of consecutive probation. Appellant admitted during the guilty plea hearing on January 10, 2006 that he delivered cocaine on two occasions. *See,* N.T. January 10, 2006, pp. 13, 14.

After Appellant was sentenced on Case 846-2004 to the state correctional system, he filed a Post-Conviction Relief Act petition in December 2006. Judge Anderson scheduled an evidentiary hearing on the petition, which hearing was held on October 8, 2007. Appellant testified under oath at this hearing, and he contended his guilty plea on January 10, 2006 was not knowing or voluntary as his previous counsel had advised him that if he went to trial, his 2005 guilty plea, which he had withdrawn, could be used against him. In an Opinion and Order of November 28, 2007, Judge Anderson granted Appellant's PCRA petition, allowed him to withdraw his guilty plea and vacated his sentence. Appellant, in his testimony before Judge Anderson on October 8, 2007, testified he only admitted committing the crimes of the 2006 guilty plea because his lawyer told him he had to. N.T. October 8, 2007, p. 32. Appellant admitted that he lied to the Court at the 2006 guilty plea. N.T. October 8, 2007, p. 33. Appellant testified at the October 8, 2007 PCRA hearing that he did not commit the alleged crimes. N.T., October 8, 2007, pp. 39, 40.

Based on the inconsistent sworn testimony give by Appellant at the January 10, 2006 guilty plea and his testimony at the October 8, 2007 Post Conviction Relief Act hearing, the Commonwealth charged Appellant with one count of perjury by making inconsistent statements under oath. The perjury charge was filed on January 16, 2008.

On March 16, 2009, Appellant waived his right to a jury trial in the perjury case. He also agreed that the non-jury trial would be a case stated trial where no witnesses would be called and the transcripts would be submitted to the undersigned. *See*, Order, March 16, 2009. Prior to the non-jury trial the Court held a conference with the Commonwealth and defense counsel on March 12, 2009, where defense counsel made an offer to the Court of a proposed defense to the perjury charge. *See,* N.T. Conference in Chambers, March 12, 2009. At this time a jury had been selected for the trial of the pending case.

Counsel for Appellant indicated he planned to argue as a defense to perjury, the defense of ignorance or mistake under 18 Pa. C.S.A. §304. This offer was premised on the fact that prior defense counsel, Charles Brace, mistakenly advised Appellant that his 2005 guilty plea could be used against him as evidence at trial if he went to trial in this case. Appellant offered to testify that he then pleaded guilty on January 10, 2006 because he was in a "no win situation." *See*, N.T. March 12, 2009, pp. 4.-5. In his offer, Appellant further claimed that Attorney Brace then told him that he could not plead guilty without admitting that he committed the crime so he followed Attorney Brace's advice and admitted guilt to the offenses on January 10, 2006. *See*, N.T. March 12, 2009, pp. 6.-7. After hearing this offer, the Court ruled that it did not create a factual basis for an ignorance or mistake defense as permitted by the Pa. Crimes Code, 18 Pa. C.S.A. §304. *See,* N.T. March 12, 2009, pp. 8, 9. The Court found Section 304 did not apply because Appellant was admitting that he lied to the Court at the January 10, 2009 guilty plea, but that he lied to the Court because Appellant's prior attorney told him to do so, so the Court would accept his guilty plea. Appellant also

complained that his attorney's advice was predicated on the mistake that the 2005 guilty plea could be used against him at trial. The Court did not believe this offer of proof stated a defense under Section 304, and the Court noted that if such offer could be a defense, all Appellants charged with perjury in a situation like this would simply defend the case by claiming their attorneys told them to lie to the Court. *See,* N.T. March 12, 2009, pp. 8.-9.

Appellant, after the Court made this ruling on March 12, 2009, waived his right to a jury trial and agreed to a non-jury trial or a case stated basis.

The case stated non-jury trial was held on March 19, 2009 before the Court, and the Court found Appellant guilty of perjury.

With agreement of the Commonwealth and Appellant the Court then immediately proceeded into a sentencing hearing on March 19, 2009. The standard range of the sentencing guidelines for perjury with Appellant's prior record score was 12-18 months. The Court imposed a sentence of 8 months to 3 years in a state correctional institution. The Court notes this sentence was below the mitigated range of the sentencing guidelines. The Court explained the reasons for the sentence including the fact that Appellant waived his right to a jury trial and his recent employment while released on bail. The Court also permitted Appellant to remain free on bail on this case if he appealed this case.

Appellant subsequently entered his third guilty plea on the underlying drug case, No. 846-2004 right before start of jury trial. The guilty plea was entered on May 9, 2009, before the Honorable Nancy Butts. Appellant pleaded guilty to conspiracy, four counts of

delivery of cocaine, four counts of criminal use of communication facility and four counts of possession of drug paraphernalia.

In his matters complained of on appeal, Appellant contends that the Court erred in its March 12, 2009 ruling that his proposed defense of ignorance or mistake could not be offered at trial. Appellant also complains that the Court erred in denying his request to modify his sentence to a county incarceration sentence instead of a state incarceration sentence.[2]

DISCUSSION

Appellant's Proposed Ignorance or Mistake Defense

Section 304 of the Crimes Code sets forth the defense of "Ignorance or Mistake" as follows:

> Ignorance or mistake as to a matter of fact, for which there is reasonable explanation or excuse, is a defense if:
>
> (1) the ignorance or mistake negatives the intent, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or
>
> (2) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

18 Pa.C.S. §304.

The Court does not believe ignorance or mistake was a defense in this case for several reasons. First, counsel's advice about the admissibility of his prior guilty plea as a subsequent trial arguably is a mistake of law, not a mistake of fact. Second, counsel's statement that Appellant had to admit guilt to complete the guilty plea was not mistaken at all; it was accurate. Finally, and most importantly, neither statement negates Defendant's intent

for perjury. The criminal intent required for the offense of perjury by making inconsistent statements, 18 Pa. C.S.A. §4902(E), is knowledge that one of the statements is untrue. Neither the mistaken advice about the admissibility of his prior guilty plea at a subsequent trial nor the statement that Appellant must admit guilt to complete the guilty plea negates Appellant's knowledge that what he said under oath was false.

In light of this, the court does not believe that Appellant's proffer constituted a defense to the perjury charge.

Ironically, Appellant subsequently pleaded guilty (for the third time) to the underlying drug offense in Case 845-2004 on May 9, 2009. It thus appears that Appellant has been simply playing games in his approach to the criminal justice system.

In regard to sentencing, the Court sentenced Appellant below the mitigated range of the sentencing guidelines when it imposed a minimum sentence of 8 months. It was clearly within the discretion of the Court to sentence Appellant to state incarceration as opposed to county incarceration. Since Appellant received a sentence of state incarceration on the drug offenses in case 845-2004, it made no sense to have Appellant serve his sentence in this case in the county prison. Likewise, the Court had the discretion to impose this sentence concurrently or consecutively to Appellant's state sentence for the underlying drug deliveries. If the perjury sentence would be run concurrent to the underlying drug offense, there would be no real penalty

[2] The Court in an Order of June 29, 2009,also noted that the perjury sentence should be served consecutively to any other sentence Appellant was currently serving.

for Appellant's criminal conduct in this case. Thus, the Court sees no error in the sentence imposed in this case.

By The Court,

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Kenneth D. Brown, President Judge

cc: Mary Kilgus, Esquire ADA
Marc Lovecchio, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)
Work file