

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**DEBORAH MERRILL,
Defendant**

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**No.: 64-2008
CRIMINAL DIVISION**

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

The Defendant appeals this Court's Sentencing Order dated November 13, 2008. No direct appeal was filed. On March 6, 2009, Defendant filed *Pro Se* Petition for Relief under the Post Conviction Relief Act (PCRA). On May 10, 2009, conflicts counsel, Andrea Pulizzi, Esquire was appointed. On May 19, 2009, counsel filed a Turner-Finley letter and a Motion to Withdraw as Counsel. The Court denied counsel's Motion on May 22, 2009 and after review of the record, orally requested counsel file an Amended PCRA Petition. On June 30, 2009, counsel filed a Petition requesting a new trial or the right to file an appeal *nunc pro tunc*. On July 14, 2009, this Court granted Defendant's PCRA Petition, and thus reinstated her appellate rights.

The Court notes the Defendant filed a timely Notice of Appeal on July 31, 2009, and that the Defendant's Concise Statement of Matters Complained of on Appeal was then filed on August 24, 2009. Defendant raises two issues on appeal: (1) that trial counsel was ineffective for failing to file a direct appeal; and (2) trial counsel was ineffective for failing to object to or withdraw the plea agreement when the sentence imposed exceeded the agreement.

Background

On August 15, 2008, the Defendant entered a plea of guilty to Retail Theft. The plea agreement was for a minimum of six (6) to nine (9) months in the Lycoming County Prison. On November 13, 2008, the Defendant was placed under the supervision of the Adult Probation Office of Lycoming County for a period of twenty-four under the Intermediate Punishment Program with the first eight (8) months to be served at the Pre-Release Center.

Discussion

Trial Counsel was ineffective for failing to file a direct appeal

By way of Opinion this Court will rely on its previous Opinion and Order filed on July 14, 2009

Trial Counsel was ineffective for failing to object or withdraw the plea agreement

Defendant alleges that trial counsel was ineffective for failing to object or withdraw the plea agreement when the sentence imposed exceeded the agreement.

When a Defendant is challenging the discretionary aspects of his sentence, there is no absolute right to appeal the sentence imposed. 42 Pa.C.S.A. § 9781(b). The Defendant is required to show there is a substantial question that the sentence imposed is not appropriate under the sentencing code. *Id.* “A bald claim of excessiveness of sentence does not raise substantial question so as to permit review where the sentence is within the statutory limits.”

Commonwealth v. Petaccio, 764 A.2d 582, 587 (Pa. Super. Ct. 2000). See also Commonwealth v. Jones, 613 A.2d 587, 593 (Pa. Super. 1992) (en banc). “In order to establish a substantial question, the appellant must show actions by the sentencing court inconsistent with the

Sentencing Code or contrary to the fundamental norms underlying the sentencing process.” Commonwealth v. Fiascki, 886 A.2d 261, 263 (Pa. Super. Ct. 2005). The trial court's sentence will stand unless there is a manifest abuse of discretion. To demonstrate an abuse of discretion, “the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias, or ill will, or arrived at a manifestly unreasonable decision.” Commonwealth v. Perry, 883 A.2d 599, 602 (Pa. Super. Ct. 2005).

The Court did not abuse its discretion in imposing sentence and believes the Defendant’s allegations do not raise a substantial question that her sentence was inappropriate. The Defendant pled guilty on August 15, 2008, to one count of Retail Theft, a felony of the third degree. The statutory maximum for that offense is 7 years. In fact, the Defendant received 24 months under the Intermediate Punishment Program with the first 8 months to be served at the Pre-Release Center, which does not exceed 7 years. The Defendant also has a prior record. Further, the plea agreement called for a 6 to 9 month sentence in the County Prison. Therefore, the Court’s sentence of 8 months at the Pre-Release center falls within the plea agreement of 6 to 9 months. As the Defendant sets forth no specific claim as to how the Court has abused its discretion, his claim has no merit.

Conclusion

As none of the Defendant's contentions appear to have merit, it is respectfully suggested that this Court's sentencing order be affirmed.

By the Court,

Dated: _____

Nancy L. Butts, Judge

xc: DA (KO)
Andrea Pulizzi, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)