IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-611-2007; CR-613-2007;**
	:	**CR-855-2007; CR-1655-2007**
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
DENNIS MOLINO,	**:**	
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 January 16, 2009. The relevant facts follow.

On October 14, 2008, Appellant entered an open plea agreement in four cases.

In case number 611-2007, Appellant pled guilty to one count of retail theft, a misdemeanor of the first degree, for taking $189.00 worth of merchandise from Lowe's on April 29, 2006.

In case number 1655-2007, Appellant pled guilty to one count of possession of drug paraphernalia, an ungraded misdemeanor. The factual basis for this charge was that Appellant attempted to enter the Lycoming County Courthouse on August 1, 2007, and he had in his possession a glass pipe with steel wool in it that tested positive for cocaine, a spoon with residue that tested positive for opiates, and a syringe.

In case number 613-2007, Appellant pled guilty to 23 counts of forgery, two counts of receiving stolen property, and two counts of theft, arising out of Appellant taking the checkbook of another person without his permission or consent, writing 23 checks to

various entities and receiving approximately $3,278.25 in merchandise or services during the summer of 2006.

In case number 855-2007, Appellant pled guilty to four counts of burglary graded as felonies of the second degree, three counts of conspiracy to commit burglary, four counts of criminal trespass, three counts of conspiracy to commit criminal trespass, one count of theft graded as a felony of the third degree, three counts of theft graded as misdemeanors of the first degree and three counts of conspiracy to commit theft based on the following incidents.

On June 21, 2006, Appellant entered the Deer Xing Inn by crawling through an unlocked window. He disarmed the alarm system by tearing it off the wall and proceeded to steal stereo equipment, beer, cigarettes and money valued in excess of $2,000.

On June 24, 2006, Appellant and a black male known only as "Vee," entered New Shore Acres bar by breaking a window and crawling through it. They took money, a television, a DVD player, and a bottle of Jim Beam whiskey.

On June 25, 2006, Appellant and "Vee" entered the Breeze Inn by prying open a door. They took a cash register, two cases of beer, four bottles of liquor, a television, and money. They then proceeded to the Nippenose Tavern, entered by crawling through a window and took 40 Delmonico steaks, 24 Porterhouse steaks, and 36 pork chops.

Appellant came before the Court for sentencing on January 16, 2009. On each of the four burglary counts in case 855-2007, the Court imposed a consecutive one to two years incarceration in a state correctional institution. The Court also imposed a consecutive six months to two years for conspiracy in that case. In case 613-2007, the Court imposed a one to two year sentence on count 1 forgery consecutive to the sentence imposed in case 855-

2007. The Court ran the rest of the counts in case 613-2007 concurrent to count 1. The Court imposed a concurrent six to twelve months for the retail theft in case 611-2007 and a concurrent four to twelve months for possession of drug paraphernalia in case 1655-2007.

Appellant filed an appeal, claiming the court abused its discretion in imposing sentence. Appellant does not specify how the Court abused its discretion. Nevertheless, the Court cannot agree with Appellant's contention. The imposition of sentence, including the imposition of consecutive rather than concurrent sentences, is vested within the sound discretion of the sentencing court and will not be disturbed absent an abuse of that discretion. 42 Pa.C.S. §9721; ***Commonwealth v. Johnson***, 2008 PA Super 269, 961 A.2d 877, 880 (Pa. Super. 2008); ***Commonwealth v. Booze***, 2008 PA Super 166, 953 A.2d 1263, 1279 (Pa. Super. 2008).

> In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, 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.

Booze, *supra*, quoting ***Commonwealth v. Rodda***, 1999 PA Super 2, 723 A.2d 212 (Pa. Super. 1999).

Appellant had a prior record score of four.[1] The offense gravity scores applicable to Appellant's cases were a five for the burglaries and conspiracy, a four for the

1 Appellant's prior record consisted of the following cases and offenses:
41-CR-1467-2000 – DUI and a consecutive possession of drug paraphernalia;
41-CR-622-2001 – DUI, a consecutive possession of a controlled substance and a consecutive possession of drug paraphernalia;
41-CR-699-2001 – Simple Assault, consecutive to case 1467-2000;
41-CR-1209-2001 – Recklessly endangering another person;
41-CR-1082-202 – Furnishing drug-free urine;
46-CR-1614-2001 (Montgomery County) – possession of a controlled substance;
Orland, Florida – possession of drug paraphernalia.

forgeries, a two for the retail theft, and a one for the possession of drug paraphernalia. The standard range for the burglaries was nine to sixteen months. It was six to sixteen months for the forgeries, restorative sanctions (RS) to six months for retail theft and RS to four months for possession of drug paraphernalia. Each sentence imposed by the Court was within the standard range of the sentencing guidelines. The Court did not think it was appropriate to give Appellant a volume discount. Appellant burglarized four establishments on three separate dates. The victims in case 855-2007 lost their sense of security, especially the owner of New Shore Acres, Michael Caseman, and his family. The television and DVD player taken from New Shore Acres were there for the children to watch while their parents were working. After the burglary, the children were afraid of a bad guy coming in their room and stealing their stuff, and Mr. Caseman's daughter became afraid to go in the ladies rest room at night, because Appellant broke in through a bathroom window. The Court noted that it appeared Appellant was becoming a career criminal and he was a danger to be on the streets. N.T., January 16, 2009, at 19-20. In light of that and the seriousness of the offenses, the Court felt a significant sentence of state incarceration was appropriate, but the Court was not trying to "throw away the key." Id. at 18-21. Therefore, the Court imposed consecutive one to two year sentences for each burglary and one of the forgeries and a consecutive six to twelve months for the conspiracy. The Court ran the numerous remaining counts, including 22 counts of forgery, concurrent.

DATE: _____ By The Court,

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Kenneth D. Brown, P. J.

cc: Henry Mitchell, Esquire (ADA)
Robert Cronin, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)