

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**ANDRE MULLEN,  
Defendant**

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**No.: 385-2008  
CRIMINAL DIVISION  
APPEAL**

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

The Defendant appeals this Court's Order dated February 26, 2009, denying the Defendant's Motion to Reconsider Sentence. The Court notes a Notice of Appeal was timely filed on March 3, 2009 and that the Defendant's Concise Statement of Matters Complained of on Appeal was then filed on March 18, 2009. The Defendant raises one issue on appeal: that the Court abused its discretion in imposing sentence.

***Background***

On October 16, 2008, the Defendant entered into a nolo contendere plea to one count of each of the following: Simple Assault, Resisting Arrest, and Driving Under Suspension (DUS). The Plea Agreement called for a nine (9) month county sentence in exchange for dismissal of the Aggravated Assault against an Officer charge. Defendant was sentenced before this Court January 23, 2009 at which time he received an aggregate sentence of thirty-six (36) months Intermediate Punishment with the first nine (9) months to be served at the Pre-Release Center, and a two hundred (\$200) dollar fine on the DUS. Defendant filed a timely Motion to Reconsider Sentence which was denied by this Court on February 26, 2009.

## *Discussion*

### *The Court abused its discretion in imposing sentence*

Defendant contends in his Statement of Matters Complained of on Appeal that the Court abused its discretion in imposing sentence.

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 his sentence was inappropriate. The Defendant entered into a nolo contendere plea to Simple Assault and Resisting Arrest, both misdemeanors

of the second degree and DUS<sup>1</sup>, a summary offense. The statutory maximums for the Simple Assault and Resisting Arrest offenses are two (2) years. For the Simple Assault and the Resisting Arrest offenses, the Defendant received an aggregate sentence of thirty-six (36) months Intermediate Punishment with the first nine (9) months to be served at the Pre-Release Center. The Plea Agreement called for a total of nine (9) months incarceration at the county prison in exchange for the Commonwealth dropping the Aggravated Assault against an Officer charge. Both Counsel for the Defense and the Commonwealth acknowledged at the time of Sentencing that the Plea Agreement called for a sentence above the guidelines and the Court was informed that was because the Commonwealth agreed to drop the Aggravated Assault charge. Therefore, as the Court sentenced the Defendant according to the Plea Agreement, the Court did not abuse its discretion in imposing sentence. 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)  
PD (RC)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)

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<sup>1</sup> The DUS offense carries a mandatory \$200 fine and therefore, is not at issue.