

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 434-2009
vs. :
 : CRIMINAL DIVISION
 :
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 :
 :
 ARON C. HOYT, :
 Defendant : 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 August 5, 2009 and its Order dated September 24, 2009, which denied Defendant's post sentence motion.

To fully comprehend the issues in this appeal of Defendant's sentence for the offense of default in required appearance, a violation of 18 Pa.C.S. §5124, the Court will need to set forth some background information regarding Defendant's forgery and theft convictions in case numbers 1452-2005, 1509-2005, and 1627-2005.

In case numbers 1452-2005, 1509-2005, and 1627-2005, Defendant was charged with various forgeries, thefts and bad check offenses. Following a non-jury trial, the Court found Defendant guilty of most of the offenses charged. The Court scheduled Defendant's sentencing hearing for October 1, 2008, and in open court gave notice to Defendant of the date and time of his sentencing hearing after it announced its verdict. Defendant failed to appear for sentencing on October 1, 2008, and the Court issued a bench warrant for his arrest. The police arrested Defendant on the bench warrant on January 19,

2009. The Court revoked Defendant's bail and rescheduled his sentencing hearing for February 26, 2009.

At the sentencing hearing on the 2005 cases, the Court discussed Defendant's conviction and the information contained in the pre-sentence investigation, including but not limited to Defendant's age, employment history, his prior criminal history, and the probation officer's comments regarding his supervision history and his manipulation of the system in the 2005 cases. The Court then went over the standard minimum sentencing guideline ranges for the forgeries and thefts, noting the bad check charges would merge for sentencing purposes. Before giving each attorney the opportunity to advocate for the sentence they felt would be appropriate, the Court noted that Defendant was aware of his sentencing date, but he didn't appear and had to be picked up on the bench warrant. Defendant's attorney then argued for concurrent county sentences, and the prosecutor requested consecutive state sentences. During her argument, the prosecutor noted that when Defendant was picked up on the bench warrant, he was charged with resisting arrest and false identification to law enforcement.

The Court imposed sentences that were within the standard range, but ran them consecutive to each other, resulting in an aggregate sentence that required incarceration in a state correctional institution. In explaining its reasons for the sentence, the Court did not mention the fact that Defendant failed to appear for his original sentencing hearing. Instead, the Court noted Defendant's significant pattern of criminal activity, the likelihood of re-offense, Defendant's denial of criminal intent or responsibility and his poor history while

under county supervision.¹

On March 2, 2009, the police charged Defendant with default in required appearance,² a felony of the third degree, arising out of his failure to appear at his sentencing hearing on October 1, 2008 in case numbers 1452-2005, 1509-2005, and 1627-2005.

Defendant pleaded guilty to this charge; it was an open plea.

On August 5, 2009, the Court sentenced Defendant to undergo incarceration in a state correctional institution for six to eighteen months, consecutive to the sentences the Court imposed in the above-listed 2005 case numbers.

Defendant filed an appeal from this sentence.

Defendant initially asserts his sentence was excessive. The Court cannot agree. The offense gravity score for a felony three default in required appearance is four. Defendant had a prior record score of two. Therefore, the standard minimum guideline range in this case was RS-<12. The six month minimum sentence imposed by the Court was in the middle of that guideline range. The statutory maximum for a felony of the third degree is seven years. The maximum sentence imposed by the Court was eighteen months. Although the Court ran this sentence consecutively to Defendant's other sentences, the Court has discretion whether to impose concurrent or consecutive sentences. 42 Pa.C.S. §9721(a); *Commonwealth v. Johnson*, 961 A.2d 877, 880 (Pa.Super. 2008)("the imposition of consecutive rather than concurrent sentences lies within the sound discretion of the sentencing court"). The Court indicated on the record that it imposed a consecutive sentence,

¹ The Court notes that the reasons are set in the sentencing transcript of the 2005 cases (N.T., February 26, 2009, at pp25-26).

² 18 Pa.C.S. §5124.

because it “is important that individuals get the message that there will be consequences when they fail to appear” and a concurrent sentence would not “impart the right message to Mr. Hoyt or anyone else about deterrence.” N.T., August 5, 2009, at pp. 37-38. In light of these facts, the Court believes Defendant’s claim that his sentence was excessive is frivolous.

Defendant also contends he was punished twice for his failure to appear at his sentencing hearing on October 1, 2008. Again, the Court cannot agree. At the sentencing hearing on his 2005 cases, the Court appropriately noted that Defendant failed to appear for his original sentencing date and had to be picked up on a bench warrant. This fact was part of the progression of Defendant’s case and was relevant to sentencing considerations such as the protection of the public and Defendant’s rehabilitative needs. Defendant, however, was not punished for his failure to appear; he was punished for the forgeries, thefts and attempted thefts that he committed against several area banks.

Defendant pleaded guilty to the default in required appearance charge, and the Court had to sentence him. Quite frankly, Defendant is lucky he did not receive more time than he did. Not only did Defendant fail to appear for his sentencing hearing, but there was some indication that he was going to turn himself in and then that didn’t happen. When he came in contact with the police, Defendant lunged out of the vehicle and pushed the officers. The police ultimately had to pepper spray Defendant to subdue him and take him into custody. Throughout his cases, Defendant has neither shown sincere remorse nor truly accepted responsibility for his actions; rather, he has minimized his conduct and fled or attempted to flee from his obligation to appear and be sentenced. The Court indicated on the record at the sentencing hearing that if Defendant gone to trial and been found guilty, the Court would have sentenced in the aggravated range. The Court, however, gave Defendant

some credit for pleading guilty, even though the plea was not entered until the time scheduled for jury selection. N.T., August 5, 2009, at p. 36.

DATE: _____

By The Court,

Kenneth D. Brown, President Judge

cc: A. Melissa Kalaus, Esquire
Jeana Longo, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)