

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

: NO. CR – 1925 – 2006

vs.

KEVIN B. SHUMAN,
Defendant

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OPINION IN SUPPORT OF ORDER OF AUGUST 1, 2007,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Order of August 1, 2007,¹ which imposed sentence for probation violations following his plea of no contest to theft and a sentence of five years probation. In his Concise Statement of Matters Complained of on Appeal, Defendant contends the Court abused its discretion in imposing a sentence which exceeded “the request of the Adult Probation Office”, and which approached the maximum allowable sentence for violations “which were either technical or purely addiction-related.”

Defendant pled no contest to a single count of theft on February 13, 2007, and on April 25, 2007, was sentenced to five years probation. On May 23, 2007, based on Defendant’s admission to having violated the terms of his probation by using cocaine,² it was directed that Defendant be placed on a SCRAM unit for a minimum of ninety days, that he be placed on super-intensive supervision, that he undergo a drug and alcohol evaluation within one week, that he immediately apply for admission into the Drug Court program, and that he perform an additional three hundred hours of community service. In that Order it was noted that “should Mr. Shuman violation (sic) supervision in the future, particularly as it would relate to the unlawful use of drugs or alcohol, that he no doubt will have his probation revoked and be committed to a State Facility.” According to the testimony of Defendant’s probation officer, Jeff Whiteman, Defendant was placed on the SCRAM unit on May 23, 2007, but removed it at some point in July. Although directed to report twice each week, he failed to report after July 6, 2007. A bench warrant was issued for his arrest on July 18, 2007, and he was arrested on

1 Following the filing of a petition under the Post-Conviction Relief Act, Defendant’s direct appeal rights were reinstated by Order dated December 22, 2008.

2 This admission followed a positive reading when Defendant was tested for drug use at the time of his initial reporting.

July 25, 2007. Analysis of the SCRAM unit showed four confirmed consumptions during the period of time in which Defendant failed to report to the probation office. Based on the extent of the violations, Mr. Whiteman recommended a two to four year state prison sentence.

The Court is not aware of any requirement that its sentence not “exceed” the recommendation of the Adult Probation office and will, therefore, address this contention no further. With respect to the contention that Defendant should have received a lesser sentence because the violations were all either technical or addiction-related, the Court believes the sentence appropriate in light of the number of violations, the timing, and Defendant’s complete lack of cooperation.

Dated: March 18, 2009

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: DA
Joel McDermott, Esq.
Gary L. Weber, Esq.
Hon. Dudley Anderson