

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 807-2007
	:	OTN: R 003867-3
	:	
v.	:	
	:	CRIMINAL DIVISION
ERIC GIBBONS,	:	APPEAL
Defendant	:	

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

The Defendant appeals the Order of the Honorable Nancy L. Butts, dated September 30, 2010, which resentenced the Defendant after a final state probation violation. On October 21, 2010, the Defendant filed a Notice of Appeal, and on October 22, 2010, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a Concise Statement of Matters Complained of on Appeal. This Court received the Defendant's Concise Statement of Matters Complained of on Appeal on November 5, 2010. The Defendant raises one issue on appeal: (1) whether sentence imposed at the Defendant's Final State Probation Revocation Hearing was excessive and an abuse of the Trial Court's discretion.

At the time of the Defendant's Final State Probation Violation Hearing on September 30, 2010, the Defendant was resentenced on Count 2 Burglary, a felony of the first degree. The Defendant violated the terms of his probation when he was arrested for Possession of marijuana on May 4, 2010. Once the Defendant was found to have violated the terms of his probation, the Court had the authority to impose the same sentence available at the time of the original sentencing. See Commonwealth v. Ware, 737 A.2d 251 (Pa. Super. 1999). A person convicted of a felony of the first degree may be sentenced for a term fixed by the court to a period of confinement not to exceed twenty (20) years. 18 Pa.C.S. § 1103(1). At the time of the Defendant's Final State Probation Violation Hearing, the Court considered the fact that not only

was the Defendant's arrest for Possession of marijuana a criminal offense, it was also a violation of his probation, as the Defendant was prohibited from possessing controlled substances while on probation. The Court resentenced the Defendant to incarceration in a state correctional institution for an indeterminate period of time, the minimum of which shall be twenty (20) months and the maximum of which shall be forty-eight (48) months and a consecutive period of six (6) years probation under the supervision of the Pennsylvania Board of Probation and Parole. The September 30, 2010 Order also stated that the Court would take no action on Count 3, and ordered and directed that the sentence remain a consecutive five (5) year probationary sentence under the supervision of the Pennsylvania Board of Probation and Parole. In all other respects, the Court's original sentencing Order of August 10, 2007 was to remain in full force and effect.

Taking into account the fact that the Defendant's offense of Possession of marijuana was both a criminal offense and a specific violation of the Defendant's probation, the Court is confident that a condign sentence was imposed. The Court's sentence was within the guidelines prescribed for a felony of the first degree and the Court imposed a sentence which was available to the Court at the time of the original sentencing. Therefore, the Court fails to see how the sentence imposed at the Defendant's Final State Probation Revocation Hearing was excessive or an abuse of the Trial Court's discretion.

Conclusion

As the Defendant's argument is without merit, it is respectfully suggested that this Court's Sentencing Order of September 30, 2010, be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Nicole Spring, Esq.
Amanda B. Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)