

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	Nos. 599-2005; 929-2006; 1332-2006
	:	CRIMINAL DIVISION
ALEC CAJKA,	:	APPEAL
Defendant	:	

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

The Defendant appeals the Honorable William S. Kieser’s Order dated July 17, 2007. On January 8, 2010, this Court granted the Defendant’s PCRA Petition, thereby reinstating his appellate rights, *nunc pro tunc*. The Court notes a Notice of Appeal was timely filed on February 3, 2010, and that the Defendant’s Concise Statement of Matters Complained of on Appeal was then filed on February 15, 2009. Defendant asserts two issues on appeal: (1) The trial court abused its discretion by sentencing Defendant to 6 months to 5 years on the probation violation where the trial court failed to give meaningful consideration to, inter alia, Defendant’s age, mental health history, and overall lack of substantive criminal history; and (2) the trial court abused its discretion by permitting the Lycoming County Adult Probation Office to engage in improper legal advocacy. The first issue raised by Defendant was addressed in the Honorable William S. Kieser’s Opinion dated October 18, 2007, and the Court will rely on that opinion for purposes of this appeal. This opinion addresses the remaining issue.

The trial court abused its discretion by permitting the Lycoming County Adult Probation Office to engage in improper legal advocacy

Defendant contends in his Statement of Matters Complained of on Appeal that the trial court abused its discretion by permitting the Lycoming County Adult Probation Office to engage in improper legal advocacy.

At the Sentencing and Parole Violation Hearing held on July 16, 2007, Lycoming County Probation Officer, Scott Metzger, briefed the court of the circumstances surrounding the Defendant's parole violation. Defendant did not raise any objection to Agent Metzger's statements at the time of the hearing. Alternatively, the Defendant agreed with Agent Metzger's account of the Defendant's parole violation. Transcripts of Proceedings of the Sentencing and Parole Violation from July 16, 2007 reveal the following:

SCOTT METZGER: Your Honor, with regards to the Defendant, he had failed to report to our office on November 30th of '06 and December the 7th of '06. He was verbally directed by the phone to report on December the 7th. He failed to do so, and then the simple assault conviction also happened while he was on supervision. His history is that he was previously a bench warrant. After being on supervision for about two months, he absconded. He did a setback on that sentence.

COURT: When was that?

SCOTT METZGER: That was in the first part of '06. He received a setback in the county prison on that, Your Honor. He was out on the streets for about three weeks when this happened. So it was a very short period of time. Also to note to the Court, he's on supervision for an offense where if the Court would review the official version on the corruption charge, he was shooting at two joggers on the bike path.

COURT: All right. Now, Mr. Cajka, do you understand why it's alleged that you were in violation of your supervision? One is, of course, the commission of a new offense while under supervision, and two is your failure to report to the Adult Probation Office in compliance with your supervision conditions.

DEFENDANT: Yes

COURT: Do you want to make an admission that those allegations are true, or do you wish to have a hearing?

DEFENDANT: They're true

Officer Metzger then offered a specific recommendation to the court regarding the appropriate sentence for the Defendant. While the court does not look favorably upon the probation office making sentencing recommendations, this does not mean they are prohibited from doing so.

Commonwealth v. Moore 583 A.2d 1, (1990 Pa. Super.) The court's primary concern is to ensure that the trial judge is the final arbiter of the sentence. Id. at 5. The trial judge can consider the probation office recommendation as one of many factors in sentencing a defendant and still retain his or her sentencing responsibility. Id. at 7.

It is clear from the transcript that Judge Kieser took into account a number of factors before sentencing the Defendant.

COURT: Well, as I have viewed the matter in the case, Mr. Cajka, I don't question the district attorneys contentions and reasons for offering the plea agreement that was offered; but as I look at the overall situation of your case, I cannot in good conscience go forward with that plea agreement which would call for probation given the repetitive nature of the offenses and given the fact that you were on supervision when this occurred and also the history of other cases that you have here in the county let alone the fact that you discharged a weapon, a BB gun, which in some circumstances could very well be considered to be a deadly weapon under our law. Now, as far as this goes, it is my intent to give you credit for the time that is served. As I look at the overall situation, what I'm looking at is the need for you to have a significant time of supervision after you are released from prison. My view of the matter to try and put this in the best possible light for yourself and looking at the fact that you've been in prison as pointed out by counsel some eight months now, it's my intent to impose a state sentence under the corrupting charge as indicated by Mr. Metzger.

The record clearly shows that Judge Kieser looked at the Defendant's entire situation and considered Agent Metzger's recommendation as only one of many factors when he sentenced the Defendant. As Judge Kieser remained the final arbiter of the Defendant's sentence, there was nothing improper about Agent Metzger's recommendation. Therefore, the trial court did

not abuse its discretion by permitting the Lycoming County Adult Probation Office to engage in improper legal advocacy. As the Defendant sets forth no specific claim as to how the Lycoming County Adult Probation Office engaged in improper legal advocacy, his claim has no merit.

Conclusion

As none of the Defendant's contentions appear to have merit, it is respectfully suggested that the Defendant's sentence be affirmed.

By the Court,

Dated: _____

Nancy L. Butts, P.J.

xc: DA Ken Osokow, Esq.
Edward J. Rymysza, Esq.
Hon. Nancy L. Butts
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)