IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CP-41-CR-204-2009**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
GERALD JORDAN,	**:**	
Appellant	**:**	**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 December 1, 2009 and its order dated December 16, 2009, which denied Appellant's motion for reconsideration of sentence. The relevant facts follow.

On or about January 30, 2009, Appellant was arrested on charges of indecent assault without consent, indecent assault of the child less than 13 years old, unlawful contact or communication with a minor, and endangering the welfare of children. These charges arose out of an incident where the victim, M.V., and her younger sister, A.V., were staying overnight at Appellant and his wife's home sometime in 2004. M.V., who was between seven and eight years old at the time of the incident, suffers from Rett's syndrome, a severe genetic disorder that renders her utterly helpless. She cannot speak, walk or take care of her own basic needs. On the night in question, A.V. heard M.V.'s bed rail go down then M.V. screamed. A.V., who was in the same room, observed M.V. lying on her stomach and Appellant lying on top of her. A.V. went and got Appellant's wife, who came into the room and yelled at Appellant. A.V. saw Appellant's privates come out of M.V.'s butt when he got

up. When Appellant's wife was interviewed by the police, she told them she saw Appellant, in his white boxer shorts with his hard penis sticking out, standing over M.V. holding her arms down on her back. Appellant told his wife he was holding M.V. down because she was biting him while he was trying to change her diaper; however, he ultimately admitted to the police that he rubbed his penis against M.V.'s buttocks when he was changing her diaper.

On July 28, 2009, Appellant pleaded guilty to indecent assault of a child less than 13 years old and endangering the welfare of a child, both misdemeanors of the first degree, in exchange for a standard range sentence on the indecent assault and consecutive probation for endangering the welfare of a child.

Appellant came before the Court for sentencing on December 1, 2009. The Court sentenced Appellant to undergo incarceration in a state correctional institution for 10 months to five years for indecent assault and a consecutive five-year term of probation for endangering the welfare of a child. Appellant filed a motion for reconsideration of sentence asking that he be permitted to serve his sentence in the Lycoming County Prison, instead of a state correctional institution. On December 16, 2009, the Court denied Appellant's motion for reconsideration of sentence.

Appellant filed a timely notice of appeal. The sole issue raised in this appeal is whether the sentence of 10 months to five years incarceration in a state correctional institution was excessive or an abuse of discretion. The Court concludes it was not. The sentence imposed complied with the plea agreement. Appellant had a prior record score of one. The offense gravity score for both offenses was five. Therefore, the standard minimum guideline range was one to twelve months. The Court imposed a minimum sentence of ten months, which was within the standard range.

The maximum sentence for a misdemeanor of the first degree is five years. 18 Pa.C.S. §1104. The Court's sentence did not exceed the statutory maximum. Although he was not charged criminally, Appellant had sexually abused his own young son and daughter and his parental rights were terminated as a result. This information was revealed during the Megan's Law hearing, at which the Court found Appellant to be a sexually violent predator. Given Appellant's propensity for sexually abusing small children, the Court believed Appellant needed to be under supervision for as long as possible. With a maximum sentence of five years, the Court was required to commit Appellant to a state correctional institution. 42 Pa.C.S. §9762(a)(1).

At the argument on Appellant's motion for reconsideration, his counsel argued that the Court could split the sentence to achieve maximum supervision while keeping Appellant at the Lycoming County prison. The Court found this option was not the best one for the protection of society or Appellant's rehabilitation needs. In its Order denying reconsideration, the Court noted Appellant was in the Mental Health Court Program for a previous offense. While the conduct in this case occurred before Appellant was in that program, the Court did not see a benefit to having Appellant in a program, which he had already gone through. The Court also believed the state correctional system was better suited to deal with a sexual offender such as Appellant, in that it could be more specialized in placing Appellant in sexual offender programs. The Court finds this was an appropriate consideration given the nature and circumstances of the crime and Appellant's limitations and needs. See ***Commonwealth v. Stalnaker***, 376 Pa. Super. 181, 545 A.2d 886, 889-90 (1988)(trial court did not abuse its discretion in sentencing the defendant to state correctional institution when the court appropriately considered the educational and vocational programs

that would be available to the defendant in state correctional facility).

For the foregoing reasons, the Court does not believe it abused its discretion is sentencing Appellant to a state correctional institution.

DATE: _____ By The Court,

_____
Kenneth D. Brown, Senior Judge

cc: Paul Petcavage, Esquire (ADA)
Public Defender's Office
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)