IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	**:**	
	:	
v.	**:**	**No. 1892-2007**
	:	**CRIMINAL DIVISION**
PATRICIA REIMAN,	**:**	
Defendant	**:**	**PCRA**

OPINION AND ORDER

On October 22, 2010, Defense Counsel filed a Post Conviction Relief Act (PCRA) Petition. Following a Court Conference on this matter and the preparation of the relevant transcripts, Defense Counsel informed the Court they do not wish to file an Amended PCRA Petition. Therefore, this Opinion will address the merits of the issues raised in the Defendant's initial Petition.

Factual background

Following a non-jury trial before the this Court on September 4, 2009, the Court found the Defendant guilty of Count 2 Solicitation to Commit Aggravated Assault, Count 3 Possession of a Controlled Substance, Count 4 Possession with Intent to Deliver, Count 6 Aggravated Assault-Attempt to commit serious bodily injury[1], Count 7 Recklessly Endangering Another Person, Count 8 Simple Assault-Attempt to commit bodily injury[2], Count 9 Conspiracy to

[1] The Court's verdict of guilt dated September 4, 2009, lists Count 6 as Attempt to Commit Aggravated Assault: although this language is confusing, the Order amending the Criminal Information dated February 23, 2009 clearly lists Count 6 simply as Aggravated Assault, and the Court's Sentencing Order of April 1, 2010 correctly states Count 6 Aggravated Assault attempt to commit serious bodily injury.

[2] The Court's verdict of guilt dated September 4, 2009, lists Count 8 as Attempt to Commit Simple Assault and the Court's Sentencing Order of April 1, 2010 lists Count 8 as Attempted Simple Assault: although this verbiage is confusing, the Order amending the Criminal Information dated February 23, 2009 correctly lists Count 8 merely as Simple Assault.

Commit Aggravated Assault, Count 10 Conspiracy to Commit Recklessly Endangering Another Person, Count 11 Conspiracy to Commit Simple Assault. On April 1, 2010, the Court sentenced the Defendant on Count 2 Solicitation to Commit Aggravated Assault to 24 months county intermediate punishment with the first 12 months to be served at the Pre-Release Center, and on Count 4 Possession With Intent to Deliver a Controlled Substance to 12 months intermediate punishment with the first 5 months to be served at the Pre-Release Center consecutive to the sentence imposed under Count 2. The Court found that Count 3, Possession of a Controlled Substance, merged for purposes of sentencing. On Count 6 Aggravated Assault attempt to commit serious bodily injury the Defendant was sentenced to five years probation consecutive to the sentences imposed on Counts 2 and 4, on Count 7 Recklessly Endangering Another Person and Count 8 Simple Assault attempt to commit bodily injury, the Defendant was sentenced on each to 12 months county intermediate punishment with one month to be served at the Pre-Release Center on each offense, said sentences to run concurrent to one another and concurrent to the sentence already imposed, and on Counts 9, 10 and 11, the Court found the Defendant guilty without further punishment.

In her PCRA Petition, the Defendant raises several issues relating to the legality of the sentence imposed against her: 1) the sentence on Count 6 Attempt to Commit Aggravated Assault is illegal because the offense merges with Count 2 Solicitation to Commit Aggravated Assault; 2) the sentence imposed on Count 8 Attempt to Commit Simple Assault, Count 9 Conspiracy to Commit Aggravated Assault, Count 10 Conspiracy to Commit Recklessly Endangering Another Person, and Count 11 Conspiracy to Commit Simple Assault are also illegal as these inchoate offense were designed to culminate in the commission of the same crime as the offense contained in Count 2 Solicitation to Commit Aggravated Assault; 3) the sentences

imposed on Count 2 Solicitation to Commit Aggravated Assault and Count 4 Possession with Intent to Deliver are also illegal as they amount to an aggregate sentence of 36 months county intermediate punishment with the first 17 months to be served at the Pre-Release Center.

As the first two issues raised both relate to 18 Pa.C.S. §906, the Court will discuss them jointly.

Discussion

Does 18 Pa.C.S. §906 bar the sentences imposed for Counts 6, 8, 9, 10, 11

The Defendant contends that the sentences imposed for Counts 6, 8, 9, 10, and 11 are illegal as all of these offenses were designed to culminate in the same crime as that charged under Count 2 Solicitation to Commit Aggravated Assault. The Defendant bases her argument on 18 Pa.C.S. §906 as said statute provides that "a person may not be convicted of more than one of the inchoate crimes of criminal attempt, criminal solicitation or criminal conspiracy for conduct designed to commit or to culminate in the commission of the same crime."

The Court finds that the offenses charged under neither Count 6 Aggravated Assault attempt to commit serious bodily injury nor Count 8 Simple Assault attempt to commit bodily injury, are inchoate offenses; the Defendant inaccurately states the name of the counts for which she was found guilty. A person commits the offense of 18 Pa.C.S. §2702 Aggravated Assault if that person "attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." In establishing an aggravated assault charge, the Commonwealth must only show that the defendant attempted to cause serious bodily injury, not that serious bodily injury actually occurred. Commonwealth v. Galindes, 786 A.2d 1004, 1011 (Pa. Super. 2001)

(See Commonwealth v. Elrod, 572 A.2d 1229, 1231 (Pa. Super. 1990). A person commits the offense of 18 Pa.C.S. §2701 Simple Assault if that person "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." Similarly, in establishing simple assault, the Commonwealth must only show that the defendant attempted to cause bodily injury, not that bodily injury actually occurred. Commonwealth v. Repko, 817 A.2d 549 (Pa. Super. 2003). The Court notes that during the hearing on the Defendant's Motion to Dismiss/Sentencing Hearing on April 1, 2010, before proceeding to the Sentencing portion of the hearing, the Defense and the Commonwealth argued as to whether or not Counts 6 and 8 were inchoate offenses. The Court clarified that Counts 6 and 8 were not inchoate offenses:

> THE COURT: Mr. Campana, according to my order of February 23rd of 2009, this was based upon the hearing on the Commonwealth's motion to amend the information and based upon the agreement of the parties….count six, aggravated assault. It does not say attempt criminal attempted aggravated assault….Count eight says simple assault, it doesn't say attempt or solicitation.

N.T., 4/1/10. p. 61-62. As the attempt element is included within the statutory definition of each offense, it is not required that a defendant be charged with Criminal Attempt as provided within the inchoate crime of 18 Pa.C.S. §901; therefore, the Court finds the Defendant's argument that the sentence imposed was illegal pursuant to 18 Pa.C.S. §906 to be without merit. Furthermore, as the Defendant was found guilty without further penalty under Counts 9, 10 and 11, the Court cannot find that the imposition of sentence under these Counts was illegal, as no additional sentence was actually imposed

The sentences imposed for Count 2 and Count 4 illegal as they amount to an aggregate sentence of 36 months county intermediate punishment with the first 17 months to be served at the Pre-Release Center

The Defendant contends that the sentence imposed under Count 2 and Count 4 is illegal as it amounts to an aggregate sentence of 36 months county intermediate punishment with the first 17 months to be served at the Pre-Release Center. The Defendant bases her argument on 42 Pa.C.S. §9755(h) Sentence of partial confinement combined with sentence of county intermediate punishment, which states:

> The court may impose a sentence of partial confinement without parole under this subsection only when:
> (1) the period of partial confinement is followed immediately by a sentence imposed pursuant to section 9763 (relating to sentence of county intermediate punishment) in which case the sentence of partial confinement shall specify the number of days of partial confinement to be served; and
> (2) the maximum sentence of partial confinement imposed on one or more indictments to run consecutively or concurrently total 90 days or less.

As the period of confinement imposed against the Defendant totals more than 90 days, the Defendant contends that the sentence imposed is illegal.

As noted above, the Defendant was sentenced on Count 2 Solicitation to Commit Aggravated Assault to 24 months county intermediate punishment with the first 12 months to be served at the Pre-Release Center and on Count 4 Possession With Intent to Deliver to 12 months intermediate punishment with the first 5 months to be served at the Pre-Release Center consecutive to the sentence imposed under Count 2. However, the Court finds that the Defendant was not in fact sentenced to a period of partial confinement, but was sentenced to serve a period of intermediate punishment, which is one of the six sentencing alternatives set forth in 42 Pa.C.S. §9721(a). See Commonwealth v. Pinko, Jr, 811 A.2d 576 (Pa.Super.2002)

where the Superior Court found that a sentence 60 months of intermediate punishment, all restrictive at the Dauphin County Work Release Center or, if appropriate, to inpatient treatment, was not a sentence of partial confinement, but was in fact a sentence of intermediate punishment, a sentencing alternative under 42 Pa.C.S. §9721(a). As the Court finds that the sentence imposed against the Defendant was not a sentence of partial confinement, the Court finds that 42 Pa.C.S. §9755(h) is not applicable to the sentence and the Defendant's argument is therefore without merit.

The Court notes that the Defendant also requests credit for time served in the Lycoming County Prison for a period of 34 days prior to be released on the intensive supervised bail program; an Amended Sentencing Order was previously issued on May 12, 2010 crediting the Defendant for time served from October 16, 2007 to November 14, 2007.

ORDER

AND NOW, this ____ day of November, 2011, upon consideration of the Defendant's Petition for Post Conviction Collateral Relief, it is ORDERED and DIRECTED that the Petition is DENIED.

As to the portion of the Petition denied, the Defendant and her attorney are hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907 (1), that it is the intention of the Court to dismiss the remainder of the PCRA petition unless she files an objection to that dismissal within twenty (20) days of today's date.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter T. Campana, Esq.