

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	
	:	<b>No. 661-2010</b>
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>DANIEL STANTON,</b>	:	<b>APPEAL</b>
<b>Defendant</b>	:	

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

The Defendant appeals the Sentencing Order of the Honorable Nancy L. Butts dated April 5, 2011. The Court notes a Notice of Appeal was timely filed on May 5, 2011 and that the Defendant's Concise Statement of Matters Complained of on Appeal was filed on May 10, 2011. The Defendant raises several issues on appeal: (1) the Court abused its discretion by imposing an unreasonable and excessive sentence inconsistent with the fundamental norms of the sentencing process; 2) sentencing Court erred by sentencing the Defendant in the aggravated range due to his prior record score as that factor was already taken into account by the sentencing guidelines; 3) the Court erred in its finding of the Defendant's prior record score by relying solely on the Commonwealth's unsubstantiated assertions of a prior record; and 4) the Defendant was subject to an illegal sentence because he was made ineligible for recidivism risk reduction incentive.

***Background***

October 24, 2009, Daniel Stanton (Defendant) acted as a middle man, or "hook", in the purchase of cocaine. The Defendant used a white male's (buyer) cell phone and called Steve Sanford (seller) to arrange the transaction. The Defendant then rode with the buyer to the 600

block of Lycoming Street in Williamsport, PA, where the transaction was supposed to take place. When the seller arrived with the cocaine, he did not bring enough cocaine for what was ordered. During the course of the drug transaction, the buyer was shot and sustained a single gunshot wound to the chest.

On January 11, 2011, the Defendant pled guilty to one count of Criminal Use of a Communication Facility under 18 Pa.C.S. § 7512, and one count of Conspiracy to Deliver a Controlled Substance under 18 Pa.C.S. § 903. The Defendant was subsequently sentenced on April 5, 2011, to 21 to 42 months on the Criminal Use of a Communication Facility charge, with a consecutive 42 months of supervision with the Pennsylvania Board of Probation and Parole, and 30 to 60 months on the Conspiracy to Deliver a Controlled Substance with a 5 year period of probation. The Defendant's aggregate sentence was 51 to 102 months incarceration with a consecutive 102 month period of probation.

### ***Discussion***

#### ***The Court abused its discretion by imposing an unreasonable and excessive sentence inconsistent with the fundamental norms of the sentencing process***

The Defendant claims that the sentence imposed against him was unreasonable and excessive and inconsistent with the fundamental norms of the sentencing process. As the Defendant's appellate claims are all closely related, and as the second, third, and fourth claims seem to describe how the sentence was unreasonable and excessive, the Court will analyze the claims together. 42 Pa. C. S. A. § 9781(b) provides:

The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this chapter.

A Defendant has no absolute right to challenge the discretionary aspects of his sentence. Commonwealth v. Petaccio, 764 A.2d 582, 586 (Pa. Super. 2000) (See Commonwealth v. Hoag, 665 A.2d 1212 (Pa. Super. 1995)). It is well settled that sentencing is a matter vested in the sound discretion of the sentencing judge. See Commonwealth v. Paul, 925 A.2d 825, 829 (Pa. Super. 1997) (Quoting Commonwealth v. Kenner, 784 A.2d 808, 810 (Pa. Super. 2001)). The decision of the sentencing court will be reversed only if the sentencing court abused its discretion or committed an error of law. See Paul (Quoting Kenner). “An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will.” See Paul (Quoting Kenner). Furthermore, a claim that a sentence is manifestly excessive does not raise a substantial question on appellate review when the sentence was within the statutory guidelines. See Commonwealth v. Jones, 613 A.2d 587 (Pa. Super. 1992).

At the Defendant’s sentencing hearing, the Court discussed the Defendant’s prior record in detail with both the Commonwealth and Defense Counsel, taking into account both parties’ arguments and the pre-sentence investigation report provided. The Affidavit of Probable Cause in this case indicates that the Defendant has at least four prior felony convictions from New Jersey, including charges for Burglary and Robbery, and the Defendant acknowledged the Affidavit as true and accurate. The Defendant has a substantial prior record dating back to the 1970’s and continuing to approximately 1996. After maxing out on a sentence in New Jersey in 1999, the Defendant moved to Williamsport and remained conviction free for approximately fifteen years until his most recent offense. Notwithstanding this conviction free period of time, many of the offenses for which the Defendant was previously convicted were felonies, as

previously indicated, raising his prior record score substantially. However, the exact score of the Defendant's prior record was in dispute at the time of sentencing. Although the prior record score was thought to be a five (5) at the time of the Defendant's guilty plea, the Commonwealth now believed that based on the Defendant's history and the relevant records available, the Defendant was in fact a repeat felony offender. The Defendant disagreed and argued that several of the felony offenses on which the Commonwealth based its assessment were ultimately downgraded to lesser charges, or were the equivalent of a lesser Pennsylvania offense. The Commonwealth counter-argued that even taking the Defendant's contentions into account and viewing several of the offenses as felony twos instead of felony ones, the Defendant's prior record was still a repeat felony offender.<sup>1</sup>

However, since the details surrounding the Defendant's previous convictions in New Jersey were not available to the Court due to the age of the offenses, the Court chose "[t]he path of least resistance..." and sentenced the Defendant as a prior record score of five (5), which was still an appropriate score given the Defendant's lengthy conviction history. Given the prior record of five, and as the Conspiracy charge had an offense gravity score of six, the standard range was 21 to 27 months and the aggravated range 27 to 33, and as the Criminal Use charge had an offense gravity score of five, the standard range was 12 to 18 months with an aggravated range of 18 to 21 months. The Defendant was then sentenced to 21 to 42 months on the Criminal Use of a Communication Facility charge, with a consecutive 42 months of supervision with the Pennsylvania Board of Probation and Parole, and 30 to 60 months on the Conspiracy to Deliver a Controlled Substance with a 5 year period of probation. The Court sentenced the Defendant in the aggravated range, making the Defendant's maximum sentence twice his

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<sup>1</sup> At the time of sentencing, the Defense Counsel argued that several of the Defendant's offenses could be felony threes instead of either a felony one or two. However, this is the first time Defense Counsel put forth this argument and the Court pointed out that on one of the Robbery offenses, the Defendant was also charged with Possession of Weapon, which would most likely make the Robbery offense a felony one if there was a weapon involved.

minimum, and the Court stated that to the extent the Defendant had time left on the statutory maximum, that would be a consecutive probationary sentence. The Court cited, at both the sentencing hearing and within the Sentencing Order itself, several reasons for sentencing within the aggravated range which included the Defendant's criminal history and prior record score, the fact that the drug transaction resulted in a shooting, and the gravity of that offense and its impact on the victim and the community at large. The Court also found that the fact the Defendant was able to easily facilitate the drug transaction with a simple phone call made it clear to the Court that the Defendant continued to be involved with the drug trade, albeit remaining **conviction** free for a period of time. The Court also discussed the Defendant's eligibility for a Recidivism Risk Reduction Initiative (RRRI) sentence, and found that the Defendant's prior Robbery offense, which was not contested by Defense, would exclude the Defendant from eligibility.

The Defendant's argument that the Court erred by sentencing the Defendant in the aggravated range due to his prior record score, as that factor was already taken into account by the sentencing guidelines, is without merit. The Court erred on the side of caution in finding the Defendant's prior record as a five (5) rather than a repeat felony offender, and cited several reasons for its decision to sentence in the aggravated range, which the Court had discretion to do. Given the fact that the Court gave substantial consideration to the Defendant's prior record score, taking into account arguments from both parties and the information provided in the pre-sentence investigation report, the Court finds the Defendant's argument that the Court erred in determining the Defendant's prior record score by relying solely on the Commonwealth's unsubstantiated assertions of a prior record, to be wholly without merit.

The Court also finds the Defendant's argument that he was subject to an illegal sentence because he was made ineligible for RRRI to be without merit. RRRI was created to act as a

sentence calculated by the trial judge in advance to anticipate a Defendant's early release on good behavior. In order to qualify for a RRRI sentence, the defendant must meet the statutory requirements, which the Defendant here did not do based upon his conviction for Robbery. However, even if the Court incorrectly excludes the Defendant from RRRI eligibility, this has no underlying effect on the defendant's sentence. Therefore, a defendant's sentence may be illegal, but not for any reason related to RRRI. For all of these reasons, the Court finds the argument that the Court abused its discretion by imposing an unreasonable and excessive sentence, inconsistent with the fundamental norms of the sentencing process, to be entirely erroneous.

***Conclusion***

As the Defendant's argument is without merit, it is respectfully suggested that this Court's Sentencing Order of April 5, 2011, be affirmed.

By the Court,

Dated: \_\_\_\_\_

Nancy L. Butts, President Judge

xc: DA  
Jeana A. Longo, Esq.  
Gary L. Weber, Esq. (LLA)