

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

<b>COMMONWEALTH</b>	:	
	:	<b>No. 1068-2010; 1167-2010</b>
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>MARGARET WHITE,</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 March 22, 2011. The Court notes a Notice of Appeal was timely filed on April 21, 2011 and that the Defendant's Concise Statement of Matters Complained of on Appeal was filed on May 2, 2011. The Defendant raises one issue on appeal: (1) that the sentencing court abused its discretion when imposing the sentence against the Defendant.

***Background***

The relevant facts as they relate to the Defendant's current charges establish that on February 18, 2008, the Defendant was released on parole from SCI Cambridge Springs, and following her release was charged with Possession of Drug Paraphernalia when a crack cocaine pipe was found in her purse. However, the Defendant was continued on parole with the open Possession charge. In July of 2009 the Defendant admitted to using crack cocaine and was thereafter detained pending the results of both the Paraphernalia charge and the illegal drug use. On May 16, 2010, the Defendant was re-paroled from SCI Cambridge Springs to an approved address in Williamsport. In June of 2010, Agent Tracy Gross (Gross), the Defendant's parole

officer, made four separate attempts to contact the Defendant, but was unable to do so. Gross was informed by the homecare providers that they suspected the Defendant was again using crack cocaine. At the beginning of July 2010, the Defendant's homecare providers informed parole supervision staff that the Defendant was not living at the address, but was merely stopping by to pick up her mail. The homecare providers also informed supervision staff that the Defendant was planning to abscond to Florida to reunite with her boyfriend. When supervision staff was again unable to contact the Defendant, the Defendant was declared delinquent for failure to be available for supervision based on the Defendant's failure to be home during multiple attempted contacts, credible information that she planned on leaving the state, and her suspected drug use. On July 4, 2010, the Defendant was arrested based on the Parole Board's warrant and upon a search incident to arrest was found to have crack cocaine in her possession. On July 6, 2010, the Defendant was again charged with Possession of a Controlled Substance and Possession of Drug Paraphernalia. The Defendant admitted to Gross that she was using crack cocaine as recently as July 3, 2010, and that she had not followed through with her recommended drug and alcohol treatment. Following this arrest, the Parole Board learned that the Defendant was arrested on June 19, 2010 for Retail Theft and Receiving Stolen Property and that during this arrest she provided a false name.

On January 11, 2011, the Defendant pled guilty under CR: 1167-2010 to Retail Theft and False Identification to Law Enforcement and under CR: 1068-2010 to Possession of a Controlled Substance (cocaine) and Possession of Drug Paraphernalia. A Sentencing Hearing was held before Judge Butts on March 22, 2011, where it was determined that the Defendant is a repeat felony offender who is not eligible for Recidivism Risk Reduction Incentive as she has three prior Burglary convictions. The Court sentenced the Defendant to an aggregate period of incarceration of forty eight (48) months to (12) years in a state correctional institution.

## *Discussion*

### *The sentencing court abused its discretion by the imposition of an excessive sentence*

The Defendant claims that the sentencing court abused its discretion in its imposition of the sentence against the Defendant. 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).

At the Sentencing Hearing in this matter, the District Attorney testified to the fact that the Defendant has an extensive criminal history dating back almost 40 years. The District Attorney pointed out that the Defendant is a repeat felony offender with at least 14 previous convictions, and that the Defendant was on state parole for her last felony shoplifting charge at the time she committed her current offense, her sixth Retail Theft conviction to date. The District Attorney also testified that the Defendant has violated every supervision she has been on in at least the last 25 years, and that during her most recent supervision, the Defendant began

violating supervision almost immediately upon her release by not residing at her approved residence, using drugs and alcohol, and absconding from supervision. Additionally, during her period of incarceration in the Lycoming County Prison preceding her sentencing, the Defendant received at least 14 warnings and two (2) written infractions for her behavior. The Prison corrections officers described the Defendant as being “[d]emanding, mouthy, and disrespectful...[s]he seems to have trouble co-existing with others if things aren’t done her way.” N.T., 3/22/2011, p. 9.

In this case, the sentencing court did not abuse its discretion in imposing the sentence against the Defendant. As the Defendant is a repeat felony offender, the standard range of sentence for the offenses committed was 12 to 18 months for Retail Theft, 3 to 6 months for False Identification, 12 to 18 months for Possession of a Controlled Substance, and 3 to 6 months for Drug Paraphernalia. The Court considered a number of factors in making the determination to impose the statutory maximum against the Defendant, one of the most important reasons being that the Defendant is a repeat felony offender who was currently being sentenced for the same type of crimes she previously committed. That the Defendant has an almost 40 year criminal history and yet continues to commit crimes leaves the Court with the impression that the Defendant has seemingly no regard for the consequences of her actions and no desire to change her behavior. The Court is aware that the Defendant has a drug problem; however, the Defendant refuses to accept treatment for this problem as evidenced by her most recent failure to follow through with drug and alcohol treatment. Taking all of these factors into account, the Court determined that to sentence the Defendant to anything other than the statutory maximum would depreciate the seriousness of the Defendant’s crimes and devalue the Defendant’s previous sentences. N.T., 3/22/2011, p. 18. The Court therefore sentenced the Defendant to 18 months to 7 years on Retail Theft, 6 to 12 months for False Identification, 18 to 36 months on

Simple Possession with a 3 year maximum as the Defendant already had a prior conviction for this offense, and 6 to 12 months on the Possession of Drug Paraphernalia. As the Defendant fails to set forth a valid claim as to how the Court abused its discretion, her claim has no merit.

***Conclusion***

As the Defendant's argument is without merit, it is respectfully suggested that this Court's Sentencing Order of March 22, 2011 be affirmed.

By the Court,

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

Nancy L. Butts, President Judge

xc: DA  
William J. Miele, Esq.  
Gary L. Weber, Esq. (LLA)