

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

**CHRISTINA JOHNSON,
Defendant**

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: No. CR-1403-2009

OPINION AND ORDER

Before the Court is a Motion for Reconsideration of Sentence that was filed on behalf of Defendant.

By way of background, the Defendant was sentenced on November 18, 2010. The Defendant had violated the conditions of her previously imposed probation by absconding from supervision. Accordingly, Defendant's probation was revoked and she was re-sentenced. The Court sentenced the Defendant to one and a half (1 ½) months to three (3) months on Count 1, Retail Theft, a misdemeanor 1. The Court noted that its intention was that the sentence be a max out sentence. The effective date of the sentence was November 4, 2010.

Defendant filed a Motion for Reconsideration of Sentence nunc pro tunc on November 24, 2010. The Court granted the nunc pro tunc request and an argument was scheduled on the Motion for Reconsideration for December 29, 2010.

Defendant argues that her sentence should be reduced to a term of imprisonment no greater than twenty-nine (29) days to fifty-nine (59) days. Defendant asserts that she faces drug charges in Federal Court and that her previously imposed sentence in this matter may cause her to be ineligible for a reduced sentence in Federal Court.

More specifically, Defendant argues that without the Court reconsidering and imposing a lesser sentence in this case, Defendant will be ineligible for a "safety valve"

reduction in sentence which would enable the Federal Court to impose a sentence below the statutory mandatory minimum of ten (10) years.

At the time Defendant's sentence was imposed, the Court was made aware of the fact that Defendant was facing Federal charges and possibly a mandatory minimum of ten (10) years. In considering all of the relevant circumstances including the history and characteristics of the Defendant, the circumstances of the offense and the Defendant's supervision history, the Court concluded that a one and a half (1 ½) to three (3) month sentence was appropriate.

As the Court noted during the argument in this matter, it is indeed sympathetic with Defendant's position. Defendant is apparently cooperating with authorities and despite Defendant's level of cooperation, she will not be entitled to a "safety valve" reduction unless this Court reduces her sentence. On the other hand, Defendant will be entitled to a downward departure if in fact her cooperation is such that a downward departure is recommended by the U.S. Attorney's Office.

Despite its sympathy for the Defendant, this Court is not willing to engage in result oriented justice. Defendant received a full and fair hearing on her probation violation. The sentence that the Court imposed was well below that recommended by the Adult Probation Office yet appropriate in the Court's opinion given all of the relevant sentencing factors.

The sentence is no less appropriate because its impact has collateral consequences to the Defendant in connection with pending charges. Every sentence has collateral consequences, some more egregious than others. This Court cannot and will not change this sentence because in this case the collateral consequences are quite significant. It is

indeed a slippery slope for a Court to amend sentences based on factors that develop as a consequence of those sentences. Moreover, and perhaps determinatively, the equities do not favor Defendant's positions. Numerous other defendants with Federal criminal history scores of 0 are justifiably awarded a safety valve if the other requirements are met. It begs logic to suggest that Defendant should be treated the same as those other Defendants. Accordingly, Defendant's Motion will be denied.

ORDER

AND NOW, this 4th day of January 2011, following an argument on Defendant's Motion for Reconsideration of Sentence, said Motion is **DENIED**.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA
PD
Gary Weber, Esquire (Lycoming Reporter)
Work File