IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. 184-2011;**
	:	**955-2011;**
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
JENNA BACHMAN		

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 October 3, 2011 and its order denying appellant's motion for reconsideration on October 14, 2011. The relevant facts follow.

In case number 184 – 2011, appellant was charged with escape as a result of leaving a shelter care placement which was ordered pursuant to an adjudication of delinquency for criminal mischief, a misdemeanor of the second degree, and unauthorized use of the motor vehicle, a misdemeanor of the second degree. Appellant turned 18 years old approximately one month before she escaped from shelter care, so the escape charge was filed in adult court.

On March 1, 2011 appellant pled guilty to escape and the court sentenced her to a term of incarceration of 21 days to two years less one day. Appellant receive credit for time served and was paroled.

On May 6, 2011 appellant violated the conditions of her parole by consuming alcohol and receiving new criminal charges for corruption of minors, and furnishing alcohol to minors. A preliminary parole violation hearing was held on May 10 2011, and the Court

found probable cause that appellant had violated the conditions. Appellant was detained pending a final hearing on July 25, 2011. At the July 25 hearing, the court found appellant in violation of the conditions of her parole, but deferred imposing a sanction until August 4, 2011.

On August 4, 2011, the court sentenced appellant to serve a setback from May 6, 2011 to August 19, 2011, and revoked her street time, resulting in a new maximum date of May 16, 2013. The court also imposed an additional condition of supervision that appellant fully comply with the rules, regulations, and conditions of the Freedom House Women's Center and complete the program as recommended by its director.

In case number 955 – 2011, police were called to an underage drinking party hosted by Appellant on May 6, 2011. The police, accompanied by several adult probation officers, apprehended four underage juveniles, who all reported that Appellant furnished alcohol to them. Appellant was arrested and charged with multiple counts of corruption of minors and furnishing alcohol to minors.

On July 25, 2011, appellant pled guilty to one count of corruption of minors, a misdemeanor of the first degree, and one count of furnishing alcohol to minors, a misdemeanor of the third degree. On August 4, 2011, the court sentenced appellant to an aggregate three years probation to be served consecutive to her sentence in case number 184 – 2011. Appellant was subject to the standard conditions of probation supervision including, that she could not consume any drugs or alcohol, that she be evaluated by West Branch Drug and Alcohol Commission, that she complete her education, and attend and complete any program she was referred to by her adult probation officer. As with case number 184 – 2011, appellant was referred to the Freedom House Women's Center by her adult probation officer.

Appellant subsequently violated the rules, regulations and conditions of Freedom House, and also tested positive for THC. Another parole violation hearing was scheduled for October 3, 2011.

At the hearing on October 3, appellant admitted that she violated her parole and her probation. The court took no further action in case number 184 – 2011, but revoked her probation in case number 955 – 2011 and sentenced her to incarceration in a state correctional institution for one to three years on count one, corruption of minors, and a consecutive one-year probation on count four, furnishing alcohol to minors. Appellant filed a motion for reconsideration of her sentence, which the court summarily denied.

On October 28, 2011, appellant filed a timely notice of appeal, wherein she raises two issues: (1) her sentence was manifestly excessive and unduly harsh given her age and the nature of her violations; and (2) it was a conflict of interest for Judge Lovecchio to preside over her resentencing as he is familiar with both of her parents as they are employed and/or associated with Lycoming County.

Appellant first contends that her sentence was manifestly excessive and unduly harsh given her age and the nature of her violations. The court cannot agree.

Initially, the court notes that it had the power to revoke appellant's probation, despite the fact that she was on parole at the time and had not yet begun her probationary term. Commonwealth v. Wendowski, 420 A. 2d 628, 630 (Pa. Super.1980); see also Commonwealth v. Sierra, 752 A.2d 910, 912 (Pa. Super. 2000); Commonwealth v. Ware, 737 A.2d 251, 253 (Pa. Super. 1999).

"A probation violation is established whatever it is shown that the conduct of the probationer indicates the probation has proven to be an ineffective vehicle to accomplish

rehabilitation and not sufficient to deter against future antisocial conduct." Commonwealth v. Brown, 503 Pa. 514, 469 A.2d 1371, 1376 (1983). Upon revocation of probation the sentencing alternatives that are available to the court are the same alternatives that existed at the time of the original sentencing. 42 Pa.C.S. §9771(b); Commonwealth v. Crump, 995 A.2d 1280, 1284 (Pa. Super. 2010); Ware, supra at 254; Commonwealth v. Smith, 669 A.2d 1008, 1011 (Pa. Super. 1986). The court, however, may only impose a sentence of total confinement if one of the following conditions is met: (1) the defendant has been convicted of another crime; (2) the conduct of the defendant indicates that it is likely she will commit another crime if she is not imprisoned; or (3) such a sentence is essential to vindicate the authority of the court. 42 Pa.C.S. §9771(c).

Appellant admitted that she tested positive for THC and that she was discharged from the Freedom House Women's Center for violation of the program policies on September 27, 2011. Clearly, she violated the conditions of her probation and her parole.

In this case, a sentence of total confinement upon probation revocation was appropriate because: (1) the conduct of Appellant indicated it was likely she would commit another crime if she was not imprisoned; and (2) such a sentence was essential to vindicate the authority of the Court.

Appellant's conduct showed it was likely she would commit another crime. THC is a metabolite of marijuana. It is a crime to possess marijuana. Despite being on probation and parole, which carried conditions precluding Appellant from using alcohol and controlled substances, Appellant admitted using marijuana. Appellant, who is under 21 years of age, previously violated her parole by using alcohol and providing it to other minors.

Nothing that the Court or the probation officers were doing could get Appellant to conform her behavior to be law-abiding. The Court felt that the only way to keep Appellant from using alcohol and controlled substance was to incarcerate her.

The Court also felt incarceration was necessary to vindicate its authority. Appellant's pattern was to apologize for her violations, swear she had learned her lesson, promise never to do it again, and beg for leniency. The Court previously believed Appellant's song and dance and gave her another chance at her last violation hearing when probation officials wanted to send her to state prison. When the Court gave Appellant another chance, it specifically told Appellant that if she violated her conditions again, she would go to state prison and have no one but herself to blame. The previous violation hearing occurred in early August and by the end of September, she had committed the current violations. Quite simply, the Court and the probation office tried numerous alternatives short of sending Appellant to state prison, but Appellant would not cooperate, choosing instead to party with her friends and otherwise do what she wanted when she wanted, all the while thumbing her nose at the Court and her probation officer.

Although the Court could have revoked Appellant's parole on her escape charge and her probation on her furnishing alcohol to minors charge or given her a maximum sentence of two and one-half (2 ½) to five (5) years on the corruption charge where probation was revoked, it did not do so, because its intent was not to send Appellant away for as long as possible but to give her a wake up call.

Given Appellant's poor supervision history and the previous attempts to rehabilitate her at the county level, a sentence of state incarceration for this violation was neither manifestly excessive nor unduly harsh. Rather, it was the Court's attempt to save a

bright and articulate young lady from her impulsivity and anti-social behaviors after several county alternatives proved unsuccessful.

Appellant also avers that it was a conflict of interest for the Court to preside over her resentencing because it was familiar with both of her parents as they are employed and/or associated with Lycoming County. The Court believes this issue is waived because it was not raised prior to or at the time of the probation and parole violation hearings; instead, this issue was first raised in Appellant's motion for reconsideration of sentence.

In Commonwealth v. Edminston, 535 Pa. 210, 634 A.2d 1078 (Pa. 1993), the Pennsylvania Supreme Court stated:

> Once a trial is complete with entry of a verdict or judgment, a party is deemed to have waived his right to have a judge disqualified unless he can meet the standard regarding after-acquired evidence, i.e., the evidence could not have been brought to the attention of the trial court in the exercise of due diligence and the existence of the evidence would have compelled a different result in the case.

634 A.2d at 1088; see also Commonwealth v. Johnson, 719 A.2d 778, 790 (Pa. Super. 1998). Appellant's mother and step-father work for Lycoming County as the county controller and the intensive supervised bail coordinator and have done so long before Appellant ever came in contact with the criminal justice system. Their employment is not after-acquired evidence to justify Appellant's failure to raise this issue before the Court rendered its decision. Rather, Appellant is simply unhappy that she received a state sentence and is looking for any excuse for another attempt to cajole a lighter sentence from another jurist. Moreover, Appellant's sentence had nothing to do with who her parents were, and everything to do with her poor choices and the fact that incarceration and supervision at the county level were not effective to change her anti-social and criminal behaviors.

Finally, the Court, while knowing who Appellant's mother is, has never had any professional or personal relationship with her. The Court has, however, worked with Appellant's step-father on a professional level only, while as an attorney and then of course as a judge. Any suggestion that a conflict of interest exists under these circumstances not only is meritless, but begs logic.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
Trisha Hoover, Esquire (APD)
Adult Probation Office
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)