

for Simple Assault was revoked and he was sentenced to twelve (12) to twenty-four (24) months to be served at a State Correctional Institution. The Defendant was also assessed the costs of bringing him back from Indiana, which totaled \$657.40.

On September 5, 2012, the Defendant timely filed a Notice of Appeal, appealing the IP Violation Sentencing Order of August 9, 2012. The Court directed the Defendant to file a concise statement of the matters complained of on appeal, in accordance with Pa.R.A.P. 1925(b). The Defendant only alleges one (1) issues in his 1925(b) statement, which is whether the lower court abused its discretion by imposing a manifestly excessive sentence, by imposing an aggregate sentence of twelve (12) to twenty-four (24) months in a State Correctional Institution.

The trial court abused its discretion by imposing a manifestly excessive sentence

The Defendant claims that the sentence imposed against him was excessive. 42 Pa. C. S.

A. § 9781(b) provides that:

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 also Commonwealth v. Hoag, 665 A.2d 1212 (Pa. Super. 1995). “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 Commonwealth v. Paul, 925 A.2d 825, 829 (Pa. Super. 1997) (quoting Commonwealth v. Kenner, 784 A.2d 808, 810 (Pa. Super. 2001)). Furthermore, “[u]pon sentencing following a revocation of probation, the trial court is *limited only* by the maximum sentence that it could have imposed originally at the time of the

probationary sentence.” Commonwealth v. Gibbons, No. 1733 MDA 2010, slip op. at 2 (Pa. Super. June 17, 2011) (emphasis added); see also Commonwealth v. Coolbaugh, 770 A.2d 788, 792 (Pa. Super. 2001).

While the Defendant argues that the sentence imposed against him was excessive, he does not argue that the sentence was beyond the maximum. The record establishes that the sentence the Defendant received was not beyond the maximum. The Defendant pled guilty on March 29, 2011 to Simple Assault, a misdemeanor of the second degree. The statutory maximum for that offense is two (2) years. The Defendant’s sentence of one (1) to two (2) years, which he received at his final IP violation hearing, is within the maximum sentence.

Furthermore, it is well settled that once probation has been revoked, the court may impose a sentence of total confinement if any of the following conditions exist under Section 9771(c) of the Sentencing Code:

- (1) the defendant has been convicted of another crime;
- (2) the conduct of the defendant indicates that it is likely that he 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. When it becomes apparent that the probationary order is not serving its desired rehabilitation effect, the court’s decision to impose a more appropriate sentence should not be inhibited. Commonwealth v. Ahmad, 961 A.2d 884 (Pa. Super. 2008) (citing Commonwealth v. Carver, 923 A.2d 495, 498 (Pa. Super. 2007)).

In this case, the Court had multiple justifications for imposing a sentence of total confinement. The Court found from the Defendant’s history of probation violations that supervision did not seem to have any rehabilitative effect on the Defendant. The Defendant was originally on supervision for a DUI before he violated by committing the new offenses of Terroristic Threats and Simple Assault charges. While on his current supervision, the Defendant failed to report along with moving out of the state without informing Geiser, which

were violations of his IP sentence. In addition, the Defendant was charged with Public Drunkenness and False ID while he was out of the State. The Defendant served a ninety (90) day sentence for the Public Drunkenness charge in Indiana.

The Court also assessed multiple factors in sentencing the Defendant:

COURT: I think if I were sentencing you off this charge, based upon what sounds like you're relatively low prior record score, I wouldn't be giving you a state prison sentence, and that's what the recommendation is, but the fact that you moved, the fact that you didn't stay in touch with the Adult Probation Office, the fact that you left the state of Pennsylvania without permission, the fact that once you went to Indiana that you were arrested for new criminal charges, that you were so intoxicated you either were uncooperative and refused to give your name, or you couldn't give your name, and the only way they could identify you was by running your fingerprints though, I guess it's AFIS, I think all those factors are aggravating factors that justify a sentence of state prison.

I think that a sentence of state prison basically vindicates the authority of the Court, which says that when we put you on supervision you need to comply with all these terms and conditions, and when you fail to do that so deliberately, so intentionally, so overtly in that you just don't go to Philadelphia or Pittsburgh you go to Indiana, any sentence that's less than this would depreciate the seriousness of what you did.

N.T., August 9, 2012, p 7-8. The record shows that this Court did not abuse its discretion and reasonably sentenced this Defendant. Therefore, this Court finds that the Defendant's issue lacks merit and respectfully suggests that the Defendant's sentence be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Kathryn Bellfy, Esq.