

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | No. 1060-2003 |
| v. | : | |
| | : | CRIMINAL DIVISION |
| BENTON COLVIN, | : | APPEAL |
| Defendant | : | |

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

On September 8, 2010, the Defendant filed an appeal from the August 10, 2010 Order of the Honorable Craig P. Miller, which denied and dismissed the Defendant's Motion/Petition to Correct Defendant's Sentence that was Illegally Changed by the Honorable Nancy L. Butts, the District Attorney's Office and Luann Yohn from the Adult Probation Office. Following several reassignments of counsel, the Defendant's case was ultimately assigned to Todd Leta, Esquire, via an Order dated July 12, 2011 which informed Counsel that the Defendant's case was on appeal. However, despite this notification and despite the May 20, 2011 Order directing Counsel to file within thirty (30) days a concise statement of matters complained of on appeal, Attorney Leta has yet to file a concise statement.¹ However, as the Defendant identified in his Notice of Appeal the Order of Court from which he appeals, this Opinion addresses the merits of the appeal.

On August 2, 2010, the Defendant filed a Motion/Petition to Correct Defendant's Sentence that was Illegally Changed by Judge Nancy L. Butts, D.A. and Luann Yohn. In his Motion, the Defendant indicated that on July 21, 2004 Judge Butts sentenced the Defendant on this case under count two Terroristic Threats to five (5) years probation under the Pennsylvania

¹ Judge Butts signed the May 20, 2011 Order on behalf of Judge Miller.

Board of Probation and Parole (PBPP). The Defendant then indicated that on August 18, 2008, the Honorable Barry F. Feudale again iterated the sentence on count two Terroristic Threats of five (5) years probation with the PBPP. However, the Defendant maintains that somewhere between the time of August 18, 2008 and January 21, 2009, Judge Butts amended the sentence to include special probation, and that she did not have the authority to do so as she had previously recused herself as Judge from the Defendant's case. Notwithstanding the timeline for the amended sentence set forth by the Defendant, the Court finds that on September 9, 2009, special conditions of probation were in fact imposed against the Defendant by Judge Feudale.² However, contrary to the Defendant's assertion otherwise, Judge Butts has had no involvement with the Defendant's case, other than to sign orders for the Judge's of record, since her recusal on June 13, 2006. That being said, the Court also notes that pursuant to 42 Pa.C.S. §9771(a) the Court can, at any time, lessen or increase the conditions upon which an order of probation has been imposed, which appears to be what Judge Feudale did in the September 9, 2009 Order.³

As the Defendant's contention is without merit, it is respectfully suggested that this Court's Order of August 10, 2010 be affirmed.

DATE: _____

By the Court,

Craig P. Miller, Judge
Specially Presiding

xc: DA
Todd Leta, Esq.
Gary L. Weber (LLA)

² The Defendant's special probation was amended to include a provision that he not associate with minor children under the age of 18 without his parole agent's prior approval.

³ The Court also notes that on December 14, 2011, the Honorable Richard A. Gray revoked the Defendant's previous special probation sentence and resentenced the Defendant on count 2 Terroristic Threats to state incarceration for eighteen (18) months to four (4) years.

