

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 59 – 2008
	:	CR – 363 – 2007
vs.	:	CR – 720 – 2007
	:	CR – 727 – 2007
ASHLEY CUPP,	:	CR – 731 – 2007
Defendant	:	CR – 1419 – 2007

OPINION IN SUPPORT OF ORDER OF AUGUST 13, 2008,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed *nunc pro tunc* this Court’s Order of August 13, 2008,¹ which, following her admission to alleged probation violations, revoked her prior Intermediate Punishment sentence and imposed a new sentence of one to three years incarceration followed by a three year period of probation supervision. In her Statement of Matters Complained of on Appeal, Defendant contends this court abused its discretion in imposing sentence and in permitting the Adult Probation Office to represent the Commonwealth at the proceeding.

With respect to the sentence, Defendant contends specifically that the court failed to consider her age, mental health history and rehabilitative needs. The court does not agree that these things were not considered. The court conducted a thorough colloquy of Defendant and discussed with her the reasons behind her behavior.² The court ascertained that Defendant was 19 years old, that she had been involved with drugs since she was fourteen, and that she quit school in the eleventh grade. N.T., August 3, 2008, at p. 7-8. As far as consideration of Defendant’s mental health history, the only “mental health history” offered by Defendant was her statement, in response to the court’s inquiry of why she was unable to complete the drug court program, that “it’s mental health problems that I have to try and deal with, take away the pain from all that and use drugs.” *Id.* at p. 8. When the court inquired further about the matter, Defendant offered only that “it’s just emotional and stuff from the past, being addicted to drugs and being homeless, going through everything I’ve been through.” *Id.* at p. 8-9. She did not

1 By Order dated September 14, 2011, Defendant’s PCRA petition was granted and her direct appeal rights were reinstated *nunc pro tunc*.

2 It did not appear in dispute that Defendant’s criminal behavior followed from her drug use.

provide any evidence of mental health issues and it is noteworthy that she did admit, upon questioning by the court, that her drug use was motivated by peer pressure, apathy, and/or hedonism. *Id.* at p. 9-10. In fashioning the sentence, the court considered that at age 19, Defendant had already committed multiple offenses and violated the rules of drug court twice. The court believes her behavior exhibited an attitude that she is above the law, and she did not accept the previous attempts at rehabilitation. The sentence of incarceration was imposed to remove her from the environment which made drugs available to her, and to try and impress upon her the seriousness of her situation. The court did make her eligible for boot camp and the Wings of Life program, and therefore did consider her rehabilitative needs. While rehabilitation may have taken a back seat to punishment, the Court does not believe such was an abuse of its discretion under these circumstances.

With respect to Defendant's contention that the court abused its discretion by permitting the Adult Probation office to represent the Commonwealth in the proceeding, as there was no objection to such representation at the time of the hearing, this claim has been waived. To the extent the contention asserts ineffective assistance of counsel in failing to raise an objection, such may not be raised in this direct appeal, but must await collateral review. *See Commonwealth v. Barnett*, 25 A.3d 371 (Pa. Super. 2011). Therefore, the Court will not address this issue further.

Dated: January 12, 2012

Respectfully submitted,

Dudley N. Anderson, Judge

cc: District Attorney
Edward J. Rymysza, Esq.
Gary Weber, Esquire
Hon. Dudley N. Anderson