

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1192-2011
vs. :
 : CRIMINAL DIVISION
 :
 :
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 :
 :
 : 1925(a) Opinion

**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 February 12, 2012. The relevant facts follow.

On June 28, 2011, Appellant was charged with two counts of arson and a count of risking catastrophe arising out of Appellant lighting some papers on fire in her prison cell.

On September 26, 2011, Appellant entered a guilty plea to risking catastrophe, a felony of the third degree, in exchange for a minimum sentence at the bottom of the standard sentencing guideline range, which would be served consecutively to the sentence she was currently serving in the state correctional institution at Muncy (SCI-Muncy). Appellant's prior record score was RFEL, making the standard sentencing guideline for her minimum sentence 21 to 30 months. Sentencing was scheduled for December 7, 2011, but was continued to February 22, 2012, because Appellant had not been transported from SCI-Muncy to the courthouse.

On February 22, 2012, the Court sentenced Appellant, in accordance with the

plea agreement, to 21 to 42 months incarceration in a state correctional institution consecutive to the sentence she was currently serving.

On March 5, 2012, Appellant filed a motion for reconsideration of sentence, claiming she believed her plea bargain was for a minimum sentence of 21 months and a maximum sentence of 30 months. Counsel noted in the motion that both prior counsel and current counsel explained to Appellant that her minimum would be at the bottom of the standard range and her maximum sentence would be double the minimum. The Court summarily denied Appellant's reconsideration motion.

On March 29, 2012, Appellant filed a timely notice of appeal. In response to the Court's order for a concise statement of errors complained of on appeal, counsel indicated she would be filing an Anders/McClendon¹ brief in lieu of a concise statement.

Based on the motion for reconsideration of sentence, the Court believes the only issue that will be raised on appeal is Appellant's sentence. Appellant agreed that her minimum sentence would be at the bottom of the standard sentencing guideline range. With Appellant's prior record score of RFEL and risking catastrophe having an offense gravity score of 4, the bottom of the guideline range for Appellant's minimum sentence was 21 months.

The Court could not legally give Appellant a sentence with a minimum of 21 months and a maximum of 30 months. Section 9756(b)(1) of the Judicial Code states: "The court shall impose a minimum sentence of confinement which shall not exceed one-half of

¹ Anders v. California, 386 U.S. 738 (1967) and Commonwealth v. McClendon, 434 A.2d 1185 (Pa. 1981).

the maximum sentence imposed.” 42 Pa.C.S. §9756(b)(1). Stated another way, the maximum sentence must be at least twice the minimum sentence. Since Appellant agreed to a minimum sentence of 21 months, the Court was required by law to impose a maximum sentence of at least 42 months.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

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