

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. SA-83-2012
	:	
CRISTINO DISALVO,	:	SUMMARY APPEAL
Defendant	:	APPEAL

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

On August 4, 2012, Cristino Disalvo (Defendant) was pulled over by Old Lycoming Township Police Department for driving with a taillight out. As a result of the stop the Defendant was charged with Driving While Operating Privileges is Suspended, 75 Pa.C.S. § 1543(a). On September 5, 2012, the Defendant was found guilty by trial in front of Magisterial District Judge (MDJ) James H. Sortman. As this was the Defendant's fourth Driving Under Suspension, MDJ Sortman sentenced the Defendant to thirty (30) days in prison and made him eligible for electronic monitoring after the first five (5) days were served in the Lycoming County Prison.

The Defendant appealed his sentence to the Lycoming County Court of Common Pleas. On October 29, 2012, after a hearing, this Court made the entire thirty (30) day sentence eligible for electronic monitoring. On November 21, 2012, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. In the concise statement of matters complained of on appeal the Defendant alleges that the Court abused its discretion by imposing a manifestly excessive sentence for the charge of Driving Under Suspension (S) – non DUI related.

Whether the Court abused its discretion by imposing a manifestly excessive sentence

The Defendant claims that the sentence of his summary offense was manifestly 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.

As the sentence was for a summary offense, it is the Superior Court of Pennsylvania's discretion whether allowance of appeal may be granted. In addition, 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)).

Here, the Defendant was found guilty of Driving While Operating Privileges is Suspended, a summary offense. 75 Pa.C.S. § 1543(a) states that "any person who drive a motor vehicle on any highway or trafficway of this Commonwealth after the commencement of a suspension . . . of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$200." There are, however, additional consequences if a defendant has had subsequent convictions under 75 Pa.C.S. § 1543(a). Under 75 Pa.C.S. § 6503, "every person convicted of a second or subsequent violation" for Driving While Operating Privilege is Suspended "shall be sentenced

to pay a fine of not less than \$200 nor more than \$1,000 or to imprisonment for not more than six months, or both.”

In this case, the Defendant had received his fourth conviction under 75 Pa.C.S. § 1543(a) and therefore the Court had authority to sentence him up to six (6) months imprisonment under 75 Pa.C.S. § 6503. This Court was well within the statute to sentence the Defendant to thirty (30) days of electronic monitoring. In addition, the Court had multiple justifications for imposing a sentence of confinement. The Court found from the Defendant’s history of repeated violations that resulted in monetary fines were not deterring the Defendant from continuing to drive without a license. The Court also took into account that the Defendant’s vehicle was not in suitable condition to drive and that the Defendant appears to have no concern for the Motor Vehicle Code. As the Court stated on the record:

COURT: I haven’t even looked at your driving record but my major problem with this is that the other times that you drove without a license and you got a fine it didn’t dissuade you from driving again and again and again. I don’t think that the jail time is out of line. What I will do is I’ll make you eligible for it entirely on the electronic monitoring program, but I think to only sentence you to a fine depreciates the seriousness of how many times you’ve been driving under suspension. You would have the right to file an appeal from this argument within thirty days of today’s date, but I think that the record speaks for itself, the fact that you have four priors, the fact that you even were operating a vehicle that the equipment wasn’t even working properly you don’t have any concern for the vehicle code and I just, as I said, I think that just to sentence you to a fine sends the wrong message that it’s no big deal. . . .

N.T., October 29, 2012, p 6-7. Finally, the Court also considered the reason why the Defendant was driving, which was to get medication for his partner, and found that there were multiple alternatives to driving, such as a pharmacy that delivers. *Id.* at 6. Based on the record, this Court did not abuse its discretion and reasonably sentenced this Defendant.

Conclusion

As the Defendant's issue of a manifestly excessive sentence appears to not have merit, it is respectfully suggested that the Defendant's sentence be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Kathryn Bellfy, Esq.