IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-420-2008**
	:	**CR-963-2011**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
JACK L. HOWLETT,	**:**	
Defendant	**:**	**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 November 19, 2012, which was entered following revocation of Appellant's Intermediate Punishment sentences.

Under Information 420-2008, Appellant was arrested and charged with possession with intent to deliver a controlled substance, delivery of a controlled substance, possession of a controlled substance, criminal conspiracy, and criminal use of a communication facility. On October 13, 2009, Appellant pled guilty to possession with intent to deliver a controlled substance (cocaine), an ungraded felony, and was sentenced to pay costs, fines and restitution and to undergo 24 months of probation consecutive to any other sentence Appellant was serving. One of the conditions of Appellant's supervision required him to abstain from using illegal drugs.

In March 2011, Appellant's probation officer received information from White Deer Run, a treatment facility, that Appellant was using heroin and he was admitted for detoxification, but he left the program against medical advice. In April 2011, Appellant

provided a urine specimen to his probation officer that tested positive for opiates (heroin). In June, 2011, Appellant also was charged with possession of a controlled substance (heroin) and possession of drug paraphernalia under Information 963-2011. On July 21, 2011, the court revoked Appellant's probation and he was re-sentenced to 36 months of supervision on the Intermediate Punishment Program, with the additional condition that he must attend and complete the Drug Court Program.

On September 14, 2011, Appellant entered a guilty plea to the new charges under Information 963-2011 and he was sentenced to 12 months of consecutive supervision under the Intermediate Punishment Program, again with the condition that he must attend and successfully complete the Drug Court Program. Abstaining from the use of illegal drugs also was a condition of both his supervision and his participation in the Drug Court Program.

On October 21, 2011, Appellant received a Drug Court sanction of 90-days of incarceration and a 60-day phase extension for failing to follow protocol.

In February 2012, Appellant had a positive urine sample for cocaine when he checked himself into the Divine Providence Hospital for mental health issues, but then left. He was detained on an Intermediate Punishment violation, pending a mental health evaluation by Dr. Terri Calvert. On March 14, 2012, Appellant received another 90-day sanction with credit for time served from February 12, 2012.

In mid-July of 2012, Appellant had provided another urine sample that tested positive for opiates. The court found that Appellant violated the conditions of his Intermediate Punishment, but deferred a re-sentencing hearing pending a supervision report and another assessment by Dr. Calvert.

On November 19, 2012, the court re-sentenced Appellant to 1 ½ to 4 years of

incarceration in a state correctional institution for possession with intent to deliver cocaine under Information 420-2008 and a consecutive 6 to 12 months of incarceration for possession of a controlled substance under Information 963-2011.

Appellant filed a timely notice of appeal.

Appellant asserts that the sentencing court abused its discretion when it sentenced him to state incarceration. The court cannot agree.

The length of Appellant's aggregate sentence required that Appellant serve his sentence in a state correctional institution. Appellant was sentenced to 1 ½ to 4 years of incarceration for possession with intent to deliver a controlled substance and a consecutive 6 to 12 months of incarceration for possession of a controlled substance. Those sentences aggregate by operation of law to a total sentence of 2 to 5 years of incarceration. See 42 Pa.C.S. §§9757, 9762(f); Commonwealth v. Tilghman, 543 Pa. 578, 673 A.2d 898, 901 (1996), Commonwealth v. Harris, 423 Pa. Super. 190, 620 A.2d 1175, 1179 (1993). When the maximum sentence imposed is five years or more, the sentence must be served in a state correctional institution. 42 Pa.C.S. §9762(b)(1). Therefore, the court did not abuse its discretion by requiring Appellant to serve his sentence in a state correctional institution.

Appellant also contends that the sentence was excessive and unreasonable. Again, the court cannot agree.

When the court revokes a sentence of intermediate punishment, the sentencing alternatives available to the court are the same as were available at the time of initial sentencing. 42 Pa.C.S. §9773(b). "A trial court does not necessarily abuse its discretion in imposing a seemingly harsh post-revocation sentence where the defendant originally received a lenient sentence and then failed to adhere [to] the conditions imposed on him."

Commonwealth v. Schutzues, 54 A.3d 86, 99 (Pa. Super. 2012).

According to the written guilty plea colloquy completed by Appellant and his attorney, the offense gravity score for possession with intent to deliver was a six and Appellant's prior record score was a three, resulting in a standard minimum guideline range of 12-18 months. If Appellant has been sentenced within the standard minimum guideline range, his maximum sentence would have been at least two years and he would have been required to serve his sentence in a state correctional incarceration. See 42 Pa.C.S. §9762(b)(2). Appellant received a substantial break when he received a probationary sentence in exchange for his cooperation. Appellant, however, failed to take advantage of this break. He violated his probation by repeatedly using illegal drugs and committing a new criminal offense. The court and Appellant's probation officer tried to work with Appellant to address his drug problems, but to no avail. He was placed on the Intermediate Punishment Program and the Drug Court Program to give him more intensive supervision and to get him help with his drug problem. Appellant, however, did not avail himself of these opportunities. Instead, he continued to use drugs, and he checked himself out of his drug rehabilitation program at White Deer Run and the mental health unit at Divine Providence Hospital, both against medical advice. Appellant's probation officer and the court exhausted the resources available in Lycoming County trying to help Appellant and keep him out of a state correctional facility. By choosing to continue to use drugs, Appellant left the court no choice but to revoke his Intermediate Punishment sentences and sentence him to incarceration in a state correctional institution. The court was convinced that if it did not sentence Appellant to a state correctional institution he would continue to use drugs and either commit more crimes or kill himself. See N.T., November 19, 2012, at pp. 30-35.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
Adult Probation Office
Jeana Longo, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)