

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-1155-2012  
:   
vs. : CRIMINAL DIVISION  
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:   
JAMEEL MINCY, :   
Appellant : 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 July 18, 2013. The relevant facts follow.

At approximately 2:41 a.m. on June 22, 2012, Williamsport police officers were dispatched to the Sheetz at 105 Maynard Street for a fight in progress. When the police arrived, they observed a white male, a white female, and a black male involved in a verbal altercation. The police tried to separate the individuals. Officer Jonathan Deprenda spoke to the black male and asked him to tell him what happened. The black male told Officer Deprenda that the white male had hit him in the mouth and then he stepped towards the white male. Officer Deprenda was between the two men and walked the black male towards his vehicle. He noticed a strong odor of an alcoholic beverage coming from the black male's person. The black male also was very unsteady on his feet, nearly falling over as they got to Officer Deprenda's vehicle. Officer Deprenda asked the man to identify himself or produce identification, but he wouldn't give his name or produce identification. Officer Deprenda took the black male into custody for disorderly conduct and public drunkenness and

transported him to City Hall where he was identified as Appellant, Jameel Mincy

Officer Deprenda searched Appellant incident to his arrest and discovered 19 baggies of cocaine contained within a larger “distribution” bag in Appellant’s left front pocket. The nineteen baggies of cocaine weighed 9.6 grams.

Appellant was charged with possession with intent to deliver a controlled substance, an ungraded felony; possession of drug paraphernalia, an ungraded misdemeanor; and the summary offenses of disorderly conduct and public drunkenness. Following a nonjury trial held on January 14, 2013, the court found Appellant guilty of all the charges.

On July 18, 2013, the court sentenced Appellant to 2 ½ to 5 years of incarceration in a state correctional institution for possession with intent to deliver a controlled substance and a consecutive 6 months to 1 year of incarceration for possession of drug paraphernalia.<sup>1</sup>

Appellant filed a motion for reconsideration of sentence in which he asserted that: the court’s sentence was unduly harsh and excessive; the possession of drug paraphernalia charge should have run concurrently because the paraphernalia was the bags in which the cocaine was discovered; and the court failed to adequately consider Appellant’s need for drug and alcohol treatment. The court denied this motion, and Appellant filed a timely appeal.

Appellant’s first issue on appeal is that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that Appellant was guilty of possession of drug paraphernalia because he purchased the controlled substances as packaged and did not

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<sup>1</sup>The sentence for each of the summary offense was guilt without further punishment.

have any separate implements for storing or ingesting those substances. The court cannot agree.

In reviewing the sufficiency of the evidence, the court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. *Commonwealth v. Davido*, 582 Pa. 52, 868 A.2d 431, 435 (2005); *Commonwealth v. Murphy*, 577 Pa. 275, 844 A.2d 1228, 1233 (2004).

35 P.S. §780-113(a)(32) prohibits the “use or possession with intent to use drug paraphernalia for the purpose of ... packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.” Drug paraphernalia is defined as “all equipment, products and materials of any kind which are used, intended for use, or designed for use in ... storing, containing, concealing ... a controlled substance in violation of this act.” 35 P.S. §780-102. The law does not require the paraphernalia to be separate from the controlled substance. See *Commonwealth v. Caban*, 60 A.3d 120 (Pa. Super. 2012)(Superior Court rejected a challenge to the sufficiency of the evidence for a paraphernalia conviction where the paraphernalia was the gift box and cellophane in which the marijuana was wrapped); *Commonwealth v. Coleman*, 984 A.2d 998, 1000-1002 (Pa. Super. 2009)(glass vials, glassine baggie and sock which contained crack cocaine constituted drug paraphernalia). In fact, in determining whether an object is drug paraphernalia a court should consider the proximity of the object to controlled substances. 35 P.S. §780-102.

In this case, the bags clearly were being used to store or contain the cocaine. In fact, Appellant called a witness, James Geddy, to dispute the Commonwealth's characterization of the larger bag as a "distribution" bag. Mr. Geddy testified that there is no such thing as a distribution bag in the drug world. The bag was just a sandwich bag; its purpose was to keep the smaller bags of cocaine together so one would not lose any of them. Trial Transcript, p. 69. In other words, Appellant's own evidence showed that the bags were being used to store or contain the cocaine. Therefore, this issue lacks merit.

The other issue Appellant asserts on appeal is that the court abused its discretion when it imposed consecutive sentences for possession of drug paraphernalia and possession with intent to deliver cocaine. Again, the court cannot agree.

The court could impose separate sentences on these offenses, because the crimes did not merge. 42 Pa.C.S. §9765 ("No crimes merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense."). Furthermore, "Pennsylvania law affords the sentencing court discretion to impose its sentences concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed." Commonwealth v. Austin, 66 A.3d 798, 808 (Pa. Super. 2013). A sentence will not be reversed on appeal unless the sentencing court abused its discretion. "[A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not 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.'" Commonwealth v. Walls, 592 Pa. 557, 926 A.2d 957, 961 (2007), quoting Commonwealth v. Smith, 543 Pa 566, 673

A.2d 893, 895 (1996).

The court's decision to impose consecutive sentences in this case was neither unreasonable nor based on any partiality, prejudice, bias or ill-will against Appellant, but rather was motivated by a desire to protect the public. Sentencing Transcript (7/18/13), pp. 26-29; Transcript of Reconsideration Hearing (8/1/13), p. 12. Although in many cases the court would not impose a consecutive sentence for a paraphernalia charge when there was no additional paraphernalia for ingesting or packaging controlled substances, this was not a typical case. Generally speaking, from 1996 to the present Appellant had difficulty refraining from selling drugs, using drugs or driving a vehicle while he was under the influence of drugs or alcohol or while his license was suspended except when he was incarcerated. He had been in and out of the criminal justice system with escalating consequences and nothing seemed to work. Furthermore, Appellant had three other cases that were being sentenced at the same time as this case. He committed the offenses in this case about two months after his arrest for possession of Percocet and within eight days of his arrest for DUI. Then he committed another DUI about two months after he committed the offenses in this case. Sentencing Transcript (7/18/13), p. 5; Transcript of Reconsideration Hearing (8/1/13), p. 11. These factors could have justified a sentence in the aggravated range or a lengthier maximum sentence for possession with intent to deliver cocaine,<sup>2</sup> but the court did not do that. Instead, the court simply imposed a consecutive sentence of six months to one year on the

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<sup>2</sup> The statutory maximum sentence for possession with intent to deliver cocaine was 20 years, because Appellant had prior convictions for delivery or possession with intent to deliver a controlled substance. 35 P.S. §780-115.

paraphernalia charge, which under all the facts and circumstances was neither an abuse of discretion nor an excessive sentence.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Aaron Biichle (ADA)  
Nicole Spring (APD)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)