

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. : **No. 1521-2010**  
 :  
 ADAM WYLAND, : **CRIMINAL DIVISION**  
 Defendant : **APPEAL**

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

On May 24, 2011, Adam Wyland (Defendant) pled guilty pursuant to a negotiated plea agreement. In exchange for pleading guilty to count 1 Statutory Sexual Assault,<sup>1</sup> the Defendant was to receive a sentence at the bottom end of the standard range and the sentence was to run consecutive to any other sentence the Defendant was serving. On July 26, 2011, the Defendant was sentenced by this Court to nine (9) months to five (5) years at a State Correctional Institution. No appeals were filed in this docket number; however, the Defendant appealed a probation violation sentence as a result of his guilty plea.

On June 21, 2012, the Defendant filed a *pro se* PCRA Petition. Donald F. Martino, Esquire was appointed to represent the Defendant on his PCRA Petition. On August 13, 2012, Attorney Martino filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. On November 13, 2012, the Court addressed the Defendant's PCRA Petition and also found that it was without merit. The Court assessed five (5) issues that were raised in the Petition: 1) trial counsel coerced the Defendant into pleading guilty by telling him that by not pleading guilty the District Attorney's Office would file additional charges; 2) trial counsel failed to file a motion to withdraw the Defendant's guilty plea; 3) counsel failed to file a motion in accordance with Pennsylvania Rule of Criminal Procedure 600; 4) counsel failed to

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<sup>1</sup> 18 Pa.C.S.A. § 3122.1.

adequately conduct any pre-trial investigation; and 5) counsel was ineffective for failing to file a Motion to Suppress in regards to statements the Defendant made during an interview conducted by police.

On December 3, 2012, the Court dismissed the PCRA Petition, as the Defendant did not respond to the proposed dismissal. On December 24, 2012, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. On January 3, 2013, the Court requested that the Defendant file a concise statement of the matters complained of on appeal. The Defendant has listed six (6) issues he is raising on appeal: 1) the trial court improperly sentenced him with a Prior Record Score of two (2); 2) trial counsel was ineffective; 3) the District Attorney's Office raised a charge he was found not guilty of at sentencing; 4) the Court improperly took into account misdemeanors when determining his Prior Record Score; 5) the trial court did not follow the plea agreement; and 6) the trial court abused its discretion by allowing the District Attorney's Office to bring up charges he was found not guilty of at sentencing.

***Whether the Defendant is precluded from raising issues not raised in his PCRA Petition***

On appeal, the Defendant raises issues that were not in his PCRA Petition or his response to the proposed PCRA Dismissal and are being raised for the first time in his concise statement of matters complained of on appeal. The Pennsylvania Rules of Criminal Procedure states that “[e]ach ground relied upon in support of the relief requested shall be stated in the [PCRA] petition. Failure to state such a ground in the petition shall preclude the defendant from raising that ground in any proceeding for post-conviction collateral relief.” Pa.R.Crim.P. 902(B); see also, Commonwealth v. Ford, 44 A.3d 1190 (Pa. Super 2012); Commonwealth v. Bond; 817 A.2d 33 (Pa. 2002). Therefore, the Court believes that the new issues raised in the

concise statement have been precluded. The Court, however, will still address the new issues raised.

***Whether the Court improperly used a Prior Record Score of two***

The Defendant argues that the Court improperly calculated his Prior Record Score as a two (2). There is no indication that the Court calculated the score as a two (2). In fact, the record reflects that the Court calculated and used a Prior Record Score of one (1):

COURT: Now there's a plea agreement for you to receive the bottom end of the standard range, and that sentence would run consecutive to any other sentences you are currently serving. According to the face sheet of the guilty plea colloquy, with the prior record score of one, the standard range would be 9 to 16 months. Do you understand that that plea agreement is not binding on me, but if I don't go along with it you would have the right to withdraw your plea and proceed to trial?

DEFENDANT: Yes.

N.T., 5/24/2011, p.3. If the Court used a Prior Record Score of two (2) the standard range would have been 12 to 18 months. As the Defendant received a minimum sentence of nine (9) months, the Court finds that there is not merit to the Defendant's argument.

***Whether the District Attorney or Court improperly raised a prior charge that resulted in a not guilty verdict***

The Defendant alleges that the District Attorney's Office erred when they raised a past charge that resulted in a not guilty verdict at sentencing. Further, the Defendant argues that the Court was in error for allowing the Commonwealth to raise the acquittal. The Pennsylvania Sentencing Guidelines Rule §303.5. Prior Record Score – prior convictions states:

(d) Adequacy of the prior Record Score. The court may consider at sentencing prior convictions, juvenile adjudications or dispositions not counted in the calculation of the Prior Record Score, in addition to other factors deemed appropriate by the Court.

While there is no indication that the Court actually considered the Defendant's acquittal in sentencing, there was no error in the District Attorney's Office raising the acquittal.

***Whether the Court can use misdemeanors to calculate a Prior Record Score***

The Defendant contends that the Prior Record Score was improperly calculated because it used misdemeanors. The Pennsylvania Sentencing Guidelines Rule §303.7. Prior Record Score – guideline point scoring states:

- (a) Scoring of prior convictions and adjudications is provided below and in the listing of offenses at §303.15:

....

(5) Other Misdemeanor Offenses. All other misdemeanor offenses, including a first lifetime conviction for Driving Under the Influence of Alcohol or a Controlled Substance or Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance, are designed by an "m" in the offense listing at §303.15, and are scored as follows:

- (i) One point is added if the offender was previously convicted of two or three misdemeanors.
- (ii) Two points are added if the offender was previously convicted of four to six misdemeanors.
- (iii) Three points are added if the offender was previously convicted of seven or more misdemeanors.

Misdemeanors are used to calculate a Prior Record Score, therefore the Defendant's issue is without merit.

***Whether the Court did not follow the plea agreement and he received an excessive sentence***

The Defendant contends that the Court did not follow his plea agreement and that his sentence was excessive. As state above, the Defendant was advised that the plea agreement was not binding upon the Court and that he could withdraw his guilty plea if it was not followed. N.T., 5/24/2011, p.3. The Defendant's plea agreement was for the bottom end of the standard range. With an Offensive Gravity Score of seven (7) and a Prior Record Score of one

(1), the standard range was nine (9) months to sixteen (16) months. The Court sentenced the Defendant to a minimum at the bottom end of the standard range. The maximum sentence was not governed by the plea agreement in any way. Therefore, the Court did sentence the Defendant in accordance with his negotiated plea agreement.

***Whether the Defendant is entitled to relief based upon all other issues raised***

For purposes of the remaining issues raised by the Defendant, the Court will rely on this Court's Opinion dated November 13, 2012, which determined that the Defendant's PCRA Petition was without merit.

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

By the Court,

Nancy L. Butts, President Judge

xc: DA  
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