

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	DOCKET NO. 234-2012
	:	
vs.	:	CRIMINAL LAW DIVISION
	:	
TIMOTHY D. EILAND.	:	1326 MDA 2013

**OPINION**

**Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)**

The sole issue raised by the Commonwealth in this appeal is whether the Court erred in denying the Commonwealth's motion to sentence Defendant to a two (2) year mandatory sentence for his conviction of possession with intent to deliver when the Commonwealth presented evidence *during the sentencing hearing* that Defendant possessed crack cocaine, with the intent to deliver, within a school zone, following the Supreme Court's decision in *Alleyne v. United States*, No. 11-9335 (U.S. June 17, 2013).

The pertinent factual and procedural history of this matter is as follows. Following a bench trial held on May 6, 2013, this Court convicted Defendant of possession of crack cocaine with intent to deliver, pursuant to 35 P.S. § 780-113(a)(30), and scheduled Defendant's sentencing for July 2, 2013. On July 1, 2013, the Commonwealth filed a notice requesting the Court to impose a two (2) year mandatory sentence on Defendant for possession with intent to deliver within a school zone, pursuant to Pa. C.S. § 6317 (regarding drug-free school zones and the mandatory school zone sentence). On July 2, 2013, Defendant requested a continuance based upon the Commonwealth's July 1, 2013 notice. The Court rescheduled Defendant's sentencing for July 10, 2013.

During Defendant's July 10, 2013 sentencing hearing, the Commonwealth provided sufficient credible evidence that would have lead the Court, under normal circumstances, to sentence Defendant to a two (2) year mandatory sentence for possession of intent to deliver

within a school zone. In particular, the Court received testimony Defendant exited a home, within 82 feet and 4 inches of Curtin Middle School, with the crack cocaine.<sup>1</sup> Additionally, the Court received testimony that the arresting officer conducted a traffic stop of Defendant's car within 111 feet of the Roundhouse football field, a/k/a Flanigan Park. N.T., 15:16-16:3, July 10, 2013.

However, following oral arguments by counsel regarding the Supreme Court's recent opinion in *Alleyne v. United States*, No. 11-9335 (U.S. June 17, 2013), this Court believed that the mandatory school zone sentence the Commonwealth requested was unenforceable because Defendant's trial was completed without discussing the school zone issue. Based upon *Alleyne*, the Court denied the Commonwealth's motion to sentence Defendant pursuant to the two (2) year mandatory sentence. However, the Court did sentence Defendant at the top of the standard range, imposing a fourteen (14) to twenty-eight (28) month sentence.<sup>2</sup>

Following sentencing, the Commonwealth filed the instant appeal, pursuant to 18 Pa. C.S. § 6317(d), alleging the Court erred by failing to sentence Defendant to a mandatory minimum of two (2) years, pursuant to 18 Pa. C.S. § 6317(a). The Court respectfully requests our Superior Court to affirm its July 10, 2013 sentencing Order, based upon *Alleyne, supra*.

BY THE COURT,

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Date

cc: District Attorney's Office (NI)  
Peter T. Campana, Esq. – Counsel for Appellee  
Gary L. Weber, Esq. – Lycoming County Reporter

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Richard A. Gray, J.

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<sup>1</sup> Detective Sorage testified that he took three measurements from the home at 77 Eldred Street in the City of Williamsport to the Curtin Middle School. The first measurement was from the home to the middle school property, which was 82 feet and 4 inches. The second measurement was from the home to the Curtin Middle School sign, which was 101 feet and 11 inches. The last measurement was from the home to the south-west corner of the school building, which was 173 feet and 11 inches. N.T., 17:7-25, July 10, 2013.

<sup>2</sup> The Court specifically found Defendant RRRI eligible, lowering his minimum sentence to ten (10) and one-half (½) months.