

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-979-2010
	:	
v.	:	
	:	
DAWN BALL,	:	Motion to Reconsider
Defendant	:	

OPINION AND ORDER

By Order dated April 29, 2014, Defendant was sentenced to an aggregate period of state incarceration, the minimum of which was 21 months and the maximum of which was 42 months. The Defendant was convicted, following a jury trial, of Aggravated Harassment by a Prisoner and Simple Assault. The sentence, which included a consecutive period of 3 ½ years probation under the supervision of the Pennsylvania Board of Probation and Parole was to run entirely concurrent to the sentence that Defendant was presently serving.

The sentence amounted to a time served sentence. The Court gave the Defendant credit for time served from June 17, 2010 to April 29, 2014. The Court noted that because the Defendant “maxed out her min/max sentence” she was to be released to the probationary portion of her sentence.

The Commonwealth filed a timely Motion to Reconsider alleging in essence two arguments. First, the Commonwealth contended that the Court’s Order was illegal in that it gave Defendant credit from June 10, 2010. The Commonwealth contended that the Court did not have the legal authority to provide retroactive credit in light of the fact that the Defendant was serving a sentence on another matter. Secondly, the Commonwealth argued that the Court’s sentence was essentially too lenient and did not reflect the gravity of the offense. As well, the Commonwealth contended that the sentence would “expose” other Correctional Officers to similar misconduct and create a great risk of harm to said Correctional Officers.

Argument on the Commonwealth's Motion was held before the Court on May 27, 2014. During the argument, the Court indicated that it would need to review the relevant statutes and case law prior to rendering a decision. The Defendant agreed that the Court could render its decision via a written Opinion and Order and that she did not need to be present in case the Court entered a different Sentencing Order. Regardless, the Court will issue this written Opinion and impose sentence in open court with the Defendant present on June 11, 2014.

Upon a review of the relevant statutes and case law, the Court will GRANT in part the Commonwealth's Motion.

As noted in the Court's original Sentencing Order, the Court gave the Defendant credit for time served from June 17, 2010 until April 29, 2014. The Commonwealth asserts that the Defendant was not entitled for credit for time served. The Court agrees.

Credit for time served is governed by § 9760 of the Judicial Code, which states in relevant part:

After reviewing the information submitted under § 9737 (relating to report of outstanding charges and sentences), the Court shall give credit as follows: (1) credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charges for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

42 Pa. C.S. § 9762.

Numerous Opinions from the Pennsylvania Appellate Courts have interpreted § 9760 as barring a Defendant from receiving credit for presentencing incarceration against more than one sentence for the same time served. Commonwealth v. Davis, 852 A.2d 392 (Pa. Super. 2004); Commonwealth v. Merigris, 681 A.2d 194 (Pa. Super. 1996); Commonwealth v. Hollawell, 604 A.2d 723 (Pa. Super. 1992). In other words, once a Defendant has been sentenced

or received credit towards a sentence in one case, he or she is no longer considered “in custody as a result of” any other case, and is not entitled to credit for that same time in any other case.

Defendant was already serving a sentence for Forgery from Northampton County when she committed the current offenses against a Corrections Officer at SCI – Muncy. Since the time from June 17, 2010 until April 29, 2014 was already satisfying Defendant’s sentence for Forgery, she was not entitled to receive credit for time served prior to said sentencing in this case.

During the argument in this matter, the Commonwealth indicated that should the Court agree with its argument with respect to the credit issue, it had no objection and would withdraw its argument with respect to the discretionary aspects of sentencing. Defendant, however, argued that should the Court agree that the sentence not run retroactive to April 2010, a more lenient sentence should be imposed. Moreover, the Defendant asserted that if the Court agreed with the Commonwealth in connection with the credit issue that the Court should change the sentence to one of probation to run consecutive to the sentence that the Defendant is presently serving.

Prior to imposing sentence on June 11, 2014, the Court will summarize the controlling law and facts to be considered at sentencing.

“When imposing a sentence, the Sentencing Court must consider the factors set out in 42 Pa. C.S. § 9721 (b), that is, the protection of the public, gravity of offense in relation to impact on victim and community, and rehabilitative needs of the Defendant...and, of course, the Court must consider the sentencing guidelines.” Commonwealth v. Coulverson, 34 A.3d 135, 144 (Pa. Super. 2011); citing Commonwealth v. Fullin, 892 A.2d 843, 847-48 (Pa. Super. 2006).

While there appear to be no hard and fast rules in connection with imposing a reasonable sentence, there are general guidelines. The concept of reasonableness is “inherently a circumstance-dependent concept that is flexible and understanding, and lacking precise definition.” Coulverson, Id. at 147, citing Commonwealth v. Walls, 926 A.2d 957, 963 (Pa. 2007).

However, in addition to the § 9721 statutory factors, the Court must also consider the factors set forth in 42 Pa. C.S.A. § 9781, which include the nature and circumstances of the offense and the history and characteristics of the Defendant, the Court’s observations of the Defendant, the presentence investigation, other findings supporting the sentence and again the guidelines. Coulverson, Id. at 145; Commonwealth v. Dodge, 957 A.2d 1198, 1200 (Pa. Super. 2008); Commonwealth v. Moore, 617 A.2d 8, 12 (Pa. Super. 1992).

Defendant’s initial sentence in this case was not the product of a limited focus on one or even two of the factors required to be considered. It was not a perfunctory exercise based on bias or sympathy. Moreover, and contrary to what is claimed by the Commonwealth, it was far from a sentence that failed to reflect the gravity of the offense and even further from a sentence that would “expose” other Correctional Officers to similar misconduct or create a greater risk of harm to Correctional Officers.

Indeed, the sentence was structured to best protect the public as well as the Correctional Officers at the State Correctional Institution at Muncy. The Commonwealth’s position seems short-sighted. It fails to recognize the reality of the circumstances surrounding the case and the Defendant. The Commonwealth’s position seems to be based more on perception and an inexplicable conclusion that the more time the Defendant is placed in solitary confinement, the more she will conform her behavior to societal norms. The Commonwealth’s

theory of sentencing presupposes that the Defendant is a normal rational thinking human being who will change her behavior in the face of escalating penal consequences.

The evidence adduced both prior to and at the sentencing hearing establishes beyond all doubt that the Defendant suffers from Anti-Social Personality Disorder with Obsessive Compulsive features as well as likely Bipolar Disorder, Post-Traumatic Stress Disorder and Paranoid Personality Disorder. The Defendant has been evaluated by numerous professionals over many years including psychiatrists at Danville State Hospital, Norristown State Hospital, Torrance State Hospital and SCI – Muncy.

The evidence is also crystal clear that disorders similar to those of the Defendant are very, very difficult to treat. As well, in the prison setting and especially in the Restrictive Housing Unit, treatment is essentially nonexistent. Moreover, the disorders and the symptoms of such disorders are exacerbated.

Frank Daly, Jr. is a medical doctor employed by the Department of Corrections at SCI – Muncy. He conducted a psychiatric evaluation of the Defendant. Of significant note, he concluded that the Defendant's prominent diagnosis was Anti-Social Personality Disorder. He explained that the Defendant "seems to know the rules, but consistently breaks the rules." He further noted that although the Defendant is competent, she "repeatedly acts in a manner that affects her terribly." He concluded that this is pathologic.

He advised that there was no mechanism to correct the Defendant's problems "within the auspices of the prison." He concluded that the Restrictive Housing Unit has not improved the Defendant's behavior but rather "made them worse." The antagonism between the Defendant and the Correctional Officers was described as terrible and "getting worse."

In a letter to the Court, Dr. Daly noted that the Defendant would do better in a therapeutic setting. He noted that “everything has been tried at Muncy Prison”, yet the “course has been quite rocky.”

Dr. Daly’s conclusions are echoed by much of the relevant literature regarding the effects of solitary confinement on individuals who suffer from Anti-Social Personality Disorder. The Court reviewed reports from the National Alliance on Mental Illness, the US Department of Justice, the American Association of Forensic Psychiatrists, as well as numerous scholarly articles on the subject.

It is without question that solitary confinement has been found to have a profound impact on the health and wellbeing of inmates particularly for those with pre-existing mental health disorders such as Anti-Social Personality Disorder. In such a confined and restricted setting, it may be nearly impossible to provide appropriate or effective therapy. With Anti-Social Personality Disorder, negative consequences and threats have been described as never being an appropriate motivating factor. More importantly, continuing isolation in a Restrictive Housing Unit presents what has been described as a much greater danger of post-isolation or post-release behavior dyscontrol and aggression. While it may appear to be a sound strategy to punish an individual who consistently breaks the rules, with respect to those suffering from Anti-Social Personality Disorder, it has been proven not to be an effective way to correct or conform behavior; in fact, it makes it worse.

These conclusions have been borne out by Defendant’s experience while at Muncy. In the face of escalating sanctions over several years, her behavior has not improved. Rather, it has gotten only worse. She has received hundreds of write-ups and years of Restrictive Housing Unit disciplinary time. Indeed, as long as the Defendant remains incarcerated at SCI –

Muncy, she will remain in the Restrictive Housing Unit serving her disciplinary lockup time. She has accrued, to date, disciplinary lockup time through the year 2040 plus.

As well, when Defendant was previously incarcerated at Muncy, her behavior was extremely dysfunctional. She served the vast majority, if not her entire sentence, in the Restrictive Housing Unit.

When she was released from Muncy to a far more supportive environment with appropriate treatment, she was doing well. In fact, one psychotherapist report specifically noted in a letter to her then sentencing judge that she was compliant in treatment and cooperating with therapy and her doctor. The psychotherapist specifically noted that Ms. Ball's symptoms "will exacerbate if she is made to serve time in jail."

The Defendant's conduct which led to her convictions involved her spitting on the right sleeve of a Correctional Officer on December 2, 2009 and on December 7, 2009 throwing an unknown liquid in the same Correctional Officer's eye causing eye irritation for a period of days.

In evaluating all of the relevant circumstances, the Court is greatly concerned that continued incarceration of the Defendant, which will continue to be in a restrictive housing environment, will jeopardize the safety and wellbeing of all prison staff who come in contact with the Defendant. The anti-social personality prism through which the Defendant views her incarceration and those in authority who control virtually all aspects of her daily living, causes her to believe that she is continually unfairly victimized. Thus, she continues to act out in an aggressive and hostile manner.

Moreover, the longer the Defendant remains in this setting, being isolated for potentially decades without appropriate treatment and without support, she becomes a greater

danger to the public. As the literature notes, while on its face punishing one who continues to misbehave may appear to be effective, it is actually counter-effective in circumstances such as these. This is not a situation, as the Commonwealth seems to suggest, that the Defendant's misbehaviors can be punished out of her.

Moreover, the Court perceives little if any danger of other inmates purposefully acting out expecting that by doing so, they will be rewarded by being placed in a Restrictive Housing Unit for years, being charged criminally and then receiving a minimal sentence. This is perhaps the way a rational individual may think but not a sociopath or an individual with Anti-Social Personality Disorder.

Nonetheless, and while the sentencing guidelines are merely advisory, they constitute a factor that the Court must consider in imposing a sentence. The Court must demonstrate that it was aware of and fully considered the guidelines in imposing the sentence and must recite the guideline ranges. Commonwealth v. Gause, 442 Pa. Super. 329, 659 A.2d 1014, 1016 (1995).

With respect to determining the guideline range, the Court must determine the "correct starting line" in the guidelines based upon a correct offense gravity score and prior record score. Commonwealth v. Brown, 402 Pa. Super. 369, 587 A.2d 6, 7 (1991). The lower end of the guidelines are 21 months and 12 months respectively. As well, the Court cannot ignore the reality that one of the primary purposes of the sentencing options at Defendant's sentencing level are punishment commensurate with the seriousness of the criminal behavior. 42 Pa. C.S.A. § 9721; 204 Pa. Code § 303.11 (b) (5).

The Court must ask itself what is an appropriate sentence for an individual with a severe Anti-Social Personality Disorder who has spent years in a Restrictive Housing Unit, who

has received hundreds of disciplinary sanctions, who fails to comply with the very minimum rules and regulations of the prison and who commits criminal misconduct based on spitting on a Corrections Officer and throwing an unknown liquid on a Corrections Officer causing bodily injury to that officer. The Court must also ask itself what is an appropriate sentence knowing that the sentence will be served in a State Correctional facility in that correctional facility's Restrictive Housing Unit and that the Defendant will have no chance whatsoever for parole and be required to serve the maximum sentence imposed.

ORDER

AND NOW, this 9th day of June 2014 following a hearing and as set forth herein, the Court GRANTS in part the Commonwealth's Motion for Reconsideration.

By the Court,

Judge Marc F. Lovecchio

cc: DA (MW)
PD (RC)
APO; PBPP
Gary Weber, Esquire (Lycoming Reporter)
Work file