

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-270-2006; 284-2006
 :
 MILLARD S. BEATTY, III, :
 Defendant :

OPINION AND ORDER

This matter came before the court on December 10, 2013 for a conference on Defendant's pending probation violations in the above-captioned cases. During the conference, Defendant argued that his probationary sentences could not be violated because those sentences expired on January 28, 2013. The court will treat Defendant's argument as a motion to dismiss. The relevant facts follow.

In case number 270-2006, Defendant was charged with burglary, a felony of the first degree; conspiracy to commit burglary, a felony of the first degree; two counts of forgery, both graded as felonies of the second degree; criminal trespass, a felony of the third degree; access device fraud, a misdemeanor of the first degree; possessing an instrument of crime, a misdemeanor of the first degree; theft by unlawful taking, a misdemeanor of the first degree; and receiving stolen property, a misdemeanor of the first degree. These charges arose out of an incident on January 17, 2006 where Defendant entered an individual's residence, stole checks and a debit card and then used the debit card to make purchases and cashed the checks.

In case number 284-2006, Defendant was charged with receiving stolen property, a felony of the third degree; recklessly endangering another person, a misdemeanor

of the second degree; resisting arrest, a misdemeanor of the second degree; possession of drug paraphernalia, an ungraded misdemeanor; fleeing or attempting to elude a police officer, a misdemeanor of the second degree; driving under the influence (DUI) , an ungraded misdemeanor, and numerous summary offenses. These offenses arose out of an incident on January 22, 2006, where police discovered Defendant in possession of a stolen vehicle and he led them on a high speed chase before crashing the vehicle and being taken into custody. The police discovered a crack pipe on Defendant's person during a search incident to his arrest.

On June 7, 2006, Defendant pled guilty to burglary, conspiracy and forgery in case 270-2006 and receiving stolen property, recklessly endangering another person, possession of drug paraphernalia, fleeing and eluding, DUI and several summary offenses in case 284-2006. The court sentenced Defendant to twelve months of supervision under the Intermediate Punishment Program for each conviction in case 270-2006, for an aggregate period of 36 months of Intermediate Punishment supervision.

In case 284-2006, the court sentenced Defendant to 6 months on the Intermediate Punishment Program with the first 72 hours at the Lycoming County Pre-Release Center for DUI and 12 months of supervision on the Intermediate Punishment Program on each conviction for receiving stolen property, recklessly endangering another person, and fleeing or attempting to elude the police.

Shortly thereafter, Defendant violated his Intermediate Punishment supervision. On July 19, 2006, those sentences were revoked and Defendant was re-

sentenced. Under case 270-2006, the court imposed two years of probation under the supervision of the Pennsylvania Board of Probation and Parole on each count. These sentences were to be served consecutive to the sentence imposed in case 581-2005.¹ The sentence imposed for Count 2, conspiracy, and Count 3, forgery, were concurrent to each other but consecutive to the sentence imposed for Count 1, burglary.

In case 284-2006, Defendant was re-sentenced to one year of probation on Count 1, receiving stolen property; two years of probation on Count 2, recklessly endangering another person; and 1 year of probation on Count 4, possession of drug paraphernalia. These sentences were to be served concurrently to each other and concurrently to the sentences imposed under Count 1 of case 270-2006, but consecutively to the period of state incarceration imposed in case 581-2005.

At the conference on December 10, 2013, Defendant stated that his state incarceration “maxed out” on January 28, 2011. He argued that all of his probation sentences were concurrent; therefore, his supervision expired on January 28, 2013. The court cannot agree.

Although all of the probation sentences under case 284-2006 were to be served concurrently to each other, the same cannot be said of the sentence in case 270-2006. The order dated July 16, 2006 clearly states:

The sentences imposed hereunder shall be consecutive to the sentence imposed under Case No. 05-581 where the Defendant received a sentence to State Incarceration. The sentence hereby imposed under Count 2 and Count 3 shall be served concurrently with each other but

¹ In case 581-2005, Defendant was re-sentenced to 13 months to 5 years of incarceration in a state correctional institution.

consecutively to the sentence imposed under Count 1 (emphasis added).

For Defendant's benefit, a copy of this order is attached as Exhibit A.

What this means is that if Defendant's state incarceration maxed out on January 28, 2011, in case 270-2006 he would serve his two years of probation for Count 1, burglary, from January 29, 2011 to January 28, 2013 and then serve his two years of probation for Count 2, conspiracy, and Count 3, forgery, from January 29, 2013 to January 28, 2015.² Therefore, Defendant's probation sentences have not yet expired and his request to dismiss his probation violations lacks merit.³

ORDER

AND NOW, this ___ day of January 2014, the court DENIES Defendant's request to dismiss his probation violations.

By The Court,

Marc F. Lovecchio, Judge

cc: APO
Millard Beatty, III, c/o Lycoming County Prison
Gary Weber, Esquire (Lycoming Reporter)

² In case 284-2006, Defendant's probation sentences on Count 1, receiving stolen property, and Count 4, possession of drug paraphernalia would run from January 29, 2011 to January 28, 2012; Count 2, recklessly endangering another person, would run from January 29, 2011 to January 28, 2013.

³ The court also notes that although his new Lycoming County charges did not occur until June 5, 2013, some of his new charges from other counties may have occurred in 2012. For example, the docket sheet for Defendant's charges from Schuylkill County lists the offense date as August 6, 2012 (see 54-CR-1633-2012) and the docket sheet from Columbia County lists the offense date as July 22, 2012 (see 19-CR-253-2013). If these dates are accurate, there is the possibility that Defendant's probation could be violated on Count 2, recklessly endangering another person, under case 284-2006 and Count 1, burglary, under case 270-2006, in addition to counts 2 and 3.

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