

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-373-2012
vs. :
: CRIMINAL DIVISION
:
:
RONALD DOTSON, :
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 order dated May 22, 2014 and docketed May 27, 2014. The relevant facts follow.

As a result of an incident on December 14, 2011, Defendant was charged with two counts of driving under the influence of alcohol (DUI) and one count of driving under suspension-DUI related. On July 12, 2012, the charges were amended to reflect that count 2, DUI, was a misdemeanor of the first degree and count 3, driving under suspension-DUI related was a violation of 75 Pa.C.S. §1543(b)(1.1)(i). Defendant entered an open guilty plea to all three counts on July 31, 2012.

On March 6, 2014, the Honorable Nancy L. Butts sentenced Defendant on Count 2, DUI, to pay the costs of prosecution, an Act 198 fee and a fine and to undergo five years' supervision under the intermediate punishment program (IPP) with the first six months to be served on in-home detention with electronic monitoring when a unit became available. On Count 3, driving under suspension-DUI related, Defendant was sentenced to pay a \$1,000 fine and undergo an additional 90 days in custody, but he was made eligible for work

release/work crew and electronic monitoring on this sentence as well.

On April 26, 2014 and May 11, 2014, Defendant violated the conditions of his IPP by leaving his residence when he was not authorized to do so. On May 12, 2013, when his probation officer detained him on the violations, Defendant also admitted to using heroin.

An IPP violation hearing was scheduled for May 22, 2014. At the hearing, Defendant's probation officer withdrew the violation based on using heroin in exchange for Defendant's agreement that he committed the curfew violations and would serve the rest of the time that he was supposed to be on in-home detention with electronic monitoring at Lycoming County Prison's Pre-Release Center (PRC). The court then entered an order modifying the terms of Defendant's IPP so that he was serving the remainder of his first nine months of supervision at the PRC, instead of on in-home detention with electronic monitoring. The court also gave Defendant credit for time served from April 24, 2014 to May 21, 2014.

On June 11, 2014, Defendant filed a notice of appeal. The sole issue asserted on appeal is that "the court abused its discretion at an IP revocation hearing by revoking and resentencing him, thus imposing an unduly harsh and excessive sentence." The court cannot agree.

Initially, the court believes that this claim is waived. A claim that a sentence is unduly harsh and excessive challenges the discretionary aspects of sentencing. In order to preserve such a claim, a defendant must either assert the issue on the record during the sentencing hearing or raise it in a post sentence motion. *Commonwealth v. Shugars*, 895 A.2d 1270, 1274 (Pa. Super. 2006). Defendant did neither in this case.

Defendant's claim also is not entirely accurate. The court did not revoke Defendant's IPP supervision; it simply modified the restrictive component of his sentence from in-home detention with electronic monitoring to the PRC with work release. In other words, since Defendant would not remain confined in his home other than during work hours, the court confined him at the PRC during those hours.

Finally, and most importantly, this claim is frivolous, because Defendant admitted the violations and agreed to the sentence imposed by the court. N.T., 5/22/14, at 3.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Adult Probation Office
Kirsten Gardner, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)
Work File