

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

**COMMONWEALTH OF PENNSYLVANIA** : **No. CR-1379-2013**  
:   
v. :   
: **CRIMINAL DIVISION**  
**KEITH ENGLERT,** :   
**Defendant** :

**OPINION AND ORDER**

The Defendant filed a Post-Sentence Motion on February 26, 2014. Argument on Defendant’s Motion was held on March 10, 2014.

***Background***

On September 16, 2013, Defendant pled guilty to DUI with the highest rate of alcohol, a violation of 75 Pa.C.S. § 3802(c) (§ 3802(c)). At the time of the plea, Defendant had one prior DUI offense. Defendant committed a misdemeanor of the first degree under 75 Pa.C.S. § 3803(b)(4) (§ 3803(b)(4)). Defendant was sentenced to a five (5) year IP pursuant to 18 Pa.C.S. § 106(b)(6) (§ 106(b)(6)).

In the Post-Sentence Motion, Defendant argued that under 75 Pa.C.S. § 3803(a) (§ 3803(a)), Defendant’s sentence exceeded the maximum penalty allowable by law. In arguing that the sentence exceeded the maximum penalty allowable by law, Defendant relied on Commonwealth v. Musau, 69 A.2d 754 (Pa. Super. 2013).

***Discussion***

The holding of Musau is inapplicable to this case. In Musau, the court held that a defendant may not be sentenced to a term of imprisonment of more than six (6) months if that

defendant (i) has one prior DUI offense, (ii) refuses testing of blood or breath, and (iii) violates 75 Pa.C.S. § 3802(a) (§ 3802(a)). Musau addressed the sentencing conflict that arises between § 3803(a) and § 106(b)(6) when a defendant with one prior DUI offense violates § 3802(a). Here, the defendant violated § 3802(c). Therefore, the sentencing conflict in Musau did not arise.

Likewise, § 3803(a) is inapplicable. Commonwealth v. Coles, No. 1763-2011 (Lovecchio, J., Dec. 23, 2013). Under § 3803(a), a defendant may not be sentenced to a term of imprisonment of more than six (6) months if that defendant (i) has no more than one prior DUI offense and (ii) violates § 3802(a). Here, Defendant violated § 3802(c). Therefore, § 3803(a) is inapplicable to this case.

### ***Conclusion***

§ 3803(a) is inapplicable. Defendant committed a first degree misdemeanor. § 3803(b)(4). A first degree misdemeanor has a maximum sentence of five (5) years. § 106(b)(6). Therefore, Defendant's five (5) year IP sentence did not exceed the maximum penalty allowed by law.

Based upon the foregoing, the Court finds no reason upon which to grant Defendant's Post-Sentence Motion. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order to the Pennsylvania Superior Court; (b) the right to assistance of counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and (d) the qualified right to bail under Rule 521(B).

**ORDER**

AND NOW, this \_\_\_\_\_ day of March, 2014, based upon the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant's Post Sentence Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
PD