

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **No: CR-714-2012**
 :
 : **CRIMINAL DIVISION**
AUSTIN ERNST, : **APPEAL**
 Defendant :

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

Austin Ernst (Defendant) was charged with Driving Under the Influence of Alcohol or Controlled Substance,¹ Driving Under the Influence of Controlled Substance,² and Driving Vehicle at Safe Speed.³ The Defendant was denied Accelerated Rehabilitative Disposition (ARD) by the District Attorney of Lycoming County. On September 13, 2012, the Defendant filed a Motion to Compel Placement into ARD, which argued that the District Attorney improperly considered an expunged juvenile record when considering ARD. On November 29, 2012, this Court issued an Opinion and Order which denied the Defendant's Motion.

On May 14, 2013, after a case-stated non-jury trial, this Court found the Defendant guilty of count 2, Driving Under the Influence of Controlled Substance. The Court found the Defendant not guilty of Counts 1 and 3. On November 26, 2013, the Defendant was sentenced to seventy-two (72) hours to six (6) months in the Lycoming County Prison. The Defendant was to be released at the minimum period of confinement unless he received a disciplinary write up.

On December 17, 2013, the Defendant filed a Notice of Appeal of his sentence. This Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty (30) days a concise statement of matters complained of on appeal. The Court received the Defendant's concise statement on January 6, 2014, which alleged that this Court erred in finding

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3802(d)(1)(i).

³ 75 Pa.C.S. § 3361.

that the District Attorney did not abuse his discretion in denying the Defendant's entry into the ARD program.

For purposes of this Opinion, the Court will rely on its Opinion and Order dated November 29, 2013, which found that the District Attorney did not abuse his discretion in denying the Defendant's ARD application.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Edward J. Rymysz, Esq.