

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. CR-39-2012
	:	
WILLIAM MCCORMICK,	:	
Defendant	:	APPEAL

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

On February 6, 2012, William McCormick (Defendant) pled guilty before the Honorable Marc L. Lovecchio to Retail Theft, a felony of the third degree.¹ The Defendant pled guilty in exchange for a negotiated plea agreement, which was for restitution and a sentence at the bottom end of the standard range. On May 15, 2012, Judge Lovecchio sentenced the Defendant to the Lycoming County Intermediate Punishment Program for a period of three (3) years. The first six (6) months of the sentence were to be served at the Lycoming County Prison and Pre-Release facility.

On November 14, 2013, the Defendant had a preliminary intermediate punishment hearing. At the time of the hearing, the Court agreed to consider a half-way house or Christian program if the Defendant could get enrolled into one. Subsequently, the Defendant was only able to be placed onto the waiting list of a program in Williamsport at the American Rescue Workers. On January 14, 2014, following a final intermediate punishment violation hearing, this Court found beyond a reasonable doubt that the Defendant violated the conditions of the Intermediate Punishment Program. The Court re-sentenced the Defendant on the Retail Theft charge and he received one (1) to two (2) years in a State Correctional Institution with a consecutive one (1) year of probation with the Pennsylvania Board of Probation and Parole.

¹ 18 Pa.C.S. § 3929(a)(1).

On February 12, 2014, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. On February 14, 2014, this Court requested the Defendant to file a concise statement of the matters complained on appeal. The Defendant alleged one (1) issue, which was that this Court abused its discretion at a probation revocation hearing by imposing an unduly harsh and excessive sentence.

Whether the Court abused its discretion by imposing an unduly harsh and excessive sentence

The Defendant claims that the sentence imposed against him was harsh and excessive. 42 Pa. C. S. A. § 9781(b) provides that:

The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this chapter.

A Defendant has no absolute right to challenge the discretionary aspects of his sentence.

Commonwealth v. Petaccio, 764 A.2d 582, 586 (Pa. Super. 2000); see also Commonwealth v. Hoag, 665 A.2d 1212 (Pa. Super. 1995). “An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will.” See Commonwealth v. Paul, 925 A.2d 825, 829 (Pa. Super. 1997) (quoting Commonwealth v. Kenner, 784 A.2d 808, 810 (Pa. Super. 2001)). Furthermore, “[u]pon sentencing following a revocation of probation, the trial court is *limited only* by the maximum sentence that it could have imposed originally at the time of the probationary sentence.” Commonwealth v. Gibbons, No. 1733 MDA 2010, slip op. at 2 (Pa. Super. June 17, 2011) (emphasis added); see also Commonwealth v. Coolbaugh, 770 A.2d 788, 792 (Pa. Super. 2001).

While the Defendant argues that the sentence imposed against him was an abuse of discretion, he does not argue that the sentence was beyond the maximum. The Defendant pled guilty on February 6, 2012 to Retail Theft, a felony of the third degree. The statutory maximum for that offense is seven (7) years. The Defendant's sentence of one (1) to two (2) years at a State Correctional Institution with a consecutive year of probation, which he received at his final IP violation hearing, is within the maximum sentence. As stated above, the sentencing court is only limited by the maximum sentence.

Furthermore, it is well settled that once probation has been revoked the court may impose a sentence of total confinement if any of the following conditions exist under Section 9771(c) of the Sentencing Code:

- (1) the defendant has been convicted of another crime;
- (2) the conduct of the defendant indicates that it is likely that he will commit another crime if she is not imprisoned; or
- (3) such a sentence is essential to vindicate the authority of the court.

42 Pa.C.S. § 9771. When it becomes apparent that the probationary order is not serving its desired rehabilitation effect, the court's decision to impose a more appropriate sentence should not be inhibited. Commonwealth v. Ahmad, 961 A.2d 884 (Pa. Super. 2008) (citing Commonwealth v. Carver, 923 A.2d 495, 498 (Pa. Super. 2007)).

In this case, the Court did not impose a maximum sentence. The Court, however, had multiple justifications for imposing the sentence that was given. The Defendant was instructed via letter to his approved address to report to the Adult Probation Office but the letter was returned as unclaimed and he did not report. Further, his supervision was returned from Philadelphia County after the Defendant was arrested for two more Retail Theft charges. The Court did not abuse its discretion when sentencing the Defendant for this IP violation.

Conclusion

As the Defendant's issue of a harsh and excessive sentence appears to not have merit, it is respectfully suggested that the Defendant's sentence be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Kirsten Gardner, Esq.