

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001048-2011
:
vs. :
:
:
TROY BAILEY, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant’s pro se “Motion Requesting Relief from the Courts Sentencing Order and Clarification.”

In the guilty plea and sentencing order dated August 29, 2011, the Court ordered Defendant to pay the costs of prosecution as part of his sentence on Count 2, Theft From A Motor Vehicle. No fines or restitution were imposed. The order also stated that “Defendant’s payment of costs, fines, and restitution in compliance with this order is hereby made a condition of intermediate punishment, probation or parole supervision.”

In his motion, it appears that Defendant is seeking three different, but related, forms of relief: (1) preclusion of any collections of costs and fines until there is a hearing regarding Defendant’s ability to pay; (2) issuance an order to the Department of Corrections clarifying that the Court did not intend any costs and fines to be collected from him until he is paroled; and/or (3) entry of an order precluding the Department of Corrections from collecting any costs and fines pursuant to Act 84.

The Court denies all of Defendant’s requests for relief. The Court was required by law to impose costs, and it was not necessary for the Court to hold a hearing regarding Defendant’s ability to pay before doing so. In fact, if the Court had failed to order

the payment of costs, the clerk of courts still would have assessed the costs of prosecution against Defendant. Section 9721(c.1) of the Judicial Code specifically states:

Notwithstanding the provisions of section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties) or any provision of law to the contrary, in addition to the alternatives set forth in subsection (a), **the court shall order the defendant to pay costs. In the event the court fails to issue an order for costs pursuant to section 9728, costs shall be imposed upon the defendant under this subsection. No court order shall be necessary for the defendant to incur liability for costs under this section.** The provisions of this subsection do not alter the court's discretion under Pa.R.Crim.P. No. 706(C) (relating to fines or costs).

42 Pa.C.S. §9721(c.1)(emphasis added). Moreover, Rule 706 does not require a hearing prior to the imposition of costs, but rather prior to incarcerating a defendant as a contempt sanction for the failure to pay the costs. See Rule 706(a); Commonwealth v. Hernandez, 917 A.2d 332 (Pa. Super. 2007). Although Defendant is incarcerated, he is incarcerated on the sentence for his charges and not as a result of a contempt proceeding for failing to pay his costs and fines.

It also was **not** the Court's intention to only allow the collection of costs while Defendant was on parole or to limit the Department of Corrections ability to collect costs pursuant to Act 84. Rather, the court made the payment of costs a condition of parole so that another enforcement mechanism would be available to enforce Defendant's obligation to pay his costs; that is, Defendant's parole agent could bring Defendant before the Court on a technical violation if Defendant failed to comply with the Court's order with respect to the payment of costs.

Finally, the Court lacks jurisdiction to address Defendant's challenges or complaints regarding the deductions the Department of Corrections is taking pursuant to Act

84. See Commonwealth v. Jackson, 858 A.2d 627 (Pa.Super. 2004) (Commonwealth Court has exclusive jurisdiction over claims regarding Act 84 deductions); see also Commonwealth v. Danysh, 833 A.2d 151 (Pa. Super. 2003); Commonwealth v. Parella, 834 A.2d 1253, 1255-56 (Pa.Commw. 2003).

ORDER

AND NOW, this ___ day of March 2015, the Court DENIES Defendant’s “Motion Requesting Relief from the Courts Sentencing Order and Clarification.”

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Troy Bailey, #LU-2960
PO Box 1000, Houtzdale PA 16698-1000
Gary Weber, Esquire (Lycoming Reporter)
Work file