

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-113-2010
v.	:	
	:	
ANTWONE C. CORMIER,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On April 1, 2015, the Defendant filed a timely post-sentence motion. Argument on the motion was held on April 27, 2015.

I. Background

On June 7, 2011, the Defendant was convicted of perjury. On July 27, 2011, he was sentenced to incarceration for a minimum of eight months and a maximum of 23 months. This sentence of confinement was to be followed by three years of probation. The Defendant was later convicted of robbery. He was paroled on October 6, 2014, but, after losing his home plan, he was placed in Keystone Community Corrections Center (Keystone CCC) on November 21, 2014. The Defendant admitted that he used alcohol and/or marijuana on November 27, 2014, November 28, 2014, and December 13, 2014. On December 15, 2014, the Defendant absconded from Keystone CCC. He admitted that he used marijuana after he absconded. On March 24, 2015, after the Defendant admitted that he absconded from Keystone CCC, the Court revoked the Defendant's probation and re-sentenced him to incarceration for a minimum of six months and a maximum of 24 months. In his motion, the Defendant argues that the Court abused discretion by revoking his probation and re-sentencing him to incarceration for six to 24 months.

II. Discussion

In Commonwealth v. Dickens,¹ the Superior Court of Pennsylvania held that a court may revoke a defendant's probation even though the defendant has not begun serving the probation:

If, at any time before the defendant has completed the maximum period of probation, or *before he has begun service of his probation*, he should commit offenses of such nature as to demonstrate to the court that he is unworthy of probation and that the granting of the same would not be in subservience to the ends of justice and the best interests of the public, or the defendant, the court could revoke or change the order of probation. A defendant on probation has no contract with the court. He is still a person convicted of crime, and the expressed intent of the Court to have him under probation beginning at a future time does not 'change his position from the possession of a privilege to the enjoyment of a right.'"

475 A.2d at 144 (quoting Commonwealth v. Wendowski, 420 A.2d 628, 630 (Pa. Super. 1980)).

"Upon [probation] revocation the sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing, due consideration being given to the time spent serving the order of probation." 42 Pa.C.S. § 9771(b). "The court shall not impose a sentence of total confinement upon revocation unless it finds that: (1) the defendant has been convicted of another crime; or (2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or (3) such a sentence is essential to vindicate the authority of the court." 42 Pa.C.S. § 9771(c).

Here, a sentence of total confinement was warranted. The Defendant committed a crime after being sentenced to the period of probation. In addition, the Defendant admitted that he absconded from Keystone CCC and repeatedly used alcohol and/or marijuana, thereby violating the conditions of his parole. Thus, the sentence of total confinement was essential to vindicate the authority of the Court. The Court believes that anything less than total confinement allow the Defendant to believe that being convicted of a new offense and committing technical violations of supervision is not wrongful conduct subject to severe consequences.

¹ 475 A.2d 141 (Pa. Super. 1984).

III. Conclusion

The Court did not abuse discretion in imposing a sentence of incarceration for six to 24 months because a sentence of total confinement was warranted.

ORDER

AND NOW, this _____ day of July, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal in forma pauperis and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

By the Court,

Nancy L. Butts, President Judge