

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-2019-2013  
vs. :  
: CRIMINAL DIVISION  
:   
:   
JEFFREY FARNSWORTH, :   
Appellant : 1925(a) Opinion

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

This opinion is written in support of this court's judgment of sentence dated August 27, 2015. The relevant facts follow.

Appellant Jeffrey Farnsworth (“Farnsworth”) was charged with theft by unlawful taking, theft by deception and receiving stolen property as a result of Farnsworth taking jewelry from Wendy Neuffer’s residence and selling some of it to Hooker’s Coin and Precious Metals for \$1674. On December 8, 2014, Farnsworth pled guilty to theft by deception, a misdemeanor of the first degree. The plea agreement provided for a three to six month max out sentence if Farnsworth paid \$1674 in restitution by the time of sentencing or an open plea if he did not.

A sentencing hearing was held on January 30, 2015. Unfortunately, the condition for the negotiated plea agreement was not met. The court sentenced Farnsworth to a split sentence of 11 ½ months to 24 months less one day of incarceration followed by a three-year term of probation. The court gave Farnsworth credit for time served from October 22 through November 25, 2013 and made him eligible for the Lycoming County Re-Entry

program. Farnsworth also was ordered to pay restitution in the amount of \$12,375 to Wendy Neuffer and \$1674 to Hooker's Coin and Precious Metals. Farnsworth, however, disputed the amount of restitution, so a restitution hearing was scheduled for May 1, 2015.

On that date, upon stipulation of the parties, Farnsworth agreed to the restitution amounts set forth in the original sentencing order and he was made immediately work release/work crew eligible and immediately eligible for placement on the Lycoming County Re-entry Program. Farnsworth was released from custody and placed onto the Re-entry Program on June 8, 2015.

On August 27, 2015, Farnsworth appeared before the court for a probation and parole violation hearing because he missed check-in at the re-entry services facility on July 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 20<sup>th</sup>, he missed several groups, and he failed to make any restitution payments.

Farnsworth did not contest that he was removed from the Re-entry Program; however, he claimed he was diagnosed with chronic obstructive pulmonary disorder (COPD) with chronic bronchitis and he had medical excuses for the days that he missed. He also claimed that he was on disability and just hadn't had enough time yet to pay restitution in addition to getting his own place to live.

When the court asked for the documentation, Farnsworth provided paperwork that addressed July 8<sup>th</sup> and 9<sup>th</sup>, but no documents were provided regarding his failure to check in on the 10<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> or 20<sup>th</sup>.

Farnsworth provided a doctor's note that indicated he had been seen on August 5<sup>th</sup> and should be off of his feet for four days due to shortness of breath from

bronchitis and pain from ulcers. The Chief of the Adult Probation Office then brought to the court's attention that Farnsworth was arrested for driving under suspension later in the day on August 5 when he was supposed to be on bed rest. Farnsworth did not know anything about being under suspension. He claimed, however, that he went out to get sandwiches and was stopped on his way home.

The court then inquired about Farnsworth's failure to make any payment towards restitution. Farnsworth did not deny that he did not make any payments. Instead, he claimed that he had only received two disability checks before he was picked up and that was not enough money for him to get a place to live, tithe to his church, and pay restitution. The court, however, confronted Farnsworth with statements he made during the restitution hearing and in a letter he wrote to the court in which he pleaded with the court to be released so that he could pay restitution to Ms. Neuffer and he assured the court that he could make "aggressive" payments. In light of those statements and the fact that Farnsworth had not paid one cent towards restitution despite being released from incarceration for over two months, the court concluded that Farnsworth lied to the court and duped the court into releasing him from jail.

Based on the evidence presented at the hearing, the court found that Farnsworth violated the conditions of his probation. The court revoked probation and sentenced Farnsworth to 18 to 36 months' incarceration in a state correctional institution.

On September 3, 2015, Farnsworth filed a motion to reconsider the probation violation sentence, alleging that: the sentence was unduly harsh; a county sentence would be more appropriate; he did not have the opportunity to make a restitution payment despite his

willingness to do so; and the court did not fully consider his health conditions during the two months he was on the street which rendered him unable to report to the Re-entry Program.

The court summarily denied this motion on September 10, 2015.

Farnsworth filed a timely notice of appeal. The sole issue raised in the appeal is that the trial court abused its discretion by imposing an unduly harsh and manifestly excessive sentence of 18-36 months at a state correctional facility, following a probation violation, without fully considering his medical conditions and financial means with respect to the violations alleged.

“Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion.”

*Commonwealth v. Bricker*, 41 A.3d 872, 875 (Pa. Super. 2012)(quoting *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002)). “[A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not 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.’” *Commonwealth v. Walls*, 592 Pa. 557, 926 A.2d 957, 961 (2007)(quoting *Commonwealth v. Smith*, 543 Pa 566, 673 A.2d 893, 895 (1996)).

Clearly, Farnsworth violated the conditions of his supervision. A special condition of his supervision as set forth in the original sentencing order was that Farnsworth pay restitution. On May 1, 2015, upon the stipulation of the parties, the court amended Farnsworth’s original sentence so that he could be released from incarceration and begin paying restitution prior to serving his minimum sentence. The court made successful completion of the Re-entry Program a condition of his supervision.

Farnsworth admitted that he was removed from the Re-entry Program; however, he claimed his missed check-ins and failure to pay restitution should be excused due to his medical conditions and lack of financial means. Farnsworth's excuses were not credible. Although he claimed to have medical excuses for his missed check-ins, the documentation only supported two of his six absences. Furthermore, Farnsworth repeatedly assured the court that he could make restitution payments both orally at the restitution hearing held on May 1 and in a letter he wrote to the court. Despite these promises and assurances, Farnsworth did not pay one cent towards restitution between the time he was released from jail on June 8, 2015 and August 18, 2015 when he was returned to jail on the probation and parole violation detainer.

The order entered on May 1, 2015 permitted "either the Commonwealth or the defendant to request an increase or decrease in the monthly amount depending on the circumstances." Farnsworth never submitted anything to the court to request a reduction in his monthly amount. He did, however, sign a document on July 7, 2015 (which became a court order), indicating that he had the ability to pay \$20 per month and he would make the first such a payment within thirty (30) days. He also did not make even a minimal payment of \$5 or \$10 to show he was making any effort to pay restitution. If Farnsworth truly had a willingness to pay restitution, he would have done **something** to evidence such. Instead, he completely ignored his responsibility to pay restitution.

Farnsworth's original sentence was for 11 ½ months to 24 months less one day followed by three years of probation. The court did not require Farnsworth to serve his entire minimum sentence, but rather released him to the Re-entry Program after six months to

enable him to begin paying restitution and reintegrating into society. Instead of taking advantage of that opportunity, Farnsworth ignored his responsibilities and violated the conditions of his supervision. Since county incarceration and supervision were ineffective at rehabilitating Farnsworth, the court imposed an 18-36 month state sentence. This sentence was not a result of bias, partiality, prejudice or ill-will, but Farnsworth's own failures to make any effort to meet his obligations after repeatedly representing to the court that he was willing and able to make restitution payments.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: District Attorney  
Kirsten Gardner, Esquire (APD)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)