

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-1871-2014**  
 v. :  
 :  
 **ANTHONY DWAYNE MIXON-LOVE,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

On July 6, 2015, the Defendant filed a timely Post-Sentence Motion. A conference on the motion was held on July 30, 2015.

**I. Background**

On March 27, 2015, the Defendant entered a guilty plea to the following offenses: (1) Robbery (threaten serious bodily injury),<sup>1</sup> (2) Person Not to Possess a Firearm,<sup>2</sup> Firearms not to Be Carried Without a License,<sup>3</sup> (4) Possession of an Instrument of Crime,<sup>4</sup> (5) Terroristic Threats,<sup>5</sup> (6) Simple Assault,<sup>6</sup> (7) Theft by Unlawful Taking,<sup>7</sup> and (8) Receiving Stolen Property.<sup>8</sup> On June 25, 2015, the Court sentenced the Defendant to seven years to 20 years of incarceration for Robbery, four years to 10 years of incarceration for Person Not to Possess, two years to four years of incarceration for Firearms not to Be Carried Without a License, one year to five years of incarceration for Possession of an Instrument of Crime, one year to two years of incarceration for Terroristic Threats, one year to two years of incarceration for Theft by Unlawful Taking, and one year to two years of incarceration for Receiving Stolen Property. The Court found that Simple Assault merged for sentencing purposes. The sentence for Person not to

---

<sup>1</sup> 18 Pa.C.S. § 3701(a)(1)(ii). It is a felony of the first degree. 18 Pa.C.S. § 3701(b)(1).

<sup>2</sup> 18 Pa.C.S. § 6105(a)(1). It is a felony of the second degree. 18 Pa.C.S. § 6105 (a.1)(1).

<sup>3</sup> 18 Pa.C.S. § 6106. It is a felony of the third degree. 18 Pa.C.S. § 6106(a)(1).

<sup>4</sup> 18 Pa.C.S. § 907(b). It is a misdemeanor of the first degree. 18 Pa.C.S. § 907(b).

<sup>5</sup> 18 Pa.C.S. § 2706(a). It is a misdemeanor of the first degree. 18 Pa.C.S. § 2706(d).

<sup>6</sup> 18 Pa.C.S. § 2701(a)(3). It is a misdemeanor of the second degree. 18 Pa.C.S. § 2701(b).

<sup>7</sup> 18 Pa.C.S. § 3921(a). It is a misdemeanor of the first degree. 18 Pa.C.S. § 3903(b).

<sup>8</sup> 18 Pa.C.S. § 3925(a). It is a misdemeanor of the first degree. 18 Pa.C.S. § 3903(b).

Possess runs consecutively to the Robbery sentence. The sentence for Possession of an Instrument of Crime runs consecutively to the Person not to Possess sentence and the Robbery sentence. The sentence for Firearms not to be Carried without a License runs concurrently with the Robbery sentence. The sentences for Terroristic Threats, Theft by Unlawful Taking, and Receiving Stolen Property run concurrently with each other and concurrently with the Robbery sentence. Therefore, the Defendant's aggregate sentence was 12 years to 35 years of incarceration.

In his post-sentence motion, the Defendant argues that "his sentence is unduly harsh and excessive in light of the fact that he has severe mental health issues and that the current sentence imposed as to [Robbery] is in the aggravated range of the sentencing guidelines." He asks the Court to "consider reducing the minimum portion of his sentence, or consider running the sentences concurrent to one another." During the conference on the motion, Defense Counsel noted that the Court had stated that it was applying the deadly weapon used matrix, so the Robbery sentence was not in the aggravated range. See N.T., 6/25/15, at 31. Defense Counsel also asked the Court to run the sentences concurrently with the Robbery sentence because the Defendant committed one act that lasted only a few minutes, and he had already been punished for having the gun through the application of the deadly weapon used enhancement for Robbery.

## **II. Discussion**

"[A] sentencing court must formulate a sentence individualized to that particular case and that particular defendant. Section 9721(b) provides: '[t]he court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the

victim and on the community, and the rehabilitative needs of the defendant. . . .”

Commonwealth v. Boyer, 856 A.2d 149, 153 (Pa. Super. 2004) (quoting 42 Pa. C.S. § 9721(b)).

“Where the court imposes a sentence for a felony or misdemeanor, the court shall make part of the record, and disclose in open court during sentencing, a statement of the reasons for the sentence imposed. At the same time, the court is not required to parrot the words of the sentencing code, stating every factor relevant under 42 Pa.C.S.A. § 9721(b). Instead, the record as a whole must reflect due consideration by the court of the offense and the character of the offender.” Commonwealth v. Kalichak, 943 A.2d 285, 290 (Pa. Super. 2008) (citations omitted).

Here, the Court reviewed a pre-sentence investigation report on the Defendant. N.T., 6/25/15, at 4. The Court knew the circumstances surrounding the offenses. See id. at 5, 18. The Court also knew the Defendant’s age, work experience, criminal history, and some facts about the Defendant’s childhood. See id. at 4, 6-9. In addition, the Court knew that the Defendant had mental health problems. See id. at 5, 10-11. The following are some additional factors that the Court considered when fashioning the sentence: the Defendant’s poor response to supervision, the Defendant’s poor adjustment to incarceration, and the Court’s belief that the Defendant minimized accountability. All of the sentences are within the standard range. The Court believes that the imposition of consecutive sentences was not unduly harsh because each crime that has a consecutive sentence protects an interest different from the crime to which it is consecutive.

### **III. Conclusion**

For the reasons discussed above, the Defendant's sentence is not unduly harsh or excessive.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of September, 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 entry 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