

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. SA – 53 – 2014
	:	NO. SA – 63 – 2014
	:	
vs.	:	CRIMINAL DIVISION
	:	
AMY MORGRET,	:	
Defendant	:	Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant’s Post-Sentence Motion, filed January 5, 2015. Argument was heard February 25, 2015.

In August and September 2014, Defendant was convicted of driving without a license and driving under suspension before Magisterial District Judge Kemp, and driving under suspension before Magisterial District Judge Carn, respectively. As a result of an appeal from those convictions and an agreement reached with the Commonwealth, on November 14, 2014, Defendant pled guilty to two counts of driving under suspension and was sentenced by the Honorable Nancy L. Butts to an aggregate period of incarceration of 120 days, as well as fined a total of \$2000.00.¹ Defendant was ordered to report to the Lycoming County Prison at 10:00 a.m. on December 1, 2014.

When Defendant failed to report on December 1st, a bench warrant was issued for her arrest. She was brought before this court on that warrant on December 24, 2014, and by Order of that date, remanded to the prison to serve the 120 day sentence. This court also found her in indirect criminal contempt for

failing to report as ordered, and sentenced her to an additional 120 days incarceration. In the instant motion, Defendant contends the court's sentence is illegal.

The power of the court to impose summary punishments for contempts of court is found in 42 Pa.C.S. Section 4132, which allows for such in the case of, *inter alia*, “[d]isobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court”. While Defendant agrees the court has the power to find her in contempt, she argues that the power to punish her for that contempt is limited by Section 4133, which restricts the “punishment of commitment for contempt” to “contempts committed in open court”. 42 Pa.C.S. Section 4133. According to Section 4133, all other contempts may be punished by fine only. *Id.* Defendant thus argues the sentence of incarceration for her contempt is illegal.

The court agrees with Defendant that Section 4133 limits the court's power to impose a sentence of incarceration for indirect criminal contempt. The court believes, however, that the statute is unconstitutional, based on the Pennsylvania Supreme Court's holding in Commonwealth v. McMullen, 961 A.2d 842 (Pa. 2008). There, Section 4136 of Title 42 was found to “unconstitutionally restrict[] the court's ability to punish for contempt.” *Id.* at 850. Section 4136 provides, in relevant part, as follows:

(a) General rule.--A person charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court ...

(b) Punishment.-- Except as otherwise provided in this title or by statute hereafter enacted, punishment for a contempt specified in

¹ The charge of driving without a license was dismissed as part of the agreement.

subsection (a) may be by fine not exceeding \$ 100 or by imprisonment not exceeding 15 days in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail for the nonpayment of such a fine, he shall be discharged at the expiration of 15 days, but where he is also committed for a definite time, the 15 days shall be computed from the expiration of the definite time.

42 Pa.C.S. § 4136. The McMullen Court held:

Since courts have the authority to punish individuals in violation of their orders under the case law described above and § 107(c), the legislature cannot create a form of indirect criminal contempt and restrict a court's ability to punish individuals who commit contempt of court. While the legislature generally may determine the appropriate punishment for criminal conduct, indirect criminal contempt is an offense against the court's inherent authority, not necessarily against the public. Section 4136(b) provides maximum penalties the court may impose; thus, § 4136(b) unconstitutionally restricts the court's ability to punish for contempt.

Commonwealth v. McMullen, *supra*, at 849-50. This court fails to see any distinguishing characteristic which would prevent the application of McMullen's pronouncement to Section 4133. Therefore, that section will not be considered, and the sentence will be upheld.

ORDER

AND NOW, this day of March 2015, for the foregoing reasons,
Defendant's Post-Sentence Motion is hereby DENIED.²

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson

² The Commonwealth also argued that this court has no jurisdiction to entertain Defendant's motion as the rules do not provide for such a motion. In light of the disposition of the motion, the court will not address this separate argument.