

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-000125-2014;
vs. : CP-41-CR-000892-2014
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PAULA TAYLOR, :
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 November 12, 2014. The relevant facts follow.

Under Information 125-2014, the Williamsport police charged Appellant Paula Taylor with retail theft, a felony of the third degree, as a result of an incident on January 7, 2014 at the Weis Markets where she was observed taking items such as hairspray, face wipes and mayonnaise, and placing them into her purse without paying for them. Appellant tendered an open guilty plea to this charge on May 2, 2014.

Under Information 892-2014, the Williamsport police charged Appellant with retail theft and receiving stolen property, both graded as felonies of the third degree, arising from an incident on May 18, 2014 at Kohl's involving merchandise valued at \$1227.09. On October 17, 2014, Appellant entered an open guilty plea to both charges.

On November 12, 2014, the court sentenced Appellant to an aggregate term of forty (40) months to ten (10) years of incarceration in a state correctional institution, consisting of sixteen (16) months to five (5) years for retail theft in case 125-2014 and a

consecutive term of twenty-four (24) months to five (5) years for retail theft in case 892-2014.¹

Appellant filed a timely motion for reconsideration of sentence in which she asserted that: (1) the reasons given by the court for the twenty-four (24) month minimum sentence for case 892-2014, which was beyond the aggravated range, were insufficient; (2) the aggregate sentence of forty (40) months to ten (10) years was unduly harsh and manifestly excessive; (3) the court failed to adequately consider Appellant's obvious need for continuing mental health and drug and alcohol treatment; and (4) the court failed to consider reports that Appellant had made strides in treatment just prior to sentencing. The court summarily denied this motion.

Appellant filed a timely notice of appeal. The sole issue asserted by Appellant in her appeal is that the sentencing court abused its discretion when imposing sentence as specified in her motion for reconsideration of sentence.

“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).

The court does not believe it abused its discretion in this case. The court

¹Count 2, receiving stolen property, merged with Count 1, retail theft, for sentencing purposes.

recognized that Appellant had physical and mental health issues. The court specifically noted on the record that Appellant was involved in a car accident in 2012 in which she suffered a cervical spine fracture, a herniated disc, a lumbar spine deformity, and fractures of her tibia and fibula. She underwent surgery to have plates and pins inserted in her neck, left leg and ankle. The court also acknowledged that Appellant had some mental issues related to bipolar disorder, OCD, depression, anxiety, and a mood disorder. Sentencing Transcript, at 5. As explained below, however, the court did not view Appellant's physical and mental issues as a reason to decline to impose a state sentence in this case or as outweighing the reasons the court imposed a sentence outside the guidelines in case 892-2014.

The offense gravity score for these offenses was a 3. Appellant's prior record score was 5. The standard minimum sentencing guideline range was 6-16 months, and the aggravated range was 16-19 months.

The court imposed a 24-month minimum sentence in case 892-2014. The court recognized that this sentence was outside the guidelines, but found such a sentence was necessary and appropriate under the facts and circumstances of this case.

As the attorney for the Commonwealth aptly noted, the prior record score of five grossly underrepresented both the seriousness and extent of Appellant's prior criminal history, which spanned thirty years. *Id.* at 7. If the prior record score was not capped at 5 points, Appellant's prior convictions would result in a point score of 14. *Id.*

In connection with her prior criminal history, a variety of sentencing alternatives were utilized, all to no avail. Specifically, the court stated:

I have to consider a whole bunch of things. Protection of the public. You've been stealing for [sic] everybody for 30 years, and nothing has done anything to change that. Nothing. State prison, county prison,

mental health court, therapy, mental health services, outpatient, inpatient, nothing. As early as – from January to March of this year your Diakon counseling was poor at best....I guess I can't explain it other than, enough is enough here...these are choices that you're continuing to make, in spite of every service in the world being made available to you.

Id. at 15-16.

The court considered the rehabilitative needs of Appellant, but noted that she “decided to thumb her nose at every effort” made at rehabilitating her. *Id.* at 16.

The court also found that the circumstances surrounding case 892-2014 were particularly egregious. In March 2014, Appellant was sentenced to five years of probation supervision in Allegheny County for theft of services and identity theft. *Id.* at 4. She was on bail for the retail theft in case 125-2014 and entered her guilty plea on May 2, 2014. A mere 16 days later, while she was under probation supervision in Allegheny County and on bail in case 125-2014, she committed the offenses in case 892-2014.

Furthermore, the court did not sense much remorse from Appellant; it only sensed a woman who didn't want to go to state prison. *Id.* at 16.

The purported strides Appellant made in treatment just prior to sentencing were, in reality, mixed reviews. The court noted that it looked like Appellant was doing quite well with her outpatient substance abuse treatment at White Deer between August of 2014 and October 16, 2014; however, she was not entirely compliant with her mental health treatment at Diakon and her prognosis was poor. *Id.* at 6. Moreover, she had a ten-year period where she was compliant with drug and alcohol treatment in the past and it apparently did nothing to curb her propensities to commit crimes because she committed eleven different offenses in that ten-year period. *Id.* at 5, 13.

The court did not enjoy sending Appellant, an individual with physical

disabilities and mental issues, to state prison, but she repeatedly continued to commit crimes regardless of the efforts expended to try to rehabilitate her and the sentencing alternatives imposed. The only way to protect the public and keep Appellant from committing more crimes was to sentence Appellant to incarceration in a state correctional institution and keep her under supervision for a lengthy period of time.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)