

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-73-2014
	:	
v.	:	
	:	CRIMINAL DIVISION
MICHAEL D. WALLACE, JR.,	:	
Defendant	:	1925(a) Opinion

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

I. Background

On March 28, 2014, the Defendant pled guilty to one count of Possessing between one and 10 grams of Heroin with Intent to Deliver (PWID)¹ and one count of Possessing a Small Amount of Marijuana.² On November 18, 2014, the Court sentenced the Defendant on the PWID count to incarceration in a state correctional institution for a minimum of 18 months and a maximum of 36 months with a consecutive 24 months of probation. On the Possession of Marijuana count, the Court made a finding of guilt without further penalty.

The Defendant argues that because of the Defendant's rehabilitative needs and his acceptance of responsibility, the Court abused its discretion when imposing a sentence at the top end of the standard range of the sentencing guidelines.

II. Discussion

Because the Defendant had been convicted of a PWID offense before the commission of the present PWID offense, the Court could have imposed a maximum sentence of 30 years of imprisonment. 35 P.S. §§ 780-113(f)(1), 780-115. The sentence of incarceration for a maximum of 36 months is less than the lawful maximum.

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(31)(i).

“The court shall consider the sentencing guidelines in determining the appropriate sentence for offenders. . . .” 204 Pa. Code § 303.1(a). Possession of between one and 10 grams of heroin with intent to deliver is an offense with a gravity score of 7. Because of his prior PWID conviction, the Defendant had a prior record score of 2. Therefore, the standard range is 12 to 18 months minimum confinement. 204 Pa. Code § 303.16(a). The sentence of 18 months minimum confinement is within the standard range.

When sentencing a defendant, “the 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.” 42 Pa. C.S. § 9721(b). “In imposing sentence, the trial court is required to consider the particular circumstances of the offense and the character of the defendant.” Commonwealth v. Boyer, 856 A.2d 149, 154 (Pa. Super. 2004). A trial court must “state, on the record, the reasons for the sentence imposed.” Commonwealth v. Riggins, 377 A.2d 140, 149 (Pa. 1977); 42 Pa. C.S. § 9721(b). “The sentencing judge can satisfy the requirement that reasons for imposing sentence be placed on the record by indicating that he or she has been informed by the pre-sentencing report; thus properly considering and weighing all relevant factors.” Boyer, 856 A.2d at 154.

Here, the Court reviewed a pre-sentence investigation report. N.T., 11/18/14, at 3. The Court considered the character of the Defendant. The Court listened as the Defendant apologized, said he regretted committing the offense, and admitted needing professional help to recover from drug addiction. Id. at 8, 9, 11. The Court thought the Defendant was respectful, but sentenced him to incarceration in state prison because he had gone too far down a path. Id. at 7 and 12. The Court made the Defendant eligible for programs to assist in his recovery. Id. at 16.

In addition, the Court considered the circumstances of the offense. During the sentencing hearing, the Defendant said that he was using drugs at the time of the offense. Id. at 8-9. He also said that he committed the offense because he had difficulty finding a job after his first PWID conviction and needed money to pay bills and provide for his family. Id. at 19-20. The Court discussed the resources provided by the Department of Corrections to help former inmates. Id. at 20-21.

III. Conclusion

The Court did not abuse its discretion in sentencing the Defendant because it reviewed a pre-sentence investigation report and considered relevant sentencing factors.

DATE: _____

By the Court,

Nancy L. Butts, President Judge