

COMMONWEALTH : No. CR-1526-2014
:
vs. :
:
:
STEPHEN DINCHER, :
Defendant : Final PV

OPINION AND ORDER

Under Information No. 460-2015, Defendant pled guilty to Count 2, driving under the influence of a controlled substance, a misdemeanor of the first degree and under Information 1526-2014, Defendant pled guilty as well to a driving under the influence of a controlled substance offense, Count 1, also a misdemeanor of the first degree.

On November 12, 2015, President Judge Nancy Butts sentenced the Defendant under both Informations. With respect to the DUI under 1526-2014, the Defendant received a five year intermediate punishment sentence with the first 90 days to be served at the Work Release Center. Under Information No. 460-2015, the Defendant received a consecutive five year intermediate punishment sentence with the first 120 days to be served at the Work Release Center. The Court noted, however, in its Sentencing Order that it would be willing to give the Defendant day-for-day credit for inpatient treatment should he be able to obtain it while he was at the prison or Work Release Center.

On November 16, 2015, Judge Butts signed a Release Order, permitting the Defendant to be released to an inpatient treatment facility, namely Conewego Pottsville. She noted on her Release Order as follows: “Please let [the Court] know if [Defendant] leaves AMA; he comes back to LCP or a warrant issues for him.”

On January 28, 2016, Judge Butts signed a bench warrant for the Defendant

because Defendant allegedly absconded from supervision.

On February 11, 2016, the Defendant appeared before this Court. The Court found probable cause to believe that he violated the conditions of his intermediate punishment by allegedly being discharged from his treatment program for “not adhering to the program’s drug free policy.” A final hearing was scheduled for March 21, 2016.

At the final hearing, Amy Fleming testified on behalf of the Commonwealth. She has been employed at the White Deer Run Partial Treatment Program for the last four years.

Following Defendant’s successful release from Conewego, he was referred to the White Deer Run Partial Program for continued treatment. According to her testimony as well as supporting exhibits, Defendant was administratively discharged from the program on January 27, 2016 “for not adhering to the Program’s drug free policy.” It was noted as well that the Defendant was non-compliant with housing rules and would not cooperate with staff. Defendant’s discharge diagnosis included a severe Opiate Use Disorder and his prognosis was poor.

The purpose of County Intermediate Punishment Programs, among other things, is to protect society, promote accountability of offenders, fill gaps in local correctional systems through expansion of services and to provide opportunities for offenders to receive services which enhance their ability to become contributing members of the community. 42 Pa. C.S.A. § 9803.

The Court may revoke a sentence of county intermediate punishment upon proof of a violation of a specific condition of the sentence. 42 Pa. C.S.A. § 9773 (b). The Court may not revoke a sentence of county intermediate punishment, however, without a

hearing at which the Court must consider the record of the initial sentencing proceeding as well as the conduct of the Defendant while serving the sentence of county intermediate punishment.

The conduct of the Defendant clearly establishes that the purpose of intermediate punishment was not being effectuated and that the intermediate punishment sentence has, to date, been an ineffective vehicle to accomplish rehabilitation and not sufficient to deter against future antisocial conduct. Moreover, the Defendant clearly breached the conditions of intermediate punishment by being discharged from his treatment program. Defendant's conduct indicates a likelihood of future offenses and detaining him at this time is necessary to protect the public.

Given the fact that the Defendant has violated the conditions of intermediate punishment, he may be detained. 42 Pa. C.S. § 9813 (c). The Court, however, in reviewing the sentencing record as well as all of the applicable facts will not terminate the Defendant from the intermediate punishment program.

Candidly, the Court is of the opinion that the Defendant was not yet ready to be released and did not have the requisite motivation to fully commit himself to treatment and a lifestyle that would result in ultimate sobriety.

The Court will, however, modify the conditions of intermediate punishment as set forth below.

ORDER

AND NOW, this ___ day of April 2016, following a hearing, the Court finds

that the Defendant has violated the conditions of his intermediate punishment as proven by the requisite standard of preponderance of the evidence. The Defendant is recommitted to serve the remaining portion of his work release of 210 days with credit from November 12, 2015 to November 16, 2015 and from January 29, 2016 to today's date. The Defendant shall remain eligible and shall be placed at the work release facility.

Defendant shall not be released prior to serving his 210 days. Upon Defendant's release, he must attend and successfully complete the Lycoming County Reentry Program. Furthermore, he must undergo a drug and alcohol evaluation as well as a mental health evaluation and follow any and all recommended treatment as a result of said evaluations.

By The Court,

Marc F. Lovecchio, Judge

cc: APO
Sheriff
Lycoming County Prison
PRC
DA
Josh Bower, Esquire (APD)
Gary Weber, Lycoming Reporter
Work File