

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CP-41-CR-692-2011
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	:
BERNARD GILLESPIE,	:
Appellant	:
	:

**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 judgement of sentence dated August 5, 2015 and its August 12, 2015 denial of Bernard Gillespie’s post sentence motion.

In an order dated August 5, 2015, the court found that Bernard Gillespie (“Gillespie”) violated the conditions of his intermediate punishment by being removed from the Drug Court Program, relapsing, not taking his prescribed medications, and committing numerous supervision infractions. Gillespie’s intermediate punishment was revoked and he was re-sentenced.

After considering all of the relevant sentencing factors, the court sentenced Gillespie to a period of incarceration in a state correctional institution the minimum of which was three (3) years and the maximum of which was six (6) years. The sentence was imposed with respect to Count 2, criminal trespass, a felony of the second degree. Gillespie was made eligible for a Recidivism Risk Reduction Incentive (RRRI), with his RRRI minimum being 27 months.

Gillespie timely filed a post sentence motion, which the court summarily denied. Gillespie filed an appeal on September 3, 2015. The court directed Gillespie to file a concise statement of errors complained of on appeal. Gillespie obtained an extension and

eventually filed his concise statement on October 15, 2015, in which he asserted that the court erred in sentencing him to an excessive sentence that was more severe than he anticipated.

Gillespie was initially charged with burglary, criminal trespass and related charges. On February 14, 2012, he pled guilty to Count 2, criminal trespass, a felony of the second degree, pursuant to a negotiated plea agreement for probation. Gillespie's prior record score was a 1 and, with an offense gravity score of a 4, the standard sentencing guideline range was RS to 9. On March 27, 2012, Gillespie was sentenced to three years of probation with conditions that included, but were not limited to, Gillespie undergoing a drug and alcohol assessment and completing any recommended treatment.

On April 25, 2013, under a different docket number, Gillespie's parole was revoked and he was recommitted to serve six months. Gillespie had relapsed by using heroin. No further action was taken on this case.

On September 12, 2013, Gillespie was again before the court. The court found probable cause to believe that Gillespie violated his supervision under five separate cases, including this one. Gillespie again was alleged to have used heroin. The matters were kept at a preliminary and Gillespie was "urged to apply for Drug Court." Gillespie was committed to the Lycoming County Prison in lieu of bail.

On December 18, 2013, Gillespie was released from the Lycoming County Prison. The court found that he violated his probation by using heroin. The court revoked his probation, but resented Gillespie to serve three years on the Intermediate Punishment (IP) program, and included as a condition of his supervision that he successfully complete the

Lycoming County Drug Court program.

On or about July 8, 2014, Gillespie again relapsed and missed counseling. On July 16, 2014, he was sanctioned to 45 days of work release through the Drug Court. He was released on September 12, 2014.

On October 3, 2014, Gillespie again violated the conditions of the Drug Court Program by, among other things, continuing to use heroin. He was sanctioned on October 22, 2014 to 60 days at the work release facility.

On November 25, 2014, Gillespie was eventually released to an inpatient treatment program, Gaudenzia, but he was discharged on January 27, 2015 for violating “programmatic conditions.” His multiple violations included abusing his prescribed medications. The Drug Court treatment team debated whether or not Gillespie should be removed from the Drug Court program. The supervising judge, however, decided that a sixty-day evaluation was appropriate. As a result, by order dated February 4, 2015, Gillespie was sent to the State Correctional Institution at Camp Hill for a sixty-day diagnostic evaluation. Upon review of the information provided in the evaluation, the court would make a decision whether Gillespie would continue with the Drug Court program.

Gillespie was at Camp Hill for his evaluation from March 3, 2015 to April 1, 2015.

On April 8, 2015, Gillespie was removed from the Drug Court program. The team decided that the “level of care as far as Drug Court goes was no longer what Mr. Gillespie needed.” (August 5, 2015 Sentencing Transcript, p. 6).

In addition to participating in Drug Court, Gillespie previously attended three

inpatient treatment programs, one partial treatment program, one intensive outpatient treatment program and a handful of standard outpatient programs.

During Gillespie's sentencing hearing, the court extensively reviewed his treatment history. He had an inpatient treatment in 1998 that lasted two weeks. He then did 10 years of NA/AA meetings. He then had six weeks of inpatient treatment. Then he had two to three years of NA/AA meetings. Then he had ten days of detox and "months of partial treatment."

In sum, and as the court noted at the sentencing hearing, "so despite everything you went through, all the inpatient, all the outpatient, Drug Court, partial program, intensive outpatient, starting in July of 2014, you couldn't get clean, couldn't stay clean, you relapsed, you did 45 days, you relapsed again after that again, and then were you in Gaudenzia you relapsed again."

As the court further noted, once Gillespie was placed in Drug Court in December, he had a relapse in July for which he was sanctioned 45 days. As the court noted: "Let's get you motivated again, saying when you get out we can hook you back up to counseling and do everything else. We're not going to move you forward on the phases, and after you get out in 45 days."

Unfortunately, in less than three weeks, Gillespie relapsed again. At that point, he was given a 60-day sanction. As well, he was sent to Gaudenzia House but got kicked out and then eventually got kicked out of Drug Court.

The court also considered Gillespie's psychological assessment from the Department of Corrections. The court noted that Gillespie had limited insight and judgment

into his drug use, he had no mental health issues of particular concern, and he had opiate dependence and alcohol dependence.

In summing up its decision to sentence Gillespie to three to six years, the court concluded as follows:

You come in front of me with ...five violations... since 2012[. I don't buy the excuses.] You've made a choice to go to state prison. You've made a choice to be warehoused. It has nothing to do with you, you said serving time ... isn't going to do me any good. This isn't about you anymore, it's about the community.

We have a 38 year old man who refused to comply with the rules. We have a 38 year old man who continues to use controlled substances, which will lead to your death, and probably someone else's death. We have a 38 year old man who is a clear danger to the community. We have a 38 years old man who, despite thousands of dollars being put into your treatment, has --still continues to use, still continues to act out, and I am not just talking about your usage, I am also talking about your behaviors. I mean this ... is ridiculous.

The behaviors that were committed at the Gaudenzia House that you admitted to, you tell me you know, people will say this sometimes, let me be entirely honest with you, or to be entirely candid with you. That-- that's a sure sign that you weren't being candid [with] me in the beginning. You talk all about honesty, but you're not even close to being honest with yourself. You are not even close.

You are going to end up dead or being warehoused in a state prison[. I]t's your choice now. It's your choice. You had the choices up to this point[. Y]ou're going to State Prison, [and] you're going for longer than they asked. I mean I am giving you a three to six year sentence. Why? Because that's appropriate. You've had your opportunity here. Whether you take advantage of the time there is your choice. You're absolutely right. If you max out in six years, you get out. Fine. ... it's your choice then, but I will know this[-- f]or the next years, if you max-out for six years, you won't be threatening anybody else in the community and we won't be wasting our money on you anymore. And it's hard for me to say that, because I see the value in every human being, and I would be more than willing to sink tons of my tax dollars into helping you.

But here's the deal. You are drowning in a sea of addiction. We have sent helicopters out, we have sent row boats, we have sent motor boats out, we have sent all sorts of people and things to help you, but not once have you reached your hand up to help us pull you in. You want us to do the heavy lifting, and you're not light enough for us to pull you up. We can't save you from yourself, you have to save yourself, and this is your last chance. When you get out of State Prison and you come back, if you come back in front of me, I will be willing to help you then because everybody's life is important to me, but at this point this is your choice.

Sentencing Transcript, at 39-41.

“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)). “An abuse of discretion is more than a mere error of judgement; thus, a sentencing court will not have abused its discretion unless ‘the record discloses that the judgement 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)).

“In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing court’s discretion, as he or she is in the best position to measure factors such as the nature of the crime, the defendant’s character and the defendant’s display of remorse, defiance, or indifference.” *Commonwealth v. Colon*, 102 A.3d 1033, 1043 (Pa. Super. 2014)(quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

It is well settled that once probation has been revoked, the court may impose a sentence of total confinement if any of the following conditions:

- (1) the defendant has been convicted of another crime; or
- (2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or
- (3) such a sentence is essential to vindicate the authority of the court.

42 Pa. C.S. § 9771(c).

When it becomes apparent that the probationary order is not serving its desired rehabilitative effect, the court’s decision to impose a more appropriate sentence

should not be inhibited. *Commonwealth v. Ahmad*, 961 A.2d 884 (Pa. Super. 2008) (citing *Commonwealth v. Carver*, 923 A.2d 495, 498 (Pa. Super. 2007)).

Gillespie's issue of an excessive sentence is without merit. Excessiveness of a new sentence following a violation of probation or intermediate punishment is not determined by the expectations of the violator. Clearly, probation, intermediate punishment, and Drug Court were not successful in rehabilitating Gillespie. Despite offering Gillespie numerous programs and opportunities and increasing the sanctions imposed with each violation, Gillespie repeatedly failed to comply with the conditions of his supervision. In order to vindicate the authority of the court, to protect the public from Gillespie, and to protect Gillespie from his own destructive conduct, the court was left with no choice but to sentence Gillespie to incarceration in a state correctional institution. Therefore, it is respectfully suggested that the court's sentence be affirmed.

Date: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Superior Court (original and 1)
PD
DA
Work File
Gary Weber, Lycoming Reporter