

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1676-2014; CR-1677-2014  
vs. :  
: CRIMINAL DIVISION  
: JIMMY HARRIS,  
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 sentence imposed on September 16, 2015, following a probation violation hearing. The relevant facts follow.

On September 25, 2014, after a court hearing in another matter, Appellant fled instead of entering a vehicle that would return him to his juvenile placement at Camp Adams. Appellant remained at large for several days.

On September 29, 2014, Appellant took the Holiday Inn shuttle van. The hotel reported the van stolen. A couple of hours later, a Penn College police officer observed Appellant driving the vehicle in the area of Memorial Avenue and Fifth Avenue in Williamsport. The officer activated his lights and sirens, but Appellant failed to stop. Rather, he drove the van at a high rate of speed through several neighborhoods where vehicle and pedestrian traffic was heavy. Eventually, Appellant lost control of the vehicle and struck several trees. The police removed Appellant from the heavily damaged van and took him into custody.

The charges that were filed against Appellant were initially brought via

petitions for delinquency in juvenile court but transferred to adult criminal court. Under Information 1676-2014, Appellant was charged with theft by unlawful taking, a felony of the third degree; receiving stolen property, a felony of the third degree; unauthorized use of a motor vehicle, a misdemeanor of the second degree; fleeing or attempting to elude a police officer, a felony of the third degree; recklessly endangering another person, a misdemeanor of the second degree; and various summary traffic offenses. Under Information 1677-2014, Appellant was charged with escape, which was initially graded as a felony of the third degree, but upon motion of the Commonwealth it was reduced to a misdemeanor of the second degree.

On March 25, 2015, Appellant entered an open guilty plea to theft by unlawful taking, receiving stolen property, unauthorized use of a motor vehicle, fleeing or attempting to elude a police officer and recklessly endangering another person, and escape.

On May 28, 2015, over the vehement arguments of the Commonwealth for a sentence of state incarceration, the court sentenced Appellant to an aggregate term of 11 to 23 months of incarceration at the Lycoming County Prison followed by five years of probation under the supervision of the Lycoming County Adult Probation office.<sup>1</sup> The court gave Appellant credit for time served from October 23, 2104 through May 27, 2015. The court also imposed multiple special conditions of supervision, including but not limited to successful completion of the Re-entry Services Program.

Appellant was paroled on June 8, 2015. He failed to appear for the Re-entry

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<sup>1</sup> This sentence consisted of 5 to 10 months for fleeing or attempting to elude a police officer, 1 to 2 months for recklessly endangering another person, 2 years of probation for escape and a split sentence of 5 to 11 months followed by 3 years of probation for theft by unlawful taking.

Services Program for several consecutive days during the week of June 14, and he was discharged from the program. He also failed to report to his adult probation officer. As a result, on June 24, 2105, the court issued a bench warrant for Appellant's arrest for absconding from supervision.

Appellant was arrested on the bench warrant on or about July 14, 2015. A parole violation hearing was held on July 28, 2015, and Appellant was given a 6-month setback with work release/work crew eligibility. Appellant remained at the Lycoming County Prison from July 28, 2015 to mid-August when he was moved to the Pre-Release Center (PRC).

On September 10, 2015, Appellant escaped from PRC. He walked out of a basement door and kept on going. Shortly thereafter, officials at the PRC realized that Appellant was missing. Numerous law enforcement agencies began searching for Appellant. They searched the woods near PRC and went to his mother's residence. Law enforcement officials apprehended Appellant in the upstairs of his mother's residence, where it was obvious Appellant had been smoking marijuana.

On September 16, 2015, the court held a probation violation hearing. The court found that Appellant violated his probation by escaping from PRC and smoking marijuana. The court revoked Appellant's probation and imposed an aggregate sentence of 4 to 8 years of incarceration in a state correctional institution, which consisted of 3 to 6 years for theft by unlawful taking under 1676-2014 and 1 to 2 years for escape under 1677-2014.

On September 25, 2015, Appellant filed a motion to reconsider his probation violation sentence, which the court summarily denied on September 28, 2015.

Appellant filed a notice of appeal.<sup>2</sup> On appeal, Appellant asserts that his sentences for theft and escape were unduly harsh and manifestly excessive because the sentences imposed were not within the standard sentencing guideline ranges and neither the violations nor Appellant's history and circumstances warranted such a harsh sentence. The court cannot agree.

First and foremost, the sentencing guidelines do not apply at sentencing for a probation violation. As the Pennsylvania Supreme Court has aptly stated:

At initial sentencing, all of the rules and procedures designed to inform the court and to cabin its discretionary sentencing authority properly are involved and play a crucial role. However, it is a different matter when a defendant reappears before the court for sentencing proceedings following a violation of the mercy bestowed upon him in the form of a probationary sentence. For example, in such a case, contrary to when an initial sentence is imposed, the Sentencing Guidelines do not apply, and the revocation court is not cabined by Section 9721 (b)'s requirement 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 life of the victim and on the community, and the rehabilitative needs of the defendant.'

Upon revoking probation, 'the sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing, due consideration being given to the time spent serving the order of probation.' Thus, upon revoking probation, the trial court is limited only by the maximum sentence that it could have imposed originally at the time of the probationary sentence...

*Commonwealth v. Pasture*, 107 A.3d 21, 27 (Pa. 2014)(citations omitted).

Here, a sentence of state incarceration was necessary and appropriate because the conduct of Appellant indicated that he was likely to commit another crime if not imprisoned and such a sentence was essential to vindicate the authority of the court.

It was patently obvious from Appellant's history that neither probation nor a

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<sup>2</sup> Although the notice of appeal was only filed under 1676-2014, it is clear that Appellant intended to challenge his sentence as unduly harsh and manifestly excessive under both cases. Furthermore, some of the documents relevant to this appeal are only contained in file 1677-2014. Therefore, the court is requesting the clerk of

county sentence was an effective means of rehabilitating Appellant. The initial sentence was a sentence of county incarceration followed by probation. The court tried to give Appellant access to educational, vocational, behavioral and emotional support services by making him eligible for the Re-entry Services Program, but Appellant was on parole supervision for less than a week before he stopped attending the Re-entry Services Program and absconded from supervision. The court then tried to give Appellant a wake-up call without sending him to a state correctional institution when it merely gave Appellant a 6-month parole setback with work release/work crew eligibility and left his probation sentences intact. Instead of taking advantage of the chance to retain his probation, however, Appellant failed to even serve his setback. Instead, he escaped from the PRC after serving only about 1½ months of his 6-month setback.

As the court noted at the probation violation hearing, Appellant had zero respect for authority or anyone else. Despite his promises in his letters to the court prior to the initial sentencing and his pleas for mercy and leniency so he could be home again, Appellant had no interest in changing his life around or cooperating in any rehabilitation efforts. He only did what he wanted to do.

Appellant was before the court at his initial sentencing, because he escaped from his juvenile placement when he fled following a court hearing and stole a vehicle a few days later. He was before the court at his parole revocation hearing, because he quit attending the Re-entry Services Program within a week of his release and he absconded from supervision. He was before the court for a probation revocation hearing, because he escaped from PRC. Since Appellant utterly failed and refused comply with what he was directed to

do, the court was left with no choice but to warehouse him in a secure state correctional facility. Perhaps while he is there, he will realize that he won't get paroled unless he completes his programming and he will finally take advantage of programs designed to assist in his rehabilitation. If not, he probably will not get another opportunity to comply with supervision conditions, because he likely will not be paroled.

DATE: \_\_\_\_\_

By The Court,

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Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)  
Kirsten Gardner, Esquire (APD)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)