

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-2080-2013
vs. :
: CRIMINAL DIVISION
: CODY JEAN,
: 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 order dated January 21, 2016 and docketed January 27, 2016. The relevant facts follow.

Appellant was serving a sentence at the Lycoming County Pre-Release Center/Work Release Facility (PRC). On October 3, 2013, Appellant left the PRC for work. When he returned later in the day, he possessed five packets of heroin. Appellant was charged with bringing contraband into a prison facility, a felony of the second degree, and possession of a controlled substance, an ungraded misdemeanor.¹

On March 14, 2014, Appellant entered an open guilty plea to both offenses. On July 3, 2014, the court sentenced Appellant to the State Intermediate Punishment (SIP) program, followed by a period of three years of probation under the supervision of the Pennsylvania Board of Probation and Parole.

On or about December 15, 2015, the court received notification that Appellant had been expelled from the SIP program because he received an institutional misconduct

¹ 18 Pa.C.S. §5123 and 35 P.S. §780-113(a), respectively.

charge of escape. Appellant was returned to Lycoming County for re-sentencing.

On January 21, 2016, the court re-sentenced Appellant to serve three (3) to seven (7) years of incarceration in a state correctional institution. On January 27, 2016, Appellant filed a motion for reconsideration of sentence. In this motion, Appellant asserted that his sentence was unduly harsh and excessive because the court sentenced him beyond the aggravated range of the sentencing guidelines and the sentence was excessive to achieve the duties sentences are designed to perform such as to rehabilitate and to teach lessons and personal responsibility. On February 2, 2016, the court summarily denied Appellant's motion for reconsideration and noted that the sentencing guidelines were not applicable.

On February 8, 2016, Appellant filed his notice of appeal. On February 10, 2016, the court directed Appellant to file within twenty-one (21) days a concise statement of errors complained of on appeal; however, to date, no such statement has been filed. Nevertheless, based on Appellant's motion for reconsideration, the court will assume that the sole issue Appellant wishes to assert on appeal is that his sentence was unduly harsh and excessive.

The imposition of sentence following the revocation of probation or intermediate punishment is vested within the sound discretion of the trial court, which absent an abuse of that discretion will not be disturbed on appeal. *Commonwealth v. Colon*, 102 A.3d 1033, 1043 (Pa. Super. 2014)(quoting *Commonwealth v. Simmons*, 56 A.3d 1280, 1283-84 (Pa. Super. 2012). "An abuse of discretion is more than an error in judgment – a sentencing court has not abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. *Id.*

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.

Id. (quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

Furthermore, a "trial court does not necessarily abuse its discretion in imposing a seemingly harsh post-revocation sentence where the defendant originally received a lenient sentence and then failed to adhere to the conditions imposed on him." *Commonwealth v. Schutzues*, 54 A.3d 86, 999 (Pa. Super. 2012).

It is well-settled that the sentencing guidelines do not apply to sentences imposed as a result of a revocation of probation, intermediate punishment or parole. 204 Pa. Code §303.1(b); *Commonwealth v. Pasture*, 107 A.3d 21, 27 (Pa. 2014); *Commonwealth v. Coolbaugh*, 770 A.2d 788, 792 (Pa. Super. 2001). Therefore, the court did not abuse its discretion by failing to consider the sentencing guidelines or imposing a sentence outside of the sentencing guidelines.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: _____, Esquire (ADA)
_____, Esquire

Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)