

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-333-2016
 :
 WILLIAM PEPPERMAN, :
 Defendant :
 OPINION AND ORDER

On January 10, 2017, Defendant was sentenced on a simple assault, a misdemeanor of the third degree. Defendant was sentenced to undergo incarceration in the Lycoming County Prison, the minimum of which was 22 days and the maximum of which was one year.

The court noted that the conditions of Defendant’s parole included that he undergo a mental health evaluation. The court specifically noted that Defendant “clearly made some wrong choices which he attributes to his anxiety.” The court mandated that Defendant’s anxiety condition be evaluated and that Defendant participate in any counseling, treatment or any pharmacological treatment as deemed necessary.

Subsequently, the Lycoming County Adult Probation Office requested that Defendant’s conditions of supervision include the standard written conditions of supervision, the special written conditions of supervision and all supplemental conditions of supervision related to sexual offenses.

A hearing was held before the court on April 13, 2017. Defendant argued that the proposed conditions are not reasonable and that there is no nexus between the simple assault charge and the proposed conditions.

The Adult Probation Office argued that on June 6, 1995, Defendant was

sentenced on two counts of indecent assault. Defendant sexually assaulted his stepdaughter during the time she was approximately 8 to 11 years old.

On April 10, 1997, Defendant was found in violation of his parole and probation. Defendant's parole sentence was maxed out. Defendant's probationary sentence was revoked and Defendant was sentenced to a period of state incarceration. Defendant eventually served five years in state prison.

Among the sentences that a court may order after one is convicted of an appropriate criminal offense is probation. 42 Pa. C.S.A. § 9754. Probation is a suspended sentence of incarceration served upon such lawful terms and conditions as imposed by the sentencing court. *Commonwealth v. Holder*, 805 A.2d 499, 503 (Pa. 2002); *Commonwealth v. Walton*, 397 A.2d 1179, 1184-85 (Pa. 1979).

Probation is given by grace, not right. *Commonwealth v. Mullins*, 918 A.2d 82, 86 (Pa. 2007). The primary concern of probation is the rehabilitation and restoration of the individual to a useful life. *Id.* at 85.

Among the specific conditions that a court may order as a condition of probation is the requirement that the defendant "satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience." 42 Pa. C.S.A. § 9754 (c) (13).

While the courts have wide latitude on the kinds of restrictions they can impose on a criminal defendant when awarding probation, as a penal statute § 9754 must be interpreted in a light most favorable to the defendant. *Commonwealth v. Hall*, 80 A.3d 1204,

1212 (Pa. 2013). The statute authorizes imposition of “any” conditions of probation reasonably related to the defendant’s rehabilitation, so long as they are not “unduly restrictive” of the defendant’s constitutional liberty or conscience. *Id.* at 1213. Stated in other terms, there must be a nexus between the offense charged and the restrictive condition. *Commonwealth v. Houtz*, 982 A.2d 537, 540 (Pa. Super. 2009).

In this particular case, Defendant was sentenced to probation on a simple assault charge which involved him fighting with another individual by mutual consent. While Defendant was convicted of indecent assault decades ago, there is nothing in the record that supports a nexus between the simple assault offense and the numerous proposed sexual offender conditions that the Adult Probation Office wants the court to impose on Defendant. It cannot be concluded that the proposed conditions are reasonably related to Defendant’s rehabilitation. Furthermore, they are unduly restrictive of Defendant’s liberty and incompatible with his freedom of conscience.

ORDER

AND NOW, this 27th day of April 2017, the court **DENIES** the motion of the Adult Probation Office to include as Defendant’s condition of probation the standard written conditions of supervision, the special written conditions of supervision, and the supplemental written conditions of supervision for sexual offenders.

By The Court,

Marc F. Lovecchio, Judge

cc: APO

Martin Wade, Esquire (ADA)
Greta Davis, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file