

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 2155 - 1998
:
vs. :
:
DENNIS SHIRES, II, :
Defendant : CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDER OF JULY 6, 2017,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

On October 23, 2002, Defendant pled guilty to rape, involuntary deviate sexual intercourse, and aggravated indecent assault and was sentenced to nine to eighteen years' incarceration, effective November 22, 1998, followed by a term of twenty years special probation, to be supervised by the State Board of Probation and Parole. Defendant was released to the term of special probation on November 22, 2016.

On February 13, 2017, Defendant was charged with violating three conditions of his special probation: having contact with someone under the age of 18, being unsuccessfully discharged from sex offender treatment, and staying overnight at a residence other than his approved residence. At the violation hearing on April 19, 2017, Defendant admitted the facts underlying the violations but argued that he was unaware that the conditions allegedly violated were in effect at the time.

Following testimony by Defendant and the parole officer, the court determined that Defendant was or should have been aware of the conditions at the time of the violations. The court therefore revoked the special probation and re-sentenced Defendant to incarceration for three to ten years, followed by a period of ten years' supervision.

Defense counsel argued that when Defendant was on state parole, he signed special conditions for sex offenders, but that “at the onset of his special probation which he did initial, did sign, on February 9th of 2010[,] ... [t]here are no further enumerated conditions mirroring what ... were part of the special conditions for sexual offenders that were part of his parole. So he did sign a document. And to his knowledge that document that he signed carried the condition of his special probation.” N.T., April 19, 2017 at 4-5. The court wishes to point out, however, that this argument is flawed because it is based on the inaccurate assumption that Defendant signed the general conditions *after* he signed the special conditions. Actually, it was the other way around: Defendant signed the general conditions on February 9, 2010, and the special conditions on May 20 and 31, 2016.

In any event, Defendant’s probation officer testified unequivocally that he sat down with Defendant in January 2017 and went through all the conditions, general and special, and that Defendant “would have known a hundred percent” what his conditions of special probation were. Id. at 14. As the violations were alleged to have occurred in February 2017, any confusion on Defendant’s part would have been cleared up by then.¹

Dated: _____

Respectfully submitted,

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson

Dudley N. Anderson, Judge

¹ The court reiterates that the December 15, 2016 order of Judge Lovechio, which purported to impose “additional conditions” on Defendant’s special probation, was not considered by this court in making its determination. It appeared Defendant never received the order, but it was also never fully explained why or how the order came about.