

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-2192-2016  
 :  
 CLARENCE A. DISHONG, :  
 Defendant :  
 OPINION AND ORDER

On December 27, 2016, Defendant pled guilty to count 1, retail theft, a misdemeanor of the second degree. Defendant was sentenced to undergo a period of incarceration in the Lycoming County Prison, the minimum of which was 5 days and the maximum of which was two years minus one day.

Before the court is a motion by the Lycoming County Adult Probation Office to include as conditions of Defendant's supervision or parole the standard written conditions of supervision, the special written conditions of supervision and all supplemental written conditions of supervision related to sexual offenses.

The Adult Probation Office argues that these conditions should be imposed because under Information No. 1339-2011, Defendant pled guilty and was sentenced on a corruption of minors count, a felony of the third degree. Defendant was initially sentenced to intermediate punishment. On June 23, 2016, the intermediate punishment was revoked because of Defendant failing to reside at his approved place of residence. Defendant was sentenced to a max-out sentence. The Adult Probation Office further argues that Defendant's intermediate punishment was previously violated as a result of Defendant being involved with a physical altercation with his fiancée and not complying with the instructions of the Adult Probation Office. Defendant at the time was released to continuing supervision and

directed to comply with his MH/ID caseworker and undergo a MAAP assessment and attend and complete the MAAP Program.

Defendant contests the imposition of the conditions arguing that they are not reasonably related to his rehabilitation, unduly restrictive of his liberty and incompatible with his freedom of conscience.

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).

The court concludes that the proposed conditions are not reasonably related to Defendant's rehabilitation. There is no nexus between Defendant's crime and the proposed restrictions. Defendant was convicted and sentenced on a retail theft charge. Accordingly, any conditions related to sexual offenders would be unduly restrictive of Defendant's liberty and incompatible with his freedom of conscience.

**ORDER**

AND NOW, this 27<sup>th</sup> day of April 2017, following a hearing and argument, the court **DENIES** the motion of the Adult Probation Office to impose 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,

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Marc F. Lovecchio, Judge

cc: APO  
Melissa Kalas, Esquire (ADA)  
Greta Davis, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file