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| <p><b>IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA<br/>COMMONWEALTH</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>LESLIE PRICE,</b></p> <p style="text-align: right;"><b>Appellant</b></p> | <p><b>: No. CP-41-CR-1318-2013</b></p> <p><b>: CP-41-CR-1665-2013</b></p> <p><b>: CP-41-CR-1966-2013</b></p> <p><b>: CP-41-CR-743-2014</b></p> <p><b>: CP-41-CR-417-2015</b></p> <p><b>: CP-41-CR-777-2015</b></p> <p><b>: CP-41-CR-76-2016</b></p> <p><b>: Rule 1925(a) Opinion</b></p> |
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**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This Opinion is written in support of the court’s judgment of sentence dated June 1, 2016. Appellant Leslie Price (hereinafter “Price”) filed a Post Conviction Relief Act (PCRA) petition, which resulted in the reinstatement of his direct appeal rights. The relevant facts follow.

On January 20, 2014, Price entered guilty pleas and was sentenced in cases 1318-2013, 1665-2013, and 1966-2013. Under case 1318-2013, Price pled guilty to forgery, a felony of the third degree, arising out of taking a \$50 check that he received for sealing an individual’s driveway and altering it to a \$150 check. Under case 1665-2013, Price pled guilty to theft by unlawful taking, a felony of the third degree, related to taking copper heat exchangers from his employer’s premises and selling them as scrap metal for cash. Under 1966-2013, Price pled guilty to theft by deception, a misdemeanor of the second degree, related to taking an elderly woman with Alzheimer’s disease to her bank, posing as her grandson, and obtaining \$100 cash from her. Price was sentenced to serve 24 months’ on the Intermediate Punishment (IP) program with the first five months to be served at the Pre-Release Center (PRC) for theft by unlawful taking, a consecutive term of 24 months’ probation for forgery and a consecutive term of 12 months’ probation for theft by deception.

These sentences were consecutive to any sentence Price was already serving.

On May 25, 2014, under case 743-2014, Price pled guilty to theft by deception and receiving stolen property, misdemeanors of the first degree, arising out of an incident on October 16, 2013 where Price removed a PS3 Move game system and two video games valued at \$1109.70 from a residence. Price took these items to Elite Games, represented that he owned them, and sold them for cash. Price was sentenced to two years' probation for theft by deception and a consecutive one-year probationary term for receiving stolen property to be served consecutive to any sentence he was serving.

On April 22, 2015, under case 417-2015, Price pled guilty to forgery, a felony of the third degree, arising out of an incident that occurred between June 30, 2015 and July 5, 2014, in which Price took a check he received for \$50 and altered it to a \$150 check. Price was sentenced to 24 months' probation consecutive to any sentence he was serving.

On June 17, 2015, under case 777-2015, Price pled guilty to furnishing drug free urine, a misdemeanor of the third degree, arising out of an incident on September 11, 2014 in which Price was instructed to provide a urine sample to his probation officer. The probation officer had received a tip that Price was going to provide a false urine sample, so the probation officer directed Price to pull down his pants and underwear before taking the drug test. When Price did so, the probation officer observed a device with a bag of urine. Price was sentenced to serve 12 months' probation consecutive to any sentences he was presently serving.

On June 1, 2016, Price came before the court for a guilty plea and sentencing hearing under case 76-2016 and a probation violation hearing and re-sentencing under cases 1318-2013, 1665-2013, 1966-2013, 743-2014, 1680-2014, 1688-2014, 1692-2014, 417-2015,

and 777-2015.<sup>1</sup>

Under case 76-2016, Price pled guilty/no contest to a consolidated count of simple assault that encompassed counts 3 and 4 of the Information in exchange for a consecutive period of incarceration, the minimum of which was nine months. Price was serving several probationary sentences and tested positive for opiates. Price resisted the probation agents who were trying to detain him in the Adult Probation Office and then he resisted the sheriff deputies that tried to put him in the back of the transport vehicle to take him to the Lycoming County Prison. One of the probation agents was injured when Price shoved her head into a filing cabinet, and one of the sheriff deputies was injured when Price kicked him in the thigh/groin area.

The court sentenced Price to an aggregate term of five years, three months to 17 years' incarceration in a state correctional institution. This sentence consisted of nine months to two years' incarceration for simple assault in case 76-2016, a consecutive term of one to four years' incarceration for forgery in case 1318-2013, a consecutive term of one to four years' incarceration for theft by unlawful taking in case 1665-2013, a consecutive term of one to two years' incarceration for theft by deception in case 743-2014, a consecutive term of six months to two years' incarceration for theft by deception in case 1966-2013, a consecutive term of six months to two years' incarceration for forgery in case 417-2015 and a

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<sup>1</sup>The court did not include the facts and offenses for cases 1680-2014, 1688-2014, or 1692-2014, because the revocation sentences imposed in these cases was guilt without further punishment and are not part of this appeal.

consecutive term of six months to one year of incarceration for furnishing a drug free urine in case 777-2015.

Price challenges the discretionary aspects of his sentence asserting that the aggregate sentence was “excessive and unduly harsh” in light of the underlying crimes and “[Price’s] involvement with treatment court.”

“Sentencing is a matter vested within the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion.” *Commonwealth v. Rush*, 2017 PA Super 141, 2017 Pa. Super. LEXIS 335, \*25 (May 11, 2017)(citing *Commonwealth v. Crump*, 995 A.2d 1280, 1282 (Pa. Super. 2010)). “An abuse of discretion requires the trial court to have acted with manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.” *Id.*

In determining if the sentence is excessive or unduly harsh, great weight must be afforded to the sentencing court’s discretion. *Commonwealth v. Colon*, 102 A.2d 1033, 1043 (Pa. Super. 2014)(quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

In imposing a sentence, the court shall follow: “the general principle that the sentence imposed should call for confinement that is consistent with protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.” 42 Pa. C.S.A. § 9721 (b).

The court is also guided by § 9781 (d) of the Judicial Code, which requires appellate courts in reviewing a sentence to determine from the record whether the court considered: “(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the opportunity of the sentencing court to observe the

defendant, including any pre-sentence investigation; (3) the findings upon which the sentence was based; and (4) the guidelines promulgated by the commission.” 42 Pa. C.S.A. § 9781 (d). Additionally, and because Price attacks the sentences he received following his probation violations, the court must also consider the factors set forth in 42 Pa. C.S. § 9721 (b). *Commonwealth v. Derry*, 150 A.3d 987, 994 (Pa. Super. 2016). In other words, the sentence must not only be consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community and the rehabilitative needs of the defendant, but the court must also consider whether the sentence imposed, is among other things, essential to vindicate the authority of the court and must give due consideration to the time spent serving the order of probation. *Id.* at 994.

As well, in a VOP context, the court enjoys a greater degree of deference. *Id.* at 995 n.2 (citing *Commonwealth v. Pasture*, 107 A.3d 21, 28 (Pa. 2014)).

The sentencing court’s institutional advantage is, perhaps, more pronounced in fashioning a sentence following the revocation of probation, which is qualitatively different than an initial sentencing proceeding....[I]t is a different matter when the defendant appears before the court for sentencing proceedings following a violation of the mercy bestowed upon him in the form of a probationary sentence.

*Id.* at 992 (citing *Pasture*, 107 A.3d at 27). Further,

since the defendant has previously appeared before the sentencing court, the stated reasons for a revocation sentence need not be as elaborate as that which is required at initial sentencing. The rationale for this is obvious. When sentencing is a consequence of the revocation and probation, the trial judge is already fully informed as to the facts and circumstances of both of the crime and nature of the defendant.

*Id.* at 995 n.2 (quoting *Pasture*, 107 A.3d at 28).

Finally, and perhaps foremost, the sentencing guidelines do not apply at a sentencing for a probation violation. The sentencing alternatives available to the court are the

same as were available at the time of initial sentencing with due consideration being given to the time spent serving the order of probation. 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. *Pasture*, 107 A.3d at 27.

Contrary to what Price claims, the court did not ignore or misapply the law. The court did not arrive at a manifestly unreasonable decision. To the contrary, the court undertook a lengthy discourse for its reasons in imposing the sentence and the record as a whole reflects the court's consideration of the relevant facts and circumstances.

Under CR-76-2016, the defendant pled no contest/guilty to a consolidated count of simple assault, a misdemeanor of the second degree. In exchange for his plea, the Commonwealth agreed to recommend a consecutive period of incarceration, the minimum of which was nine months. (Sentencing Transcript, June 1, 2016, at 4, 5). The court imposed a sentence of nine months to two years. In imposing this sentence, the court considered the nature and circumstances of the offense. Price was serving several probationary sentences and tested positive for opiates. He was in the Lycoming County Adult Probation Office and he was going to be detained because of the positive urine tests. He was so "high" he didn't know exactly what he was doing. When he was told to put his hands behind his back, he resisted. A struggle ensued between Price and two female probation agents. During the struggle, he shoved one of the agent's head into a filing cabinet injuring her (Sentencing Transcript at 11-13).

After Price was subdued and on his way to be transported to the Lycoming County prison, he resisted the deputy sheriffs as they tried to put him in the back of the transport vehicle. He attempted to kick the vehicle door but ended up kicking a deputy in the

thigh/groin area. The deputy suffered both leg and shoulder injuries. (Sentencing Transcript, at 12-14).

Obviously, the offenses were extremely serious. While under the influence of a controlled substance, Price openly and physically resisted law enforcement personnel causing injury to them and jeopardizing the safety of others. Price's criminal conduct took place in the Adult Probation Office and then near the back door to the courthouse near prisoner transport. The personnel, time and resources used to control Price caused the entire courthouse to be short-staffed and increased the risk of harm to many others.

Regarding the history and characteristics of Price, the simple assault constituted Price's sixth conviction since he was first sentenced on January 30, 2014. Since being placed on supervision, Price committed theft, DUI (controlled substance), and drug free urine charges. When he committed the simple assault offense, "he had nine other offenses for which he was serving a sentence." (Sentencing Transcript at 15-16).

Price had a very significant substance abuse history. He started abusing pain pills after a car accident when he was just 21. He moved to Williamsport but was unable to find a doctor to fill his pain prescription, so he began buying controlled substances on the street. He was eventually placed in treatment court where he learned about how to get high with over the counter medications including Coricidin. He used the medication approximately one month by taking two boxes per day until he was sanctioned. He also used a substance called Kratom. When he entered "treatment court," he began to hang out with people such as "heroin addicts." He used drugs extensively and had little control over his drug use. (Sentencing Transcript at 19-21).

In connection with his drug abuse, Price received several different levels of

care. He struggled with his sobriety but gained stability. Unfortunately, he also suffered from a chronic mental illness which, along with his ongoing substance abuse issues, “resulted in a rather delayed rehabilitative process through out-patient interventions. (Sentencing Transcript at 24).

In 2013, Price was an inpatient at White Deer Run, a chemical dependency program. In 2014, he was an inpatient at Firetree Conewago, also an inpatient treatment program and following these inpatient stays, he was placed on Drug Court and started receiving programming through partial programs and outpatient treatment. While in Drug Court, he received a partial program for substance abuse treatment five times per week for 30 days. (Sentencing Transcript at 20).

Unfortunately, Price suffers from a number of personality and mental health disorders which likely exacerbate his substance abuse problems. These cause him to continually be involved in criminal and antisocial activities. His functioning is marked by aggression, hostility and disregard for social and moral convention. It is likely that his pathology is “severe.” (Sentencing Transcript at 20-21).

His diagnoses include anxiety disorder, substance abuse disorder and anti-[social] personality disorder traits. “Serious psychological maladjust[ment] is present and he may have considerable difficulty adapting.” He is also likely “to endorse anti-social attitudes, values and beliefs” and he has a history in engaging in risk-taking behaviors, impulsivity and anti-social behaviors. (Sentencing Transcript at 22, 23).

One evaluator indicated that Price would be an ideal candidate for the State Intermediate Punishment (SIP) program. (Sentencing Transcript at 24). However, this option was not available given the nature of the offenses and the District Attorney’s objection. The

same evaluator acknowledged that Price received several different levels of care, struggled and that his rehabilitative process was delayed. While “incarceration will serve a useful tool in consequences, it will not offer him the structured support he needs to obtain stability upon his release.” (Sentencing Transcript at 24).

After reviewing the above factors, the court analyzed how best to arrive at an appropriate sentence given the purposes of sentencing and the additional considerations that apply under a VOP situation.

Two points must be made at this juncture. First, the court has the discretion to impose concurrent or consecutive sentences. 42 Pa. C.S.A. § 9721 (a); *Commonwealth v. Prisk*, 13 A.3d 526, 533 (Pa. Super. 2011). Secondly, to the extent Price challenges discretionary aspects of his sentence for the simple assault conviction under CR-76-2016, he is not entitled to do so. This court imposed the sentence that Price negotiated. He may not now seek discretionary review of the negotiated sentence. *Commonwealth v. Reid*, 117 A.3d 777 (Pa. 2015)(citing *Commonwealth v. O’Malley*, 957 A.2d 1265, 1267 (Pa. 2008)).

In arriving at a sentence deemed to be appropriate, the court gave due consideration to the time Price spent on probation. The court noted that Price had significant failures on probation and that he had been placed on drug treatment court but removed. (Sentencing Transcript at 16, 18).

The court gave substantial consideration to protecting the public, the nature of the offenses and Price’s rehabilitative needs.

The court concluded that despite Price’s “mental health” disorders, such issues did not cause him to engage in criminal misconduct. “It wasn’t until [Price] started using that [Price] engaged in criminal misconduct.” (Sentencing Transcript at 39). Further,

the court concluded that Price's substance abuse exacerbated his mental health issues.

The court also noted defendant's history of violations and the court's prior lenient dispositions. In July of 2014, for example, the court released Price on continuing supervision, over the objection of the Adult Probation office which sought a state prison sentence, in order that Price could undergo an assessment and comply with any treatment recommendations. (Sentencing Transcript at 39, 40).

Previously, in light of escalating behaviors, and numerous probation violations, the court recommended and actually discussed with Price the advantages of SIP and/or treatment court. However, Price chose not to participate in SIP. (Sentencing Transcript at 40, 41).

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. Pasture*, 107 A.3d 21, 28 (Pa. 2014)(citing *Commonwealth v. Reaves*, 923 A.2d 1119, 1122 n.5 (Pa. 2007)).

As the court concluded, in 2 ½ years, Price committed 10 separate criminal offenses. His substance abuse was "out of control." His mental health issues centered on anxiety, substance abuse, and anti-social personality disorders. Price could not control his behaviors despite all of the interventions. (Sentencing Transcript at 41).

The court noted that the sentence would be significant and that its primary purpose was to protect the community from Price's behaviors. Unfortunately for Price, the prior sanctions and treatments failed to work. Furthermore, Price failed to put forth "the appropriate effort" into his treatment. Moreover, the court was convinced that a state prison

sentence for a lengthy period of time could best rehabilitate Price. As the court noted: “There are lots and lots of people who come out better, I get letters every day from people, but it’s your choice.” (Sentencing Transcript at 42-43).

In conclusion, the court noted that “given everything that [the court knows], it’s the only appropriate thing...it makes sense.” (Sentencing Transcript at 44).

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

By The Court,

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Marc F. Lovecchio, Judge

cc: District Attorney  
Trisha Hoover Jasper, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)  
File 1318-2013  
File 1665-2013  
File 1966-2013  
File 743-2014  
File 417-2015