

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	CP-41-CR-0002120-2012
	:	
v.	:	
	:	
TODD DANIEL HOOVER,	:	1925a
Appellant	:	

**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 Order of October 26, 2017, vacating Defendant's Early Release from Supervision.

**Background**

On August 13, 2013, Defendant was sentenced for Driving Under the Influence with the Highest Rate of Alcohol, a misdemeanor of the first degree, the Lycoming County Intermediate Punishment Program for a period of five (5) years, with ninety days to be served at the Lycoming County Prison/pre-release facility. Order of Sentence, 8/13/2013, at 1.

On September 8, 2017, Defendant, through the Public Defender's Office requested Early Release from Intermediate Punishment Supervision. Having found that the Defendant complied with all conditions of supervision, paid all fines and costs, and completed all obligations as set forth in the Court's original order, the Court released Defendant from Intermediate Punishment supervision in an Order filed Friday, September 29, 2017, pursuant to its statutory authority to terminate a sentence of county intermediate punishment or increase or decrease the conditions of a sentence pursuant to section 9763 (relating to sentence of county intermediate punishment). 42 Pa.C.S. § 9773 (Modification or revocation of county intermediate

punishment sentence.) A court can terminate intermediate punishment upon concluding that the defendant has complied with all of his sentencing conditions and demonstrated that he or she is no longer in need of supervision. Commonwealth v. Concordia, 97 A.3d 366, 374 (Pa. Super. 2014)

On Monday October 2, 2017, this Court was contacted by the Adult Probation Office. The Adult Probation Office advised Court staff that the Defendant had been charged with Driving Under the Influence on the evening of Friday September 29, 2017, several hours after having been released from supervision but without Defendant's knowledge that he had been released. The Court set a hearing for October 23, 2017, to consider whether the Court should vacate its Order releasing Defendant from supervision in light of the new charges.

In the interim, a hearing was held by the Sentencing Judge, Marc F. Lovecchio, regarding Defendant's probation revocation on October 12, 2017. Transcript, 10/12/2017. The Sentencing Judge issued an order finding that the Defendant had been released by the September 29th Order and so could not be called into a probation revocation hearing related to the new DUI charges. The Sentencing Court in its order stated *inter alia* "Although a petition for reconsideration is pending before Judge Butts, this Court would ask that Judge Butts would vacate the order immediately in order that the defendant can be replaced onto supervision, and be placed on a TAD unit as a condition of his supervision." Order, 10/13/2017, at 1.

At the reconsideration hearing, the Defendant was represented by Private Counsel. The hearing did not take place on the record but at the time of the hearing

the Court was persuaded by Defense Counsel that the Court was without authority to vacate the early release Order. The Court asked the Commonwealth to address the Court's jurisdiction to vacate the Order. The Court asked for further response from the Commonwealth as to how the Court would have lawful authority to vacate the Order. Later, the Court determined that Section 5505 of Title 42 did provide it with lawful authority and proceeded to vacate the Early Release Order.

### **Matters Complained of on Appeal**

**1. Did the Court err by vacating the Court Order of September 29, 2017, which granted Defendant's early release from supervision?**

Section 5505 of Title 42, Judiciary and Judicial Procedure, allows for the Court, except as otherwise provided or prescribed by law, upon notice to the parties to modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed. As no appeal was taken from the Court's September 29, 2017, Order the Court believes that it was within its authority to reconsider and vacate the Order.

A review of case law shows examples where a Court is unable to modify an Order even within that thirty day period. An example where changing an Order is prescribed by law would be where a Court has *sua sponte* changed a verdict of guilty to not guilty when neither a motion for arrest of judgment has been made nor post sentence motions have been filed. Commonwealth v. Robinson, 33 A.3d 89 (Pa. Super. Ct. 2011). Additionally, a court at a probation revocation hearing may not re-sentence a Defendant on a conviction where he had already been found guilty

with no further punishment. Commonwealth v. Williams, 997 A.2d 1205 (Pa. Super. Ct. 2010).

The decision to not allow a Defendant to be released early from supervision is unlike these examples. Defendants are not entitled to be released early nor does criminal procedure require that a Court make a determination as to whether a Defendant be released early, unlike in the two examples above where a court case must be adjudicated, criminal procedure is followed throughout that adjudication, and convictions will become final as a result of that procedure to remain undisturbed by the Trial Court if that procedure for challenging the conviction is not followed. Here the procedure allows for the Court to terminate, increase or decrease the conditions of supervision. The proper procedure was followed in asking the Court to reconsider its decision and the Court was within its legal authority to do so before the Order releasing Defendant became final.

**2. Did the Court err by treating the new DUI charge as a probation violation?**

The record shows that the Trial Court did not treat the new charge as a probation violation. Transcript, 10/12/2017, at 4.

**3. Did the Court err by returning Defendant to the Intermediate Punishment Supervision of Adult Probation?**

Defendant was released from supervision because it was the Court's belief that the Defendant no longer required supervision. Before the Order releasing Defendant became final, the Court was advised that Defendant had again been charged with the same crime that had made his initial supervision necessary. The Court was asked to reconsider its decision within the timeframe before an Order of

Court becomes final and vacated its original Order within that timeframe. As it is the Court's duty to consider the supervision needs of the Defendant and it is within the power of the Court to increase those conditions if necessary, after hearing, it is without error that the Court considered the changed circumstances of the Defendant and deemed continued supervision necessary.

**4. Did the Court err by granting the Adult Probation Office's October 2, 2017, Oral Motion for Reconsideration and vacating the Order of September 29, 2017, granting him early release from supervision?**

See item number one above.

By the Court,

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

\_\_\_\_\_  
Nancy L. Butts, President Judge

cc: Melissa Kalaus, Esquire  
William J. Miele, Esquire  
Michael J. Rudinski, Esquire  
Gary Weber, Esq.