IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-0001703-2015**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
CARL K. ALFORD,	:	
Appellant	:	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this court's probation violation sentence dated April 25, 2018 and filed on April 30, 2018.

On April 19, 2016, the appellant, Carl Alford, pled guilty to Count 5, burglary, a felony of the second degree,[1] and was sentenced to serve 11 to 23 months' incarceration in the Lycoming Count Prison followed by 13 months' probation. Due to receiving approximately 5 months' credit for time served, the appellant was paroled on October 14, 2016 at the expiration of his minimum sentence.

On December 2, 2016, the court issued a bench warrant for the appellant's arrest because he absconded from supervision.

On January 12, 2017, upon stipulation of the parties, the court found probable cause to believe the appellant violated the conditions of his parole and probation by not reporting as directed, leaving his approved address and not providing his adult probation officer with a new address, failing to attend the Re-Entry Services Program and being

[1] 18 Pa. C.S. §3502(a)(4).

discharged from the Program, giving positive urines, admitting to ingesting heroin, and necessitating the issuance of a bench warrant. The appellant was released on unsecured bail pending the final hearing, but subject to the condition that he obtain an approved address, undergo a drug and alcohol assessment and follow any and all recommendations, and that he re-enroll in and successfully complete the Re-entry Services Program.

A final parole violation hearing was held on March 2, 2017. The court found that appellant violated his parole, and it sentenced him to serve a four-month setback at the Lycoming County Prison. Once released from prison, the appellant was required to re-enroll in the Re-entry Services Program and follow up with any drug and alcohol treatment. The appellant was released from the Lycoming County Prison on or about June 7, 2017.

On October 13, 2017, the court issued a bench warrant because the appellant again absconded from supervision.

On November 2, 2017, the bench warrant was vacated. Based on the appellant's counseled admission, the court found that the appellant violated the conditions of his parole and probation by relapsing in September and October 2017. He had positive urine tests for opiates and THC in late September and early October and, when he was apprehended, he admitted using heroin. The appellant also absconded from supervision, was removed from the Re-entry Program, was discharged from Crossroad Counseling, lost his employment, and was residing in a residence that was not approved.

On April 25, 2018, the court revoked the appellant's probation and re-sentenced him to 18 months to 4 years' incarceration in a state correctional institution, with a RRRI minimum of 13 ½ months. The court also gave the appellant credit for approximately 6 ½ months' time served.

On May 1, 2018, the appellant filed a motion to reconsider his probation violation sentence. The appellant asserted that his sentence was excessive and he had not committed a new crime since 2016. As at the hearing, the appellant requested "a county max out sentence" so he could return to New Jersey. The court summarily denied this motion on May 8, 2018.

The appellant filed a notice of appeal. The sole issue asserted by the appellant is that the trial court abused its discretion by imposing an unduly harsh and manifestly excessive sentence.

Initially, the court notes that this issue may be waived because the appellant failed to specify in his concise statement how or why his sentence was unduly harsh or excessive. *See Commonwealth v. Thompson*, 778 A.2d 1215, 1223 (Pa. Super. 2001).

Even if this claim is not waived, the court does not believe it abused its discretion when it re-sentenced the appellant to state incarceration.

> Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Robinson, 931 A.2d 15, 26 (Pa. Super. 2007))(quoting *Commonwealth v. Fullin*, 892 A.2d 843, 847 (Pa. Super. 2006); see also *Commonwealth v. Rodda***,** 723 A.2d 212, 214 (Pa. Super 1999)(en banc).

> In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing [judge's] discretion as he or she is in the best position to measure factors such as the nature of the crime, the defendant's character and the

> defendant's display of remorse, defiance or indifference.

Commonwealth v. Colon, 102 A.3d 1033, 1043 (Pa. Super. 2014)(quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

In a probation violation context, the sentencing court enjoys even a greater degree of deference.

> [W]here the revocation sentence was adequately considered and sufficiently explained on the record by the revocation judge, in light of the judge's experience with the [appellant] and awareness of the circumstances of the probation violation, under the appropriate deferential standard of review, the sentence, if within the statutory bounds, is peculiarly within the judge's discretion.

Commonwealth v. Pasture, 107 A.3d 21, 28 -29 (Pa. 2014).

As the Supreme Court noted in *Pasture*, a sentencing court does not abuse its discretion by imposing a harsher post-revocation sentence where the appellant initially received a lenient sentence and failed to adhere to the conditions imposed. *Id.* at 28.

This court did not act with manifest unreasonableness, partiality, prejudice, bias, or ill will or abuse its discretion in any manner. Indeed, this court acted in the only way it could act to attempt to rehabilitate the appellant and protect the community. The court recognized that the appellant had not been charged or convicted of any new criminal offense. However, the appellant also was not being rehabilitated; he was not addressing the issues that caused or contributed to his criminal conduct. The court tried county incarceration, probation, and various services to address the appellant's substance abuse issues and his other probation and parole issues such as changing his address without permission, absconding from supervision, and failing to complete the Re-entry Service Program. Quite simply, the court ran out of options at the county level. A county max-out sentence was not

an option because the appellant had been sentenced to county incarceration twice in this case and neither experience sufficiently motivated the appellant to address his substance abuse issues or to comply with his conditions of supervision.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
Kirsten Gardner, Esquire, (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)