

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001665-2014
vs. : CP-41-CR-0001060-2016
:
:
:
:
:
DESTINY DAVIS, :
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 judgment of sentence dated April 5, 2018, which was filed and docketed on April 10, 2018.

FACTUAL BACKGROUND AND HISTORY

On January 22, 2016, the appellant, Destiny Davis, pled no contest to simple assault, a misdemeanor of the second degree, in case CR-1665-2014 and was sentenced to 18 months' probation.

On July 11, 2016, the appellant pled guilty to retail theft, identity theft, and criminal mischief in case CR-1060-2016, as well as simple assault, a misdemeanor of the third degree in case CR-1061-2016. The charges in CR-1060-2016 arose out of an incident on March 22, 2016. The appellant was suspected of shoplifting at Sally Beauty Supply. When a store employee attempted to confront her, the appellant ran away and fell into a table which caused a large window pane of the store to crack. The appellant was captured by the police outside another store in the shopping plaza. She was in possession of items from several different stores that still had security tags on them. She gave the police a false name.

Further investigation ultimately revealed her true identity. She was taken to the barracks to photographed and fingerprinted. When the police attempted to fingerprint her, she claimed her hands were broken from the contact with the large window pane. The police called EMS and she was transported to the hospital. At the hospital, she gave another individual's name. As a result that individual received an ambulance and hospital bill in the amount of \$831.00.

On July 14, 2016, the court sentenced the appellant to 30 days to 11 months' incarceration for retail theft, a consecutive 6 months' probation for identity theft, and a consecutive 6 months' probation for criminal mischief in case 1060-2016, as well as a consecutive one year of probation in case 1061-2016. With her credit for time served, the appellant was immediately paroled. The court also found that the appellant violated her probation under case 1665-2014 by committing new crimes, not living at her approved address, and engaging in assaultive behavior. The court revoked her probation, but re-sentenced her to a one year period of probation consecutive to the sentences imposed in cases 1060-2016 and 1061-2016.

On January 18, 2018, the appellant was again before the court for a probation violation hearing. The court found that the appellant violated the conditions of her probation by substantially failing to comply with the requirements of the Re-entry Services Program; continuing to smoke marijuana while she was pregnant, despite numerous warnings; and by failing to comply with the directives of the adult probation officers when she was being taken into custody. The appellant acted out and became aggressive, threatening, and confrontational. The court was inclined to impose a state sentence at that time, but delayed sentencing to obtain additional information, including a 60-day diagnostic evaluation, a pre-

sentence investigation (PSI) report with her entire supervision history, and a report from the Lycoming County Prison regarding her behaviors and any medical issues.

On March 29, 2018, the court revoked the appellant's probation and re-sentenced the appellant to an aggregate sentence of three years' probation, which consisted of one year for identity theft and one year for criminal mischief under case 1060-2016 and one year for simple assault under case 1665-2014. The court noted that it was prepared to impose a state sentence but the court gave the appellant another chance due to her young age, dysfunctional history, and she appeared to be doing better in light of the most recent interventions.¹ However, the court warned the appellant that she would be "on a short leash." If she chose to smoke marijuana, not attend the Re-entry Services Program, not attend West Branch , mental health or any other treatments, or not do her community service, she was "choosing" to go to state prison.

Unfortunately, the appellant chose not to heed the court's warning. Within an hour of the appellant's returned to the Lycoming County Prison on March 29, 2018, she was involved in an incident with her cellmate. The next day she received a "write-up" for attempting to have contact with a male inmate in another cell block in violation of the prison rules. She was also not taking her prescribed medications as directed.

On April 5, 2018, the appellant was brought before the court for another probation violation hearing. The court found that the appellant violated the conditions of her

¹ The appellant did not have any misconducts while she was at the state correctional institution for her diagnostic evaluation and she was taking her medications for anxiety and depression.

probation and imposed an aggregate sentence of 1 ½ to 5 years' incarceration in a state correctional institution, consisting of 6 months to 3 years for identity theft, a consecutive 6 months to 1 year for criminal mischief, and a consecutive 6 months to 1 year for simple assault.

On April 30, 2018, the appellant filed a notice of appeal. In her concise statement, she asserts the following issues: (1) the sentences imposed were excessive because the violation and the appellant's recent history did not warrant such a harsh sentence; (2) the court did not give enough consideration to the impact the appellant's transition from SCI Muncy to the Lycoming County Prison had on the appellant's scheduled time to take medication; (3) the one incident at the prison between her and her cellmate did not show that probation was on longer a viable rehabilitative tool, especially given the changes in the appellant's behavior after starting a new medication routine at SCI Muncy; (4) the court never specified what condition of probation the appellant violated.

The appellant contends that the sentences imposed were excessive because the violation and her "recent history" did not warrant such a harsh sentence. The court cannot agree.

The appellant violated her probation by engaging in an altercation with her cellmate within an hour of her return to the prison following her probation violation hearing on March 29, 2018. The appellant and her cellmate were separated, and the appellant was removed from the cell and told to sit at a table in the day room until correctional officers could relocate her to another cell. The appellant got up from the table and continued to yell and argue with her cellmate. The appellant was told to sit back down. She did, but then she

got up from the table again. She went over to the subcontrol, opened the door, and began yelling at Correctional Officer Monica Laird. C.O. Laird had to tell her several times to go back to the day room, shut the door and sit down. The appellant eventually went back into the day room, but instead of sitting down at the table she went over to the gate in front of the cells and began arguing with her cellmate again. C.O. Laird testified when the appellant came back from SCI Muncy she seemed humbled and settled down for the most part but then she started picking right back up. C.O. Laird indicated that the appellant is a problem inmate with respect to whatever procedure that is not exactly how the appellant wants it or as she sees fit.

The evidence also established that the appellant was not taking her prescribed medications for her mental health conditions. The appellant was prescribed two medications for anxiety and depression and one medication for high blood pressure. She was to take the anxiety and depression medications twice a day and the blood pressure medication once per day. Nurse Kim Poorman testified that between April 1, 2018, and April 4, 2018, the appellant failed or refused to take her medications twelve times. The appellant also failed or refused to take her medications 43 times between March 15, 2018, and March 31, 2018. The court was not aware of any of the appellant's failures to take her medications at the time of the March 29, 2018, probation violation hearing. Nurse Poorman also testified that those medications were prescribed to the appellant while she was at SCI Muncy and there was not a lapse in medications when she was returned to the Lycoming County Prison because the medications were sent back with her. The appellant admitted that she was not taking her medications every day, but claimed that she was not doing so because the medications were

making her weak and she would pass out.

The court assumes that by “recent history” the appellant was not referring to her most recent incidents at the Lycoming County Prison or her failure to take her medications when she was returned there, but rather her lack of misconducts while she was at SCI Muncy. The appellant’s overall history clearly showed that probation was no longer a viable option. Her “recent history” at SCI Muncy and her immediate failures upon her return to the Lycoming County Prison established that a state prison sentence at SCI Muncy was the most appropriate disposition for the appellant. The appellant complained at the hearing that there were people at the Lycoming County Prison that “targeted” her. By sentencing her to state incarceration, the court removed the appellant from those people and returned her to the place where she had complied with her medications and did not have any misconducts.

The appellant next contends that the court did not give enough consideration to the impact that the transition from SCI Muncy to the Lycoming County Prison had on her scheduled time to take medication. Nurse Poorman testified that the appellant was taking the same two anxiety and depression medications at SCI Muncy as she was supposed to be taking at the Lycoming County Prison. The appellant apparently took the medications as directed while at SCI Muncy, but repeatedly failed or refused to take the same medications when she returned to the Lycoming County Prison.

The appellant also claims the one incident at the prison between her and her cellmate did not show that probation was no longer a viable rehabilitative tool, especially given the changes in the appellant’s behavior after starting a new medication routine at SCI Muncy. The court cannot agree.

Approximately an hour before the incident at the Lycoming County Prison, the appellant was before the court for a probation violation at which the court was considering a state prison sentence. The court specifically told the appellant that it was prepared to impose a state sentence and it was of the opinion that “quite simply, enough was enough, that [she] had been given numerous opportunities and failed to take advantage of them.” On the other hand, the court noted the appellant’s young age, her dysfunctional history, and the fact that the appellant appeared to be doing better. Instead of imposing a state prison sentence, the court imposed probation again with her release conditioned on an approved address, but warned the appellant that she was “on a short leash” and if she violated the conditions of her probation she would be choosing to go to state prison. In response to this warning, the appellant immediately engaged in an altercation with her cellmate and failed or refused to take her medications on numerous occasions during the first four days of April. By her actions, the appellant made it clear to the court that she was not going to follow the directives of the adult probation department, the Lycoming County Prison or the court, and therefore, probation was no longer a viable alternative. Apparently, the only time the appellant would take her medications as directed and conform her behavior was when she was incarcerated in SCI Muncy, so the court imposed a sentence that would send her to the location where she could have the most success.

The appellant also complains that the court never stated what specific condition of probation the appellant violated. The court is not aware of any requirement that the court list any or every condition that the appellant violated. Nevertheless, the appellant’s conduct violated Rule 9, Special Condition 3 and Special Condition 5. The appellant signed

these conditions on October 7, 2016.

Rule 9 states: “I will refrain from any assaultive behavior which threatens or present a clear and present danger to self or others.” The appellant was involved in an altercation/spitting incident with her cellmate almost immediately after she was returned to the Lycoming County Prison following her probation violation hearing on March 29, 2018. The court specifically stated in its Order dated April 5, 2018, that the appellant “violated the conditions of her probation by engaging in behavior at the prison that not only evidence a complete disrespect for the authority of the correctional officers, but also jeopardized the safety of the institution.”

Special Condition 3 required the appellant to “receive a mental health evaluation as directed by the probation/parole office and successfully complete any recommended treatment.” Special Condition 5 required the appellant to “comply with all special conditions imposed by the court, above and beyond these rules.” SCI Muncy conducted a mental health evaluation as part of the diagnostic evaluation that the court requested before the March 29, 2018, probation violation hearing. As a result of that evaluation, she was prescribed medications for anxiety and depression. Throughout the court’s orders, the court required the appellant to receive mental health evaluations and comply with any treatment recommendations. In the order dated March 29, 2018, which was dictated in the appellant’s presence, the court specifically warned the appellant that if she chose not to comply with her mental health or other treatments, she was choosing to go to state prison. Despite the warning, the appellant chose not take her prescribed medications as directed after she returned to the Lycoming County Prison from SCI Muncy, particularly

during the first four days of April.

Sometimes the individuals in the criminal justice system are a little like Humpty Dumpty; they are cracked or broken due to substance abuse issues, mental health issues, and/or the trials and tribulations of traumatic events in their lives. The court sends out “all the king’s horses and all the king’s men” by providing various programs and services that the county has to offer to try to help these individuals repair the damage these issues have caused in their lives. Unfortunately, there are times when even the best efforts are not enough, and other avenues, such as state prison, must be attempted. The court did not want to send this young mother to state prison. The court attempted to rehabilitate her through numerous probationary sentences. Despite all the efforts of the court, the adult probation officers, individuals at the Re-entry Services Program, and other service providers, such could not be accomplished at the county level. Finally, enough was enough. The court specifically stated in the Order dated April 5, 2018:

This sentence is necessary to vindicate the authority of the [c]ourt, to prevent the [appellant] from continuing with the conduct that she has exhibited which will hopefully prevent her from committing further criminal behaviors, and to appropriately address [the appellant’s] failure to address these issues which continue to cause her to recidivate. What the [c]ourt has tried on a county basis has not worked. This [c]ourt’s leniency has not worked. This [c]ourt giving the defendant other opportunities has not worked. This [c]ourt can accept some of the blame, and perhaps should have sentenced [the appellant] to state prison long ago.

The court sincerely hopes that a state prison sentence will be able to rehabilitate the appellant and help her address her various issues. The appellant showed improvement while she was at SCI Muncy for her diagnostic evaluation. The court had hoped that such improvement would continue following her return to the

county. It did not, but perhaps it will return now that she is back at SCI Muncy.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

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