IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CP-41-CR-0000255-2015**
	:	**CP-41-CR-0000654-2014**
vs.	**:**	
	:	
JEREMIAH MECKLEY,	**:**	
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 order dated April 20, 2018, and filed April 30, 2018.

By way of background, in March 2014, the appellant stole Ativan, Percocet, and Morphine pills, cash, and other items of movable property from family members. The appellant used these items to obtain heroin. The police arrested him and charged him with various controlled substance and theft offenses in case 654-2014. On October 22, 2014, the appellant pled guilty to possession of a controlled substance, an ungraded misdemeanor; theft by unlawful taking, a misdemeanor of the first degree; and theft by unlawful taking, a misdemeanor of the second degree. On that same date, the appellant was sentenced to 18 months' supervision on the Intermediate Punishment Program (IPP) for each theft, to be served consecutive to each other, and to pay a $50 fine for possession of a controlled substance. One of the special conditions of his IPP supervision was to attend and complete the Drug Court Program.

In May 2014, the appellant entered the basement garage of his former employer when no one was present, and stole a revolver from the gun safe to trade for heroin.

In December 2014, the police charged the appellant with burglary and related offenses. On March 18, 2015, the appellant pled guilty to burglary, graded as a felony of the second degree, and was sentenced to 12 months' probation consecutive to any sentence he was currently serving. One of the special conditions of his probation supervision was to attend and successfully complete the Drug Court Program.

The appellant struggled with his substance abuse issues while under supervision in the Drug Court Program. On February 18, 2015, he was sanctioned to 25 additional hours of community service for missing a counseling appointment. On April 1, 2015, the appellant admitted that he relapsed, and the court imposed a sanction of 14 days' incarceration at the county prison. On April 29, 2015, the appellant was again before the court because he relapsed, and the court imposed a sanction of 60 days' incarceration at the county prison. On July 15, 2015, the appellant was before the court for his third relapse while in Phase I of the Drug Court Program. The court imposed a sanction of 90 days' incarceration but directed that the appellant could be released directly to an in-patient drug rehabilitation program once a bed became available. On September 9, 2015, the appellant was released to Pyramid Belleville's inpatient program. Within two months of his release from the inpatient program, the appellant was before the court on January 20, 2016, due to his fourth relapse. The appellant was sent to SCI-Camp Hill for a 60-day diagnostic evaluation. Once the defendant returned from the diagnostic evaluation, he was returned to Lycoming County Prison while awaiting a Vivitrol shot. Once the appellant received his Vivitrol shot, he was again released to supervision. He was before the court on July 27, 2016, due to his fifth relapse. At that point he was removed from the Drug Court Program. On September 1, 2016, the appellant was before the court because he relapsed again, and he

was sent for an evaluation for the State Intermediate Punishment (SIP) Program. On November 18, 2016, the court revoked the appellant's probation and IP sentences and re-sentenced him to the SIP Program.

Unfortunately, the appellant did not fare any better in the SIP program. In mid-August 2017, he was found passed out in an alley from using alcohol and heroin. He was sent to and completed an inpatient treatment program, but was returned to SCI Camp Hill in late September, because he was found in possession of a controlled substance. He was sanctioned and then returned to Level 3 in late October under an agreed upon zero tolerance policy. In late November 2017, the appellant submitted a positive urinalysis and was directed to return to York CCC. When he returned, he was visibly under the influence. The appellant admitted he was under the influence of Vicodin, heroin, marijuana, and alcohol. He also admitted using controlled substances three times in November. On March 13, 2018, the court received a letter that the appellant was expelled from the SIP Program due to lack of meaningful participation.

On April 20, 2018, the court revoked the appellant's SIP sentence and imposed an aggregate sentence of 5 to 11 years' incarceration in a state correctional institution, which consisted of 3 to 7 years for burglary under case 255-2015; and 6 months to 1 year for possession of a controlled substance, 1 to 2 years for theft by unlawful taking (count 3), and 6 months to 1 year for theft by unlawful taking (count 7) under case 654-2014. The court found the appellant was eligible for a Recidivism Risk Reduction Incentive (RRRI) and stated that his RRRI minimum was 50 months. The court also gave the appellant 703 days credit for time served.

On April 27, 2018, the appellant filed a motion to reconsider. The motion,

however, did not state any basis or reasons why the court should reconsider the sentence imposed. The court summarily denied the motion on May 2, 2018.

On May 4, 2018, the appellant filed his notice of appeal. The sole issue asserted on appeal is that the trial court abused its discretion by imposing an unduly harsh and manifestly excessive aggregate sentence of five to eleven years at a state correctional institution.

The court believes the appellant has waived any claim that his sentence was unduly harsh or manifestly excessive by asserting it in a boilerplate fashion. *See Commonwealth v. Thompson*, 778 A.3d 1215, 1223-1224 (Pa. Super. 2001). The appellant has never stated any basis or reason why the sentence is allegedly harsh or excessive. The court is somewhat at a loss how to address this claim.

In any event, the court believes the appellant's supervision history justified a state sentence. Although the appellant was never charged with any new crimes, he continued to violate the conditions of his supervision by using controlled substances. Despite utilizing every available resource, including inpatient drug treatment, the Lycoming County Drug Court Program and the SIP Program, nothing was successful in addressing the appellant's substance abuse issues. The appellant's substance abuse was not only a violation of his conditions of his supervision; it also made the appellant a danger to himself and others. The appellant admitted that he was able to conform his conduct while he was incarcerated or in treatment programs but he was able to do so on the street. The court imposed a lengthy state incarceration sentence to try to save the appellant's life. Perhaps, with a longer period of incarceration and supervision by the Pennsylvania Board of Probation and Parole, the appellant can break his cycle of substance abuse.

Nevertheless, in reviewing the appellant's sentence, the court discovered a problem with the sentence imposed for possession of a controlled substance under case 654-2014. In its order dated April 20, 2018, the court stated that it revoked the appellant's intermediate punishment sentence for this offense and resentenced him to 6 months to 1 year of incarceration consecutive to the sentences for his other offenses. The appellant, though, was never sentenced to intermediate punishment for this offense; he was sentenced to pay a $50 fine. Therefore, the court would request that the appellate court remand this matter so that the court can vacate the sentence imposed for possession of a controlled substance. The aggregate sentence would then be 4 ½ to 10 years' incarceration in a state correctional institution.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

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