

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-2062-2013
vs. : CP-41-CR-1024-2015
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VANESSA L. WAGNER, :
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 May 2, 2018, which revoked the appellant's State Intermediate Punishment (SIP) program sentence and re-sentenced her to serve an aggregate sentence of five to ten years' incarceration in a state correctional institution.

By way of background, the appellant was using heroin and, between late December 2012 and the end of January 2013, she stole \$420 from her relatives and used it to purchase heroin. As a result, she was charged in case 327-2013 with theft by unlawful taking (TBUT), graded as a misdemeanor of the first degree. On June 28, 2013, the appellant pleaded guilty to TBUT, and on September 30, 2013 she was sentenced to two years' probation.

On November 17, 2013, the appellant stole \$285 from her relatives and used this money to purchase heroin. She injected heroin and then drove with her two-year old daughter in the vehicle. She stopped at a park and made her two-year old daughter stand outside in cold and rainy weather while she sat in the vehicle and injected more heroin. The

appellant was charged with TBUT, endangering the welfare of children (EWOC) and related offenses in case 2062-2013. On May 5, 2014, the appellant pleaded guilty to TBUT and EWOC, both misdemeanors of the first degree. The court imposed an aggregate sentence of four years' supervision in the Intermediate Punishment (IP) program with the first seven months to be served at the Lycoming County Pre-Release Center. The court also revoked the appellant's probation under 327-2013 and re-sentenced her to two years' probation consecutive to the sentence imposed in case 2062-2013. The conditions of the appellant's supervision included undergoing an assessment at the West Branch Drug and Alcohol Commission (West Branch) and complying with all recommendations. Furthermore, the court advised the appellant that if she did not take advantage of this opportunity and she placed her interests above those of her child, the court would not hesitate in revoking her sentence and imposing a period of state incarceration.

On May 7, 2015, the appellant took another individual's debit card and used it at Weis Markets to purchase \$113.89 in merchandise and she attempted to use the card at an ATM machine in a mini-market. On June 9, 2015, in case 1024-2015, the appellant was charged with access device fraud, a misdemeanor of the third degree. On July 20, 2015, the appellant pleaded guilty to this charge and was sentenced to 12 months' probation consecutive to any sentence she was presently serving. On that same date, the court found that the appellant violated the conditions of her probation and IP program in her 2013 cases, but the court did not revoke those sentences. Instead, the court directed the appellant to attend and successfully complete the Re-entry Services Program, attend one meeting every day, obtain a sponsor, and follow any recommendation of West Branch and her counseling program. The court advised the appellant if she relapsed again she was at risk not only for

county incarceration but a 60-day diagnostic evaluation or a State Intermediate Punishment (SIP) evaluation.

On May 26, 2016, the court found that the appellant violated the conditions of her probation and her IP by: testing positive for amphetamines, methamphetamines, and cocaine; being discharged from Crossroads counseling; and placing a child in danger by driving while drugs or metabolites were in her system. The appellant admitted that she used cocaine a few days prior to May 13, 2016. The court sent the appellant to be evaluated for the SIP program. On October 4, 2016, the court revoked its prior sentences under cases 327-2013, 2062-2013, and 1024-2015, and re-sentenced the appellant to the SIP program.

The appellant violated the conditions of the SIP program by committing the crime of escape, and she was expelled from the program. The appellant also used Suboxone without it being prescribed for her. On April 20, 2018, the court revoked the SIP sentence and re-sentenced the appellant to an aggregate sentence of five to ten years' incarceration in a state correctional institution, which consisted of one to two years' incarceration for TBUT and a consecutive two to four years' incarceration for EWOC in case 2062-2013, as well as a consecutive two to four years' incarceration for TBUT in case 327-2013. The sentence in case 1024-2015 was guilt without further punishment.

The appellant filed a timely motion to reconsider but did not state any basis or reasons why the court should do so. Therefore, the court summarily denied the motion.

The appellant filed a timely notice of appeal in all three cases; however, the appellant failed to file a docketing statement for the appeal in case 327-2013, and that appeal was dismissed (see Order dated August 10, 2018 at 777 MDA 2018). Since no further punishment was imposed in 1024-2015 and the appeal was dismissed in 327-2013, the only

case that is now subject to this appeal is 2062-2013.

The sole issue asserted by the appellant on appeal is “that following a probation violation, the trial court abused its discretion by imposing an unduly harsh and manifestly excessive sentence of an aggregate of five to ten years at a state correctional institution.”

The court believes the appellant has waived any claim that her 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 as how to address this claim.

The court also notes that the sentence was not imposed “following a probation violation” but rather was as a result of the revocation of the appellant’s SIP sentence due to her escape, which she was charged with and pleaded guilty to in Schuylkill County.

In any event, the court believes the appellant’s supervision history justified a lengthy state sentence. Despite utilizing every available resource, including drug treatment and counseling, probation, the Reentry Services program, the county IP program, and the SIP program, nothing was successful. The appellant’s substance abuse resulted in her committing new crimes, which was not only a violation of the conditions of her supervision; it also made the appellant a danger to herself and others.

When the appellant used controlled substances, she not only risked overdosing and killing herself, but she endangered her child and the public. The court sentenced her to the SIP program because she used multiple controlled substances and she endangered her child by driving a motor vehicle after using cocaine. This was the second

time that she had endangered her child by driving after using controlled substances. The SIP program was the appellant's last chance. She squandered it by escaping from a half-way house. The appellant continually sabotaged herself. Despite escalating sanctions and repeated warnings that if her behaviors continued she would face a state sentence, the appellant continued to use controlled substances and commit crimes. For the safety of everyone, the court imposed a lengthy state sentence.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)