

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000308-2018  
vs. : CP-41-CR-0000349-2018  
: CP-41-CR-0000648-2018  
:  
:  
EMMANUEL CRADLE, :  
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 June 11, 2019, which was issued following the revocation of Appellant’s probation.

By way of background, on March 12, 2018, Emmanuel Cradle entered a guilty plea to Count 2, receiving stolen property, a misdemeanor of the first degree, under criminal docket number 308-2018, and the court sentenced him to one year of probation under the supervision of the Lycoming County Adult Probation Office.

On March 19, 2018, Cradle entered a guilty plea to Count 1, theft from a motor vehicle, a misdemeanor of the second degree, under criminal docket number 349-2018, and the court sentenced him to four to eight days’ incarceration to be followed by one year of probation to be served consecutive to any and all other sentences Cradle was serving.

On April 5, 2018, the court found probable cause that Cradle had violated the conditions of his probation by allegedly committing a retail theft (which occurred on March 25, 2018).

On June 1, 2018, Cradle entered a guilty plea to Count 1, retail theft, a

misdemeanor of the second degree, under criminal docket number 648-2018. The court revoked Cradle's probation under criminal docket number 308-2018 and resented him to 30 to 67 days' incarceration followed by one year probation. Under criminal docket number 648-2018, the court sentenced Cradle to one year of probation consecutive to any and all sentences that Cradle was presently serving.

On June 25, 2018, Cradle was detained for leaving his approved residence and not obtaining an approved address. On July 5, 2018, the court found that Cradle's actions violated the conditions of his probation. The court did not revoke his probation, though. Instead, the court directed that he could not be released on continuing probation until he submitted an approved address and a release plan, which had to include mental health services. On July 17, 2018, Cradle was released from incarceration.

On July 23, 2018, a bench warrant was issued because Cradle absconded from supervision.

On or about August 3, 2018, Cradle was arrested on the bench warrant. He fought and struggled with the adult probation officers and sheriffs who were arresting him. As a result, he received new charges under criminal docket number 1395-2018.

On January 25, 2019, Cradle pled guilty to resisting arrest and two counts of harassment under criminal docket number 1395-2018. On March 19, 2019, the court sentenced him to an aggregate term of seven to eighteen months' incarceration. The court awarded Cradle credit for time served from August 30, 2018. The court also revoked Cradle's probation under criminal docket numbers 308-2018, 349-2018, and 438-2018 and resented him to serve one year of probation under each criminal docket number to be served consecutive to each other and consecutive to the sentence imposed under criminal

docket number 1395-2018. The court warned Cradle that if he failed to comply with his conditions of supervision or if he engaged in criminal conduct, the court might be left with no choice but to warehouse him in a state correctional institution.

On April 11, 2019, Cradle was released from incarceration. Within a matter of days or weeks, Cradle violated the conditions of his supervision by failing to appear for two consecutive sessions of the Partial Program at Crossroads Counseling and by admitting to using THC on two separate occasions.

On June 11, 2019, the court revoked Cradle's probation and resented him to: one to two years' incarceration on Count 2, receiving stolen property, under criminal docket number 308-2018; a consecutive one to two years' incarceration on Count 1, theft from a motor vehicle, under criminal docket number 349-2018; guilt without further punishment on Count 3, possession of drug paraphernalia, under criminal docket number 438-2018; and a concurrent one to two years' incarceration on Count 1, retail theft, under criminal docket number 648-2018.<sup>1</sup>

On June 21, 2019, Cradle filed a motion for reconsideration of his probation violation sentences. He requested the court to resentence him to a county sentence or release him back to a treatment plan so that he could be close to his mother and his family due to his rehabilitation needs, his mental health issues, the lack of new criminal offenses, and his mother's diagnosis of lung cancer, which greatly affected him. The court summarily denied this motion.

On June 26, 2019, Cradle filed a notice of appeal. In his concise statement of

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<sup>1</sup>Under criminal docket number 1395-2018, the court paroled Cradle to the sentenced imposed under the other criminal docket numbers.

matters on appeal, Cradle asserts that the court abused its discretion in imposing a state sentence on his re-sentence for a probation violation where he had not committed new offenses nor did the evidence show that it was likely; his rehabilitation needs in part due to his mental health issues remain as pertinent as at the time of the original sentencing; and a state sentence was not necessary to vindicate the authority of the court, as alleged and specified in his motion to reconsider sentence.

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. Garcia-Rivera*, 983 A.2d 777, 780 (Pa. Super. 2009), quoting *Commonwealth v. Hoch*, 936 A.2d 515, 517-518 (Pa. Super. 2007).

The court did not sentence Cradle out of partiality, prejudice, bias or ill will. The court sentenced Cradle to state incarceration, because nothing worked at the county level. See N.T., June 11, 2019, at 28-39; 41-45.

He refused to participate in the Mental Health Court Program. He wanted the Job Corps program but then he changed his mind and didn't want to do that either. He was referred to a group home back in 2017, and he left it. He was supposed to go to the Sharwell Building so he could get a mental health caseworker, but it did not follow through with going there. He had services through the Mental Health Forensic Team. He was supposed to complete the partial program. He went for one day but then he did not return. He gave several reasons or excuses for not completing the partial program including he found out his mom had lung cancer, he had a job interview, he wanted to go to individual rather than group

counseling, and he didn't want to be bothered.

His approved address was at his grandfather's residence but he got kicked out for not following rules. When he was released from incarceration, he was to stay at the American Rescue Workers. He stayed one night and did not go back. He was supposed to report to his probation officer as instructed but he did not report and a bench warrant was issued for his arrest.

While he was incarcerated at the county prison, he began receiving medications but they were stopped because he was non-compliant with taking them as directed. He failed to follow the rules in the county prison and received multiple write-ups and was placed in disciplinary lock up. His infractions included interfering with prison employees in the performance of their duties, refusing to obey orders, disrupting prison routine, obstructing a security camera, instigating a fight, damaging county property, and disrespecting staff.

The court tried everything, but nothing worked. Therefore, the court revoked Cradle's probation and imposed a sentence of state incarceration. Even with that sentence, however, by making Cradle eligible for boot camp the court gave Cradle the opportunity to participate in programming that would provide him with the discipline and structure that he needs and allow him to be released in a matter of months rather than years. Unfortunately, like many of the programs and services offered at the county level, Cradle is not willing to try, let alone complete, boot camp.

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

By The Court,

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Marc F. Lovecchio, Judge

cc: District Attorney  
Nicole Spring, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)  
File 308-2018  
File 349-2018