

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-1056-2016
vs. :
:
:
:
:
:
JONATHAN DOSS, :
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 August 9, 2018. The relevant facts follow.

Appellant Jonathan Doss was charged with statutory sexual assault, a felony of the second degree; aggravated indecent assault, a felony of the second degree; and indecent assault, a misdemeanor of the second degree. Police received a report from Children and Youth Services that the 20-year old Appellant was having sex with 14-year old female, A.F., at her home after school and before her father returned home from work. Police recovered used condoms from the trash can in A.F.'s bedroom. The police interviewed A.F. who said that Appellant had sex with her 10 to 20 times in April 2016. A.F. also told the police that Appellant was aware of her age.

On August 26, 2016, Appellant pled guilty to statutory sexual assault and indecent assault. On December 23, 2016, the court sentenced Appellant to 11 ½ months to 24 months less one day plus five years' probation for statutory sexual assault and a concurrent term of two years' probation for indecent assault. The conditions of Appellant's

supervision required Appellant to comply with standard sexual offender conditions, reside at his approved address, maintain employment, undergo an assessment by a mental health professional and comply with all recommendations, undergo an assessment for anger issues and comply with all recommendations, and comply with an approved mental health plan which included treatment and continuing with psychotropic medications.

On September 1, 2017, Appellant was before the court for a parole violation hearing. The court found that Appellant violated the conditions of his supervision by failing to report for mental health services as directed, violating the conditions of house arrest, testing positive for alcohol, and failing to appear for appointments with his adult probation officer. The court found that Appellant was in need of mental health services but he refused to comply with his treatment protocol. He failed to: (1) contact MH/ID; (2) begin anger management counseling; (3) continue taking his psychotropic medications and initiate counseling; and (4) initiate mobile psychological services and obtain a forensic peer specialist. The court sent Appellant to SCI-Camp Hill for a 60-day diagnostic evaluation.

On January 22, 2018, the court found that Appellant violated the conditions of his parole and ordered him to max out his parole sentence. The court, however, did not revoke Appellant's probation at that time. Instead, the court indicated that when he maxed out his parole on June 1, 2018, Appellant would be released to his probationary sentences subject to the following special conditions: wear a TAD unit for three (3) months, take medication as prescribed by his treating physician; undergo an assessment and recommended treatment by Townsend Velkoff in connection with any impulse control disorders, conduct disorders and sexual offenses; and attend and, if deemed appropriate by the Lycoming

County Adult Probation Office, be placed on house arrest.

On June 21, 2018, Appellant was again before the court. A Gagnon II (or final violation) hearing was scheduled for July 6, 2018. Appellant was warned that, in order to be kept on probation supervision, he needed an approved address and an intensive mental health treatment program that Appellant needed to follow.

Appellant's probation officer convinced the American Rescue Workers (ARW) to allow Appellant to reside at their facility. As a result, rather than revoke Appellant's probation, on July 6, 2018 the court released Appellant to reside at the ARW and re-imposed the prior conditions as set forth in the prior court orders. Appellant was again advised that, although the court did not want to put him in state prison, if probation was not working as an effective tool to rehabilitate him the court would be left with no choice but to impose a state sentence.

Unfortunately, Appellant did not comply with the conditions of his house arrest or the requirements for him to reside at the ARW and he was re-incarcerated. On August 2, 2018, at a Gagnon I hearing, the court found probable cause to believe that Appellant violated the conditions of his supervision by leaving the ARW on July 15, 2018 and not returning until the next morning and being removed from the ARW for not abiding by the rules.

At the Gagnon II hearing on August 9, 2018, the court found that Appellant violated the conditions of his probation by being removed from the ARW program. The court revoked Appellant's probation and re-sentenced him to serve an aggregate sentence of 1½ years to 4 years' incarceration in a state correctional institution, which consisted of 1 to 3

years for statutory sexual assault and a consecutive 6 months to 1 year for indecent assault.

Appellant filed a motion to reconsider, which the court summarily denied.

Appellant filed a timely notice of appeal. Appellant asserts the following matters on appeal:

1. [Appellant] avers that the trial court abused its discretion when imposing resentence—ordering confinement in a State Correctional Institution—which was unduly harsh, manifestly excessive, and clearly unreasonable for the following reasons:
 - a. The imposition of consecutive state sentences is unduly harsh and manifestly excessive in light of the particular facts and circumstances of the violations and the individual, failing to sufficiently consider [Appellant’s] needs and risks to personal health and safety upon incarceration;
 - b. The violations of the conditions of [Appellant’s] probation were not the result of the commission of any new criminal offenses, and as such should not warrant resentence to a State Correctional Institution. Instead, [Appellant] submits that he was sentenced to State confinement not because of criminal behavior, but rather for being incorrigible—a direct result of mental immaturity;
 - c. At the time of the original sentence, [Appellant] has a prior record score of zero (0), and the sentence on the Indecent Assault falls above the standard guideline range;
 - d. The [c]ourt failed to sufficiently consider [Appellant’s] mental health needs, cognitive functioning, physical characteristics, and intellectual disabilities including his borderline intellectual diagnosis;
 - e. Sufficient consideration was not afforded to [Appellant’s] multiple diagnoses, how they may affect [Appellant’s] behavioral choices, nor that care that would be required for each: Oppositional Defiance Disorder; Mood Disorder; and Impulse and Conduct Disorders;
 - f. The court abused its discretion by deciding to reject the recommendation of [c]ounsel to keep [Appellant] in [c]ounty [j]ail to attend further counseling pending rescheduling of a final PV hearing;
 - g. The court abused its discretion, and failed to sufficiently weigh and consider the required factors of sentence imposition, and impose an individualized sentence, when reasoning that resentence was necessary to vindicate the

authority of the [c]ourt.

Appellant first asserts the court erred by imposing consecutive sentences. The court does not agree. The court has the discretion to impose consecutive sentences. 42 Pa. C.S. §9721(a) (“In determining the sentence to be imposed the court shall...consider and select one or more of the following alternatives, and may impose them consecutively or concurrently....”); *Commonwealth v. Zirkle*, 107 A.3d 127, 133 (Pa. Super. 2014). The court had already tried probation and county incarceration with Appellant and neither of those sentencing alternatives worked. Appellant failed or refused to comply with the conditions of his supervision. The court tried to address Appellant’s rehabilitative needs, including his mental health issues, by offering him a variety of programs and services but Appellant would not cooperate. Finally, the court came to the conclusion that the best way to both protect the public and address Appellant’s rehabilitative needs was to impose a state sentence. The court imposed consecutive sentences so that his minimum sentence would be long enough for Appellant to complete programming but short enough that he would be eligible for parole once his programming was completed, and his maximum sentence would be long enough for Appellant to adjust to life on the outside with the assistance of and under the watchful eye of a state parole agent.

Appellant next asserts that he was sentenced to state prison not because of criminal behavior but rather for being incorrigible. The court imposed a state sentence because the court had already tried all of the resources available at the county level but nothing was effective. The court specifically noted in its re-sentencing order that Appellant was staffed through the Forensic Mental Health Team and given a specifically tailored

supervision plan that addressed all of his needs. While the plan was reliant upon Appellant's conduct, he was being assisted in his treatment through a peer specialist, a targeted case manager, and the Adult Probation Office. Appellant was not just left to his own devices but was being assisted in ways that were far beyond those available to someone without his difficulties. Despite multiple individuals trying to assist Appellant, he would not cooperate with these individuals or the programs and treatments that were tailored to his issues. Instead, he did whatever he wanted, whenever he wanted. Since no efforts at the county level were successful in changing Appellant's behaviors, the court was left with no option but to send him to a state facility.

Appellant next asserts that he had a prior record score of zero (0) and the sentence on the indecent assault was above the standard guideline range. This issue is frivolous. The sentencing guidelines do not apply to a probation violation sentence. 204 Pa. Code §303.1(b) ("The sentencing guidelines do not apply to sentences imposed as a result of the following: ... revocation of probation, intermediate punishment or parole."); see also *Commonwealth v. Ware*, 737 A.2d 251, 255 (Pa. Super. 1999).

Appellant also contends that the court failed to sufficiently consider his mental health needs, cognitive functioning, physical characteristics, and intellectual disabilities including his borderline intellectual diagnosis, and that the court failed to afford sufficient consideration to Appellant's diagnoses of oppositional defiance disorder, mood disorder and impulse and conduct disorders. He also contends the court abused its discretion by rejecting the recommendation of counsel to keep Appellant in the county jail to attend further counseling pending rescheduling of a final PV hearing. These allegations are simply

not true. The court considered all of the Appellant's disabilities, diagnoses, and characteristics throughout this case. The court originally sentenced Appellant to county incarceration and probation. The court provided Appellant with all of the resources he needed to succeed. Appellant was being assisted by a peer specialist, a targeted case manager, and an adult probation officer who handles clients with special needs. The court "left no stone unturned" at the county level to try to assist Appellant and gave Appellant multiple opportunities to change his behaviors, but nothing worked. The court had already tried everything that counsel recommended. Transcript, 8/9/18, at 60-73. After a year of failed efforts on county parole and probation, the court was left with no choice but impose a state sentence. Furthermore, a trial court does not necessarily abuse its discretion in imposing a seemingly harsh post-revocation sentence where the defendant received a lenient sentence and then failed to comply with the conditions imposed on him. *Commonwealth v. Pasture*, 107 A.3d 21, 28 (Pa. 2014).

Finally, Appellant asserts the court abused its discretion and failed to sufficiently weigh and consider the required factors of sentence imposition, and impose and individualized sentence, when reasoning that resentencing was necessary to vindicate the authority of the court. The court considered and weighed the required factors. The court was required to consider more than Appellant's rehabilitative needs. The court was also required to consider the nature and circumstances of the offenses and the protection of the public. In its original sentencing and the prior parole and probation violations, the court gave priority to Appellant's rehabilitative needs. The court tailored Appellant's supervision plan and his conditions to address his particular issues. Unfortunately, despite being given multiple

opportunities, Appellant failed to comply. The court warned Appellant that if he continued his behaviors and did not comply with his supervision conditions and plan, the court would be left with no choice but to send him to state prison. At some point, the court had to say enough is enough. The court reached that point in August 2018. The court stated that the sentence of incarceration was necessary to vindicate the authority of the court because the court can only impose a sentence of total confinement following a probation violation if the court finds that: (1) the defendant has been convicted of another crime; (2) the conduct of the defendant indicates that it is likely he will commit another crime if he is not imprisoned; or (3) such a sentence is necessary to vindicate the authority of the court. 42 Pa. C.S. §9771(c); *Pasture*, 107 A.3d at 27. Failing to abide by court orders imposing conditions of supervision must have consequences at some point. The alternative sentence for which counsel advocated on August 9, 2018, and particularly counseling with Townsend Velkoff, had already been part of the requirements and conditions the court had previously ordered.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
William Miele, Esquire (PD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)