IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-0002045-2017**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
TYREE MOY,	:	
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 the court's judgment of sentence dated August 23, 2018. The court notes that, through Post Conviction Relief Act (PCRA) proceedings, the direct appeal rights of Appellant Tyree Moy (hereinafter "Moy") were reinstated nunc pro tunc.

By way of background, on August 1, 2017, a confidential informant (CI) contacted Moy to purchase heroin. Through text messages, Moy and the CI made arrangements for Moy to sell two bundles of heroin to the CI for $160.

The CI, who was wearing a body wire and was accompanied by an undercover Pennsylvania State Police Trooper Tyler Morse, met Moy to complete the transaction. Moy handed 22 blue wax bags or packets of suspected heroin to the CI in exchange for $160.

The 22 packets of suspected heroin were sent to the Pennsylvania State Police Wyoming Regional Laboratory for testing. Jennifer Libus, a forensic scientist at the Laboratory, tested a composite sample of ten of the packets. No controlled substances were detected.

By Information filed on January 4, 2018, the Commonwealth charged Moy with delivery of a non-controlled substance, an ungraded felony, and criminal use of a communication facility, a felony of the third degree.[1]

On June 13, 2018, Moy waived his right to a jury trial and proceeded to a non-jury trial before the court. The court found Moy guilty of both charges.

On August 23, 2018, the court sentenced Moy to an aggregate term of three to ten years' incarceration in a state correctional institution, consisting of consecutive sentences of 18 months to five years on each count.

On September 4, 2018, Moy filed a post-sentence motion in which he asserted: (1) the evidence was insufficient to sustain the verdict; (2) the verdict was against the weight of the evidence; and (3) the sentence imposed was unreasonable and excessive under the circumstances of the case. In an Opinion and Order entered on December 24, 2018, the court denied Moy's post-sentence motion.

Through PCRA proceedings, Moy's direct appeal rights were reinstated nunc pro tunc on July 9, 2019.

On August 1, 2019, Moy filed a notice of appeal. The court directed Moy to file a concise statement of errors on appeal and Moy complied.

Moy first asserts that he was tried in violation of the 120-day rule under the Interstate Agreement on Detainers. Specifically, Moy alleges that he

> was extradited from Rochester, New York to face the charges in the above-captioned matter and was returned to Pennsylvania on or about November 29, 2017. Pursuant to the Interstate Agreement on Detainers, he should have been tried within 120 days of the date he was returned to Pennsylvania. 42 Pa.CSA 9101 Article IV, section (c). However, his trial

[1] 35 P.S. 780-113(a)(35(ii) and 18 Pa.C.S.A. §7512, respectively.

> took place on June 13, 2018, 196 days after being returned to Pennsylvania. Counsel was ineffective in failing to raise this issue properly—while the bail issue was raised prior to trial, the 120-day rule under the Interstate Agreement on Detainers was not addressed in the pretrial bail motion on or the trial record. (N.T. 32-33). Ineffectiveness is apparent from the record. Accordingly, the charges should be dismissed.

The court does not believe that Moy is entitled to relief on this issue for several reasons. First, this issue was not properly raised and preserved for appellate review. Moy never raised this issue before the trial court. Rather, the first time this issue was ever asserted was in Moy's concise statement. "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). Additionally, this issue is waived because no motion to dismiss pursuant to the Interstate Agreement on Detainers (IAD) was filed at any time prior to trial. *Commonwealth v. Blackburn*, 414 A.2d 638, 641 (Pa. Super. 1979); *Commonwealth v. Thompson*, 396 A.2d 720 (Pa. Super. 1978).

Second, claims of ineffective assistance of counsel generally cannot be asserted on direct appeal but rather must be deferred until Post Conviction Relief Act (PCRA) review. *Commonwealth v. Holmes*, 621 Pa. 595, 79 A.3d 562, 576 (2013)("we reaffirm *Grant* and hold that, absent the circumstances we address below, claims of ineffective assistance of counsel are to be deferred to PCRA review; trial courts should not entertain claims of ineffectiveness on post-verdict motions; and such claims should not be reviewed upon direct appeal."); *see also Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002).

It appears that Moy is attempting to avail himself of the exception set forth in *Holmes* for individual claims alleged to warrant exceptional treatment. The *Holmes* Court set

forth this exception as follows:

> With respect to individual claims of ineffectiveness alleged to warrant exceptional treatment, we note that, in the decision where the Court prospectively abrogated the direct capital appeal relaxed waiver doctrine, we recognized that there may be claims of "such primary constitutional magnitude" that we would reach them on appeal, even if the claim was defaulted at trial, and notwithstanding the abrogation of relaxed waiver. See *Commonwealth v. Freeman*, 573 Pa. 532, 827 A.2d 385, 402 (2003). We believe that a similar flexibility should be recognized with respect to certain ineffectiveness claims that emerge at the post-verdict level. In short, there may be an extraordinary case where the trial court, in the exercise of its discretion, determines that a claim (or claims) of ineffectiveness is both meritorious and apparent from the record so that immediate consideration and relief is warranted. The administration of criminal justice is better served by allowing trial judges to retain the discretion to consider and vindicate such distinct claims of ineffectiveness, and we hereby approve such a limited exception to *Grant*.

Holmes, 79 A.3d at 577. The court does not believe that Moy's claim satisfies this exception. Moy is not asserting a constitutional violation, but rather a violation of a statute. Therefore, it is questionable whether this claim is of such a primary constitutional magnitude that it can be reached on direct appeal. He also did not make this claim before the trial court; therefore, the court could not and did not exercise its discretion to consider this claim of ineffectiveness.

Furthermore, this issue is not both meritorious and apparent from the record. There is nothing in the record to show that Article IV of the IAD even applies in this case. Even if Moy was arrested in Rochester New York and was extradited to Pennsylvania, there is nothing in the record to suggest that Moy was serving a sentence in New York. Article IV of the IAD applies to a prisoner serving a term of imprisonment in another state. *See* 42 Pa.C.S.A. §9101, art. IV(b)(upon receipt of the officer's written request from the jurisdiction in which an untried indictment, information or complaint is pending, the appropriate

authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of paroled eligibility of the prisoner, and any decisions of the State parole agency related to the prisoner); *Commonwealth v. Davis*, 567 Pa. 135, 786 A.2d 173, 175 n.2 (2001)(IAD applies to the transfer of prisoners serving a sentence; Extradition Act applies to persons at liberty as well as incarcerated prisoners serving a sentence). It appears that Moy was at liberty in Rochester and arrested on his outstanding warrant for the Pennsylvania charges in this case. There is nothing in the record to suggest that Moy was serving a sentence of imprisonment in New York or anywhere else. Therefore, the Extradition Act, and not the IAD, would apply in this case.

In his second issue on appeal, Moy asserts that he requested the CI's criminal history, consensual paperwork (regarding the wiretap/bodycam), and plea benefits in exchange for his work in this matter. On March 26, 2018, his request was granted and the Commonwealth was ordered to provide the requested items within 30 days. The Commonwealth did not provide the discovery until May 21, 2018. Additionally, the Commonwealth provided chain of custody evidence approximately 5 days prior to trial. Moy asked for a continuance due to the delay in obtaining the discovery and criminal record information for the informant. Moy asserts that the court erred in denying the continuance, effectively denying Moy his right to effective counsel and a fair trial under the 6th Amendment to the U.S. Constitution.

> The grant or denial of a motion for a continuance is within the sound discretion of the trial court and will be reversed only upon a

> showing of an abuse of discretion. An abuse of discretion is not merely an error of judgment; rather discretion is abused when the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record. Moreover, a bald allegation of an insufficient time to prepare will not provide a basis for reversal of the denial of a continuance motion. An appellant must be able to show specifically in what manner he was unable to prepare for his defense or how he would have prepared differently had he been given more time. We will not reverse a denial of a motion for continuance in the absence of prejudice.

Commonwealth v. Antidormi, 84 A.3d 736, 745-746 (Pa. Super. 2014)(citations and internal quotation marks omitted).

The court specifically asked how he would have prepared differently or how he was prejudiced. The only response to these questions was "[w]e might have had time to put in a motion." The court asked "a motion to do what." Moy's only response was to object to receiving the documentation after the 30 days as required by the order dated March 26, 2018. There was no explanation of how he would have prepared differently or how he was prejudiced. Trial Transcript, at 23-32.

In this case there was absolutely no prejudice whatsoever from the late disclosure. The CI's prior criminal history and any plea benefit he received was information that could only be used during cross-examination of the CI to impeach his credibility. The Commonwealth, however, never called the CI as a witness, because it could not locate the CI at the time of trial, despite obtaining a material witness warrant a day or two prior to trial.[2] Instead, the Commonwealth presented the testimony of Trooper Morse who was present for and observed the transaction, as well as the text messages and the recording from the body

[2] The paperwork related to the material witness warrant was filed at CP-41-MD-0000314-2018. The order authorizing the warrant was dated June 11, 2018, but it was not filed in the clerk of courts office until the next morning.

wire.

The Commonwealth provided the consensual paperwork regarding the wiretap/bodycam on May 21, 2018, which was 23 days prior to trial. This should have been sufficient time for defense counsel to review the paperwork prior to trial. No motion was filed to preclude the wiretap/bodycam based on any defect in the paperwork. In fact, there were no allegations regarding that paperwork other than it was not provided within 30 days as required by the order.

The chain of custody paperwork was not even part of Moy's motion to compel or the order dated March 26, 2018. The court also found that Moy was not prejudiced; this was more of a smoke screen than anything else because this was a non-controlled substance case. Trial Transcript, at 28-29. Moy has not alleged that there was a "gap" in the chain of custody. Even if there were a gap, it would only affect the weight of the evidence, not its admissibility. *Commonwealth v. Witmayer*, 144 A.3d 939, 950 (Pa. Super. 2016). Moreover, it makes no sense that the officers tampered with the packets so that they did not contain heroin, as Moy would receive a lesser sentence due to the lower offense gravity score (OGS) associated with delivery of a non-controlled substance as compared to the OGS for heroin.

Moy next contends that the court erred in overruling his objections to the Commonwealth proceeding to trial without calling the CI to testify, thus denying his right to confrontation under the Sixth Amendment to the United States Constitution. The court cannot agree. The Confrontation Clause does not mandate that the Commonwealth call every witness to the case. *Commonwealth v. Gasiorowski*, 310 A.2d 343, 344 (Pa. Super. 1973).

Moy also avers that the court erred in sustaining the Commonwealth's

objection to the defense questions regarding the whereabouts of the CI, which further limited Moy's right to confrontation under the Sixth Amendment to the United States Constitution. Moy asserts that the defense should have been able to inquire whether the unavailability was related to the substance of his potential testimony.

The court could not find where in the record the defense allegedly attempted to ask questions regarding the whereabouts of the CI. The court does not recall any questions in which the defense directly inquired about the whereabouts of the CI. The only information the court could locate related to the Commonwealth indicating that it had recently lost contact with the CI and it requested a material witness warrant to attempt to secure his presence at trial.

Moy next asserts that the court erred by failing to draw an inference that the CI's testimony would have been unfavorable to the Commonwealth, and by finding that the Commonwealth had provided a satisfactory explanation for his failure to appear and testify at trial.

When a potential witness is available only to one of the parties to a trial, it appears that the witness has special information material to the issue, and this person's testimony would not merely be cumulative, if such party does not produce the testimony of this witness at trial, the factfinder may, but is not required to, draw an inference that the witness's testimony would have been unfavorable. *Commonwealth v. Miller*, 172 A.3d 632, 645-646 (Pa. Super. 2017); see also *Commonwealth v. Boyle*, 733 A.2d 633, 638 (Pa. Super. 1999). Nevertheless, there are several circumstances where, despite all of these factors being present, the opposing party is not entitled to a missing witness instruction. These

circumstances include, but are not limited to, situations where there is a satisfactory explanation as to why the party failed to call the witness or the witness is not available or not within the control of the party against whom the negative inference is desired. *Miller*, *supra*.

The prosecutor specifically asked Trooper Morse if he was able to locate the CI for the trial. Trooper Morse responded, "I was not. We were in communication with him last week, and then as of this week he cut off all communication." Trial Transcript, at 101. The Commonwealth further explained that it had set up a hotel room for the CI and was trying to obtain a bus ticket for him; however, as of the Friday before trial the CI stopped responding to them, and they obtained a material witness warrant. Trial Transcript, at 162. It light of these circumstances, the court did not err in finding that the Commonwealth had a satisfactory explanation for failing to call the CI as a witness at trial.

Moy asserts that the court erred in overruling his objection to the introduction of text messages purportedly sent by him, as the text messages were not sufficiently authenticated as coming from him. The court found the texts were sufficiently authenticated under all of the circumstances. Trial Transcript, at 153-154.

Trooper Morse testified that he observed the CI send and receive text messages with a contact listed as "Tyree." Moy's first name is Tyree.

In the text messages, the CI asked "Tyree" how much for a bun. A bun is slang for a bundle of heroin, which typically would be 10 bags. "Tyree" replied $80. The CI indicated that he would probably take two when he came up. "Tyree" directed the CI to come to the hospital. Trooper Morse testified that he drove the CI to that area, and the CI pointed out "Tyree" walking on Rural Avenue. Trooper Morse pulled his vehicle over to the

curb. Moy walked over and entered the rear passenger seat of Trooper Morse's vehicle. Trooper Morse turned around and looked at Moy and asked him where he wanted to go. Moy told Trooper Morse he didn't need to look at him and Moy asked Trooper Morse several times if he was a "fed" (federal agent). Trial Transcript, at 121-122. Moy had also sent the CI a text inquiring whether he was reporting drug dealers. Trial Transcript, at 105.

At Moy's direction, Trooper Morse drove to Memorial Avenue. Moy got out of the vehicle for a few minutes. After Moy returned to the vehicle, he told the CI to delete his text messages. Trial Transcript, at 127.

Consistent with the text messages, Moy delivered 22 bags to the CI in exchange for $160. Trial Transcript, at 127-128. Moy explained that there were two extra bags because that was all he had left. Trial Transcript, at 128.

Additionally, Trooper Morse testified that Moy was taken into custody in Rochester, New York and while he was transporting Moy back to Pennsylvania, Moy made statements that he thought if you asked somebody if they were police, that they had to tell you if they were the police. Trial Transcript, at 143.

In a related issue, Moy asserts that, without authentication of the text messages, there was insufficient evidence at trial of the offense of criminal use of a communication facility.

> A person commits a felony of the third degree if that person uses a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title or under the act of April 14, 1972 (P.L. 233, No. 64),[3] known as The Controlled Substance, Drug, Device and Cosmetic Act. Every instance where the communication facility is used constitutes a separate offense under this section.

[3] 35 P.S. §780-101 et seq.

18 Pa.C.S.A. §7512(a). "[T]he term 'communication facility' means a public or private instrumentality used or useful in the transmission of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part, including, but not limited to, telephone, wire, radio, electromagnetic, photoelectric or photo-optical systems or the mail." 18 Pa.C.S.A. §7512(b).

The evidence presented at trial clearly established that Moy used a communication facility to commit or facilitate a felony under The Controlled Substance, Drug, Device and Cosmetic Act. Moy delivered 22 bags of suspected heroin to the CI. Jennifer Libus testified that she tested a composite sample of 10 of the bags and no controlled substances were detected. Therefore, Moy delivered at least 10 bags of non-controlled substances to the CI, which is a violation of 35 P.S. §780-113(a)(35)(ii). A person who violates any provisions of subclauses (i) or (ii) or (iii) of clause (35) of subsection (a) is guilty of a felony. 35 P.S. §780-113(j).

Moy sent text messages to the CI to arrange this delivery. Moy's own statements at the time of the transaction showed that he was the person who sent the text messages. Both the testimony of Trooper Morse and the audio recording from the body wire established that Moy told the CI to delete his (Moy's) text messages. This evidence, as well as the other facts and circumstances listed above, showed that Moy was the person who sent the text messages and also evinced Moy's consciousness of guilt.

Moy next contends that the evidence was insufficient to convict him of delivery of a non-controlled substance because 22 bags of purported heroin were obtained but only ten were tested. This issue lacks merit. The Pennsylvania Superior Court has

specifically approved the practice of testing a representative sample of controlled substances. *Commonwealth v. Carpio-Santiago*, 14 A.3d 903, 907 (Pa. Super. 2011); *Commonwealth v. Minott*, 577 A.2d 928, 931 (Pa. Super. 1990). Furthermore, the crime Moy was charged with and convicted of was delivery of a non-controlled substance. The crime was not delivery of 22 bags all of which were a non-controlled substance. Jennifer Libus testified that she tested ten bags for controlled substances and no controlled substances were found in the ten bags tested. The law allows the fact finder to infer that the remaining bags also did not contain controlled substances. *See Carpio-Santiago*, *supra*. Nevertheless, regardless of the contents of the twelve untested bags, the evidence clearly established that Moy delivered 10 bags of non-controlled substances.

Moy also contends the court erred in finding that he had waived his motion to suppress the evidence obtained from the body cam worn by the CI, which recorded Moy's phone call. Moy argues that the recording of the phone call between him and a third party was obtained in violation of the Fourth Amendment to the United States Constitution because there was no warrant for that recording, and neither party to that conversation consented to its recording.

Although the court initially found that Moy had waived his motion to suppress the evidence obtained from the body cam (Trial Transcript, at 33-36), the court ultimately found that Moy had a point. The court refused to consider anything that could be heard coming from that phone call. Trial Transcript, at 115. Then the court also noted for the record that it could not decipher anything from that call. Trial Transcript, at 116. Since the court did not consider this evidence, Moy was not prejudiced and this issue is moot.

In his final two issues, Moy asserts that his sentence was excessive and unreasonable under the circumstances. He claims that the court abused its discretion by failing to adequately consider his mental health issues, family history, education, and waiver of jury trial and erred in denying his motion to modify sentence. He also asserts that imposition of consecutive sentences was excessive and unreasonable in that the "two counts he was convicted of were closely related in time and subject and represented a single criminal episode, and consecutive sentences were unnecessary to address the scope of the criminal episode."

> 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). In order to find that the trial court imposed an unreasonable sentence, the appellate court must find that the sentencing court imposed the sentence irrationally and that the court was not guided by sound judgment. *Commonwealth v. DiClaudio*, 210 A.3d 1070, 1076 (Pa. Super. 2019), citing *Commonwealth v. Riggs*, 63 A.3d 780, 786 (Pa. Super. 2012). Furthermore, "[i]t is well settled that the imposition of consecutive rather than concurrent sentences rests within the trial court's discretion." *Commonwealth v. Foust*, 180 A.3d 416, 434 (Pa. Super. 2018).

Initially, the court notes that Moy's claim regarding the imposition of consecutive sentences being inappropriate as the crimes were part of a single criminal

episode was not raised in his post sentence motion or at any time prior to the filing of his concise statement of matters on appeal. Therefore, this portion of his claim that his sentence was excessive and unreasonable is likely waived. *Commonwealth v. Williams*, 198 A.3d 1181, 1186-1187 (Pa. Super. 2018).

The court did not impose the sentence based on partiality, prejudice, bias or ill will. Rather, it considered all of the facts and circumstances and imposed a sentence which it believed was appropriate.

The court considered the sentencing guidelines and imposed a sentence within them. The offense gravity score for each offense was a five. Moy's prior record consisted of a conviction for conspiracy to commit forgery, a two-point felony of the second degree; a conviction for a two-point felony drug offense, and seven misdemeanor convictions, which would normally result in three points. Therefore, Moy's true prior record score would have been a seven but the prior record score is capped at a five.

With an offense gravity score of a five and a prior record score of a five, the standard guideline ranges for Moy's minimum sentence on each offense was 12 to 18 months' incarceration. The court imposed consecutive sentences of 18 months to five years' incarceration in a state correctional institution. Therefore, the minimum sentence imposed on each conviction was at the top of the standard range.

In addition to the sentencing guidelines, the court considered the pre-sentence investigation report (PSI), the documents provided by Moy, the sentencing report provided by the Lycoming County Prison, the testimony from the trial, and the testimony and arguments at the sentencing hearing. The court noted that the sentence was consistent with

and reflected the court's purpose of protecting the community, addressing Moy's rehabilitative needs, and acknowledging the severity of the crime to the extent that it impacts the community.

The court considered Moy's claims; it just did not agree with his arguments or find that his claims justified a lesser sentence. In the sentencing order, the court specifically noted:

> With respect to [Moy's] rehabilitation, [Moy] claims that he suffers from mental health issues which cause him to be impulsive, to lack judgment, and to not make appropriate choices. The [c]ourt, however, has not been provided with any documents whatsoever that support [Moy's] claim that he suffers from any mental health issues, nor that he has ever been treated for any mental health issues or problems. Even if the Court accepted [Moy's] testimony that he suffers from bi-polar disorder, anxiety, and schizophrenia, and that he has been treated for such since July of 2017, when he was hospitalized, there is no evidence whatsoever upon which the [c]ourt can conclude that [Moy's] mental health problems caused or contributed to him committing these crimes. [Moy] seems to argue that after he was hospitalized and medicated, he did not see his primary care physician for a period of weeks and it was during that period of weeks that these crimes were allegedly committed. Contrary to what the Commonwealth contends, the [c]ourt believes that [Moy] may have made an admission to the crimes, although, indirectly. Nonetheless, [Moy] also claimed that he was taking PCP and other illicit drugs that would counter the effects of any medications. The bottom line is that the [c]ourt does not accept [Moy's] argument, nor are there any documents to prove that [Moy's] mental health issues either mitigate this crime, can explain this crime, or should mitigate any sentence. It is difficult for the [c]ourt to believe that during [Moy's] entire life and given the fact that he has been committing criminal offenses for the last 15 years, and has been incarcerated and on supervision that he would not have had a diagnosis and/or treatment to address his issues.
>
> Moy has continued to commit criminal offenses for 15 years. He has continued to commit these criminal offenses despite the fact that he has been subject to increasing penalties and sanctions. According to what documents have been provided to the [c]ourt, [Moy] has been on probation, [Moy] has paid fines, [Moy] has been incarcerated in county institutions, and [Moy] has been incarcerated in state institutions.
>
> The [c]ourt agrees with the Commonwealth's assessment that over

the past 15 years Moy has engaged in a continuing course of criminal activity. Moreover, it appears to the [c]ourt that [Moy's] behaviors constitute an escalating threat to the community. [Moy] has engaged in theft related and deceptive practices for years, as has Moy engaged in substance abuse related offenses for years. There's no doubt in this [c]ourt's opinion that a substantial sentence needs to be imposed to simply protect the community from [Moy's] continued criminal behaviors. To this extent, the [c]ourt also notes what appears to be [Moy's] failure to accept any responsibility whatsoever in light of overwhelming evidence. The [c]ourt does not make this conclusion because [Moy] chose to proceed to trial. The [c]ourt has not even considered [Moy's] choice to proceed to trial[;] that is his constitutional right. But in a letter that [Moy] wrote to the [c]ourt afterwards, Moy made clear to the [c]ourt that he did not feel his conviction was appropriate because the confidential informant could not be found or would not appear. The [c]ourt infers from such that Moy was taking a risk and was playing a game where he believed that if the confidential informant could not appear or would not show up, that there was insufficient evidence to convict him. The [c]ourt concludes that despite the overwhelming evidence against him and despite knowing what he did, Moy took a gamble with the hope that he could not be convicted because of the confidential informant's unavailability. This certainly was not the case as the Commonwealth presented more than sufficient evidence via eyewitness testimony. It also appears to the [c]ourt that [Moy] blames others as part of his personality and does not accept any culpability. This is exemplified in [Moy's] letter to the [c]ourt, as well as the fact that [Moy's] behavior at the Lycoming County Prison is deplorable, yet [Moy] does not accept any responsibility whatsoever claiming that he is a victim. While the [c]ourt is not naive enough to believe that prison officials may act inappropriately simply because they're human and may, in fact, retaliate, this is not an isolated event. This is a series of transgressions, manipulations, and prison policy violations. Moreover, to believe [Moy], the [c]ourt would need to accept that numerous prison officials were engaged in a conspiracy of some kind to retaliate against [Moy]. There's no such evidence presented to the [c]ourt.

Finally, Moy has been convicted of serious offenses. While the substance did not have any controlled substances in it, the [c]ourt is of the strong opinion that [Moy] believed he was selling heroin. The evidence was clear that the parties intended to sell and buy heroin. The sale of controlled substances, especially heroin, has resulted in the destruction of many communities, many families, and many lives. Even though this offense was of a non-controlled substance, it still risked lives in different ways. First, often times during drug transactions that may go awry, there's violence. Secondly, who knew what could have been in that substance. It could have been rat poison or something else which could have easily

killed its user.

Sentencing Order.[4]

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
Helen Stolinas, Esquire
The Mazza Law Group, 2790 W. College Ave, Suite 800, State College PA 16801
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

[4] While the court would also have liked to make reference to the sentencing transcript, it is unable to do so as Moy has not requested transcription of the sentencing hearing.