

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001077-2003  
vs. :  
RONALD WINKLEMAN, :  
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 April 4, 2019. The relevant facts follow.

On November 26, 2003, Appellant Ronald Winkleman (“Winkleman”) entered a guilty plea to a consolidated count of theft by deception encompassing counts 9 through 16 of the Information. He was sentenced to pay costs and restitution and to serve three (3) years’ probation consecutive to any sentence he was serving in a state correctional institution.

Winkleman began serving this probationary sentence on December 15, 2016. On January 11, 2018, the court issued a bench warrant for Winkleman’s arrest because he absconded from supervision. On March 21, 2019, Winkleman was arrested in Clinton County.

On April 4, 2019, the court held a probation violation hearing. Based on his probation officer’s statements and Winkleman’s counseled admission, the court found that Winkleman violated his probation by failing to report as directed; by lying to his probation

officer about having cancer, undergoing treatment, and not having much time to live; and by absconding from supervision for over a year. The court revoked Winkleman's probation and re-sentenced him to serve a five (5) month to ten (10) month max out at the Lycoming County Pre-Release Center (PRC).

During the time frame for filing a post sentence motion and an appeal, Winkleman wrote several letters to the court seeking reconsideration of his sentence. The court forwarded these letters to Winkleman's public defender but the public defender did not file a reconsideration motion or an appeal.

On May 21, 2019, Winkleman filed a "Motion for PCRA Reconsideration/Relief Hearing. The court appointed new counsel to represent Winkleman. On July 26, 2019, counsel filed a PCRA petition on Winkleman's behalf. In an order dated August 23, 2019 and filed on August 26, 2019, without objection from the Commonwealth, the court granted Winkleman's PCRA petition and reinstated his right to file a motion for reconsideration within fourteen (14) days.

On August 27, 2019, Winkleman filed his reconsideration motion, which the court summarily denied on September 4, 2019.

Winkleman filed a notice of appeal on September 24, 2019. Winkleman asserts two issues on appeal:

1. Whether the sentence of the [c]ourt was unreasonable and excessive when you consider the sentencing code as a whole, 42 Pa.C.S.A. §9721 et seq?
2. Whether the sentence of the [c]ourt was unreasonable and excessive when the [c]ourt imposed a sentence greater than that stipulated to by probation and Mr. Winkleman?

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. Robinson*, 931 A.2d 15, 26 (Pa. Super. 2007) (quoting *Commonwealth v. Fullin*, 892 A.2d 843, 847 (Pa. Super. 2006)); see also *Commonwealth v. Rodda*, 723 A.2d 212, 214 (Pa. Super 1999)(en banc).

In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing [judge's] discretion as he or she is in the best position to measure factors such as the nature of the crime, the defendant's character and the defendant's display of remorse, defiance or indifference.

*Commonwealth v. Colon*, 102 A.3d 1033, 1043 (Pa. Super. 2014)(quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

In a probation violation context, the sentencing court enjoys even a greater degree of deference.

[W]here the revocation sentence was adequately considered and sufficiently explained on the record by the revocation judge, in light of the judge's experience with the [appellant] and awareness of the circumstances of the probation violation, under the appropriate deferential standard of review, the sentence, if within the statutory bounds, is peculiarly within the judge's discretion.

*Commonwealth v. Pasture*, 107 A.3d 21, 28 -29 (Pa. 2014).

As the Supreme Court noted in *Pasture*, a sentencing court does not abuse its discretion by imposing a harsher post-revocation sentence where the appellant initially received a lenient sentence and failed to adhere to the conditions imposed. *Id.* at 28.

When imposing a sentence, the court must consider the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant. 42 Pa.C.S.A. §9721(b). The court must also consider the history and characteristics of the defendant. The sentencing guidelines, however, do not apply to revocations of probation, intermediate punishment or parole. 204 Pa. Code §303.1(b).

Winkleman stole eight checks from another individual, signed the individual's name, and cashed them. Despite the fact that the total loss to the bank was \$3,498.00, Winkleman was permitted to plead guilty to one consolidated count of theft by deception graded as a misdemeanor of the first degree. Typically, when the amount involved exceeds \$2,000, the offense is graded as a felony of the third degree. 18 Pa.C.S.A. §3903(a.1). Winkleman not only received a break in the grading of his offense, his sentence of probation was at the bottom of the mitigated range. The standard sentencing guideline range called for a **minimum** sentence in the range of three (3) to fourteen (14) months.

Instead of taking advantage of the breaks he received as part of his plea agreement, Winkleman decided he just didn't want to be under supervision anymore. He repeatedly failed to report for appointments with his probation officer, and he lied about having terminal cancer in an attempt to explain his absences. When his probation officer discovered that Winkleman had lied to him, he did not immediately request a bench warrant. Instead, he left Winkleman two voicemail messages asking him to contact him as soon as possible. Winkleman never returned these phone calls. As a result, on January 11, 2018, a bench warrant was issued for Winkleman's arrest.

In March of 2018, Winkleman left his probation officer a voicemail message in which he indicated that he was aware of the bench warrant, he was moving to South Carolina, and if his probation officer wanted to find him to come down there and get him. On March 21, 2019, Winkleman was apprehended in Clinton County approximately fourteen months after the bench warrant was issued and approximately eighteen months after his first missed appointment on September 26, 2017.

The probation officer recommended a three (3) to six (6) month max out sentence. The court imposed a five (5) to ten (10) month max out sentence. A sentence of confinement was necessary to vindicate the authority of the court.

When a court re-sentences an individual following a revocation of probation, the court has all of the sentencing options available to it. The maximum possible sentence for a misdemeanor of the first degree is a minimum of two and one-half years and a maximum of five years' incarceration in a state correctional institution. Given Winkleman's actions which displayed an utter disdain for even the most basic condition of probation, i.e., that he report to his probation officer as directed, the court's ten-month maximum sentence was neither manifestly unreasonable nor excessive.

Winkleman's hopes and pleas that the court would simply release him from incarceration so that he could pursue employment opportunities and care for his parents were unrealistic. The court ordered Winkleman to serve a max out sentence because it could not trust him to comply with any conditions of supervision and could not believe anything that he said.

Winkleman had numerous opportunities to mitigate the situation by either

responding to his probation officer or turning himself in after the bench warrant was issued. If he had done so, the court would have been more inclined to not only accept the probation officer's recommendation but to release Winkleman at the expiration of his minimum sentence. Instead, by his own words, Winkleman decided to become "just a straight up jerk." Transcript, at 6.

The mere fact that the court imposed a slightly greater sentence than requested by Winkelman's probation officer does not render the sentence excessive and unreasonable. The court cannot delegate its sentencing responsibilities to the probation office as a whole or to any individual probation officer. *Commonwealth v. Schueg*, 582 A.2d 1339, 1341 (Pa. Super. 1990); *Commonwealth v. Bastone*, 467 A.2d 1339, 1342 (Pa. Super. 1983). The court must conduct its own evaluation of all the sentencing factors. Winkleman's probation officer made a recommendation to the court. The court considered that recommendation, but it was not bound by it.

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

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: District Attorney  
Trisha Jasper, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)