

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001249-2018  
vs. :  
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FREDERICK BIICHLE, :   
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 September 16, 2019. Through a Post Conviction Relief Act (PCRA) petition, the court reinstated Appellant's rights to file a post sentence motion and an appeal nunc pro tunc.

The relevant facts for purposes of this appeal are as follows. On May 25, 2018, Appellant Fredrick Biichle was drinking alcohol at a friend's house in Hughesville and, despite not having a license, he took the friend's motorcycle for a ride. Appellant failed to negotiate a turn on Lime Bluff Road, lost control, left the roadway and struck a telephone pole. He was taken to Geisinger Medical Center for treatment for his injuries. The police obtained a warrant for his medical records to obtain information regarding Appellant's blood alcohol content (BAC).

The Commonwealth charged Appellant with Driving Under the Influence (DUI) and several traffic summaries. On May 29, 2019, Appellant pleaded guilty to amended Count 3, DUI with a high rate of alcohol, graded as a misdemeanor of the first degree. Although the parties negotiated a plea agreement for the length of the sentence in

this case, there was no agreement whether the sentence was to be served concurrent with or consecutive to Appellant's sentence for another DUI offense that occurred in Bradford County.

On September 16, 2019, the court sentenced Appellant to incarceration in a state correctional institution for an indeterminate term, the minimum of which was two (2) years and the maximum of which was five (5) years, consecutive to the sentence he was serving from Bradford County.<sup>1</sup>

Appellant wished to challenge his sentence, but his counsel either failed or refused to file a post sentence motion or an appeal on his behalf. On June 8, 2020, as a result of PCRA proceedings, the court reinstated Appellant's right to file a post sentence motion and an appeal nunc pro tunc to be filed within 30 days of receipt of the transcripts.<sup>2</sup>

On August 11, 2020, Appellant filed his post sentence motion nunc pro tunc. His sole challenge concerned the discretionary aspects of sentence; more specifically, the court's determination that Appellant's sentence should be served consecutive to his Bradford County sentence. Following a hearing and argument on August 28, 2020, the court denied Appellant's post sentence motion.

Appellant filed a notice of appeal on September 9, 2020. The sole issue asserted by Appellant on appeal is that the trial court abused its discretion when imposing its sentence by failing to run his sentence concurrent with the one imposed in Bradford County.

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<sup>1</sup>Appellant also pleaded guilty to traffic summaries for which the court imposed fines. These summary offenses are not the subject of this appeal.

<sup>2</sup>PCRA counsel's contract was only for PCRA matters. Therefore, the court appointed the Chief Public Defender to represent Appellant. Once the transcripts were prepared, however, they were inadvertently sent to PCRA counsel, not the Chief Public Defender. The Chief Public Defender received the transcripts on August 4, 2020 and timely filed a post sentence motion nunc pro tunc on August 11, 2020.

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 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)).

Long standing precedent recognizes that 42 Pa. C.S. A. §9721 affords the sentencing court discretion to impose a sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. *Commonwealth v. Zirkle*, 107 A.3d 127, 133 (Pa. Super. 2014); *Commonwealth v. Gonzalez-Dejusis*, 994 A.3d 595, 599 (Pa. Super. 2010); *Commonwealth v. Marts*, 889 A.2d 608, 612 (Pa. Super. 2005). Furthermore, a defendant is not entitled to a volume discount for his or her crimes. *Commonwealth v. Davis*, 2020 PA Super 255, 2020 WL 6252801, \*18 (Pa. Super. 10/23/2020); *Commonwealth v. Sexton*, 222 A.3d 405, 421 (Pa. Super. 2019); *Commonwealth v. Hoag*, 665 A.2d 1212, 1214 (Pa. Super. 1995).

Numerous factors justified a consecutive sentence in this case. This was Appellant's third DUI within ten years and his **eighth** DUI in his lifetime. Appellant

committed his current DUI offense approximately two months after he pleaded guilty to his Bradford County DUI offense. The Bradford County court sent Appellant for an evaluation for the State Intermediate Punishment (SIP) Program; he was released in error; and then committed his current DUI offense. Although Appellant obviously had a thirty-year alcohol problem, he did very little to address it.

As the court noted at sentencing,

When I sentence someone[,] I have to consider your history and your characteristics. I have to consider the circumstances of the offense, the nature and circumstances of the offense. I have to consider the guideline ranges, the information set forth in the presentence report, and any other information that's appropriate for me to consider.

In this particular case[,] obviously I've considered the presentence report, your prison report, and the arguments of counsel, as well as what you had to say.

I have to basically address 3 things. The first is your rehabilitative needs. Obviously[,] you have a horrible alcohol problem that's lasted for 30 years. You've been unable to control yourself except for short periods of time, so the need for rehabilitation is critical. The question is whether you are motivated enough to do what you need to do, and I can't answer that question. I know you—you speak of being motivated. You're getting older now, so that's somewhat to your advantage. Your motivation might be a little greater, but it's somewhat disconcerting that despite the — the many different times that you had outpatient treatment available to you that that hasn't worked. That county sentences that haven't worked, that a state sentence hasn't worked, and in this particular case the fact that you could have potentially been placed on the state intermediate punishment program, but that opportunity wasn't available to you because in large part your —well your decision making, or your lack of making appropriate decisions.

So there's no doubt that your rehabilitation needs are significant, I'm just not sure what there is available to you. I mean there's programming available in the state, but it's really up to you. And you never went to inpatient, which I think speaks volumes as to perhaps your — as you said in your letter, you weren't really thinking right. It seems to me that after my fifth or fourth DUI that I would be in an inpatient treatment facility as soon as I possibly could.

The next thing I have to consider is the seriousness of the offense. Eight DUIs is a lot of DUIs. I mean as I think Ms. Gardner said, any of

these could have resulted in personal injury, death to someone. One of them did. The first one, 19—or second one in 1995, but you're lucky you're not dead, you're lucky that you didn't hit another vehicle. The reality here is, while 1 or 2 might just be errors in judgment, this is, I think, a failure to recognize how important it is for you not to drink, and to do it after you were in error released from the SIP program while you were pending another DUI is—increases the severity of the offense. Because it's while you were out on bail, and after you got out of the state intermediate punishment evaluation.

And last but not least, I have to look at protecting the public, and I think that's where I have to weigh in here. I think that's what I have to weigh the most. Because to be honest with you, nothing else has worked.

And this is the best that we have. If I could sent you to a 2[-]year treatment program I guess I—I might consider something like that, but I can't. All I have is the state prison available to me. I can't give you, and I'm not going to give you a volume discount. You can't commit a DUI offense, and I think Ms. Kilgus made a sound argument, which is wow Judge Burns really hammered him, Judge, and I think you should consider that, and I think it makes sense on some level, but I can't—I can't give you a volume discount. I'm not going to give you a concurrent sentence for committing your seventh and eighth DUI. The public has to be protected. And if you can't make those steps to do that on your own, then at the very least I can protect the public for the period of time that you're going to be on your minimum before you are released....

Sentencing Transcript, 9/16/2019, at 12-15.

Based on the foregoing, the court appropriately considered all of the sentencing factors, and it did not abuse its discretion in imposing a consecutive sentence in this case.

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

By The Court,

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Marc F. Lovecchio, Judge

cc: Devin Walker, Esquire (ADA)  
Nicole Spring, Esquire (PD)

Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)