IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-0001820-2017**
	:	
vs.	:	
	:	
	:	
FLOYD STEADLEY,	:	
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 January 22, 2020 order re-sentencing Appellant Floyd Steadley following revocation of his intermediate punishment sentence.

By way of background, on April 18, 2017, Detective James Capello of the Lycoming County Narcotics Enforcement Unit filed a criminal complaint against Appellant, charging him with delivery of controlled substances and related offenses. Appellant was arrested on October 25, 2017.

On June 7, 2019, Appellant pleaded guilty to one count of delivery of a controlled substance, and the court sentenced him to a split sentence of 251 to 521 days of incarceration in the Lycoming County Prison, followed by three years of Intermediate Punishment (IP) with the first seven months to be served on work release at the Pre-Release Center (PRC). The court gave Appellant credit for 521 days of time served from October 25, 2017 to March 29, 2019. Appellant began serving the incarceration/work release portion of his IP on June 21, 2019.

On August 6, 2019, Appellant left PRC for a medical appointment at the River Valley Health & Dental Center (hereinafter "River Valley"). A PRC employee drove Appellant to the appointment and instructed Appellant to have someone from River Valley call PRC at the conclusion of his appointment. Appellant told the employee that he would probably take the bus to return to PRC.

The PRC contract and work release rules precluded Appellant from stopping anywhere else unless he received authorization from PRC to do so and from having unauthorized contact with other persons. The rules also indicated that any unauthorized departure or any failure to return would constitute escape from custody.

At approximately 1:45 p.m., Appellant left River Valley without anyone from River Valley contacting PRC. Instead of directly going to the bus stop, Appellant went to the pharmacy across the street from River Valley without authorization from PRC to do so. At some point thereafter, Appellant met with someone and changed his clothing. Eventually, Appellant took the bus back to PRC.

At approximately 2:55 p.m., when PRC personnel had not received a phone call from River Valley, the employee who drove Appellant was sent to River Valley to look for him. The employee did not locate Appellant at River Valley or in the surrounding area. At approximately 3:30 p.m., PRC staff initiated the escape protocol.

At approximately 4:15 p.m., Appellant returned to the PRC after getting off the bus.

On August 26, 2019, Appellant's probation officer filed an IP violation report against Appellant. Following a hearing on September 5, 2019, the court found probable

cause to believe that Appellant violated the conditions of his IP by violating the PRC work release rules.

The court held a hearing on October 11, 2019. Following this hearing, the court found that Appellant violated the conditions of his IP. The court revoked Appellant's IP and scheduled a re-sentencing hearing for January 22, 2020.

On January 22, 2020, the court re-sentenced Appellant to one to two years' incarceration in a state correctional institution with respect to Count 1, delivery of a controlled substance (heroin), an ungraded felony. The court awarded Appellant credit for time served from June 21, 2019 to January 21, 2020.

On February 3, 2020, Appellant filed a motion for reconsideration of sentence, which the court summarily denied on February 10, 2020.

On February 20, 2020, Appellant filed a notice of appeal. Appellant filed a concise statement of matters complained of on appeal in which he raised seven issues, most of which assert that the court abused its discretion and imposed an unduly harsh and excessive sentence.

Appellant first asserts that the evidence was insufficient to prove that he violated the terms of his IP sentence. The court cannot agree.

As part of Appellant's sentence, the court directed Appellant to serve the first seven months of his IP at the PRC on work release. During that seven-month period, Appellant was required to comply with the rules and conditions of work release as part of his conditions of IP.

The testimony of John Loiselle, the manager at PRC, and Detective Calvin

Irwin of the Lycoming County District Attorney's Office, established that Appellant violated the work release rules.

The Commonwealth introduced the work release rules as Commonwealth Exhibit 2.

Mr. Loiselle testified that Appellant violated several of these rules. Specifically, Appellant violated the rules when he did not have staff at River Valley contact PRC and wait for PRC to grant permission before he departed to his next location. Appellant also went to the pharmacy without authorization, and he had unauthorized contact with whomever provided him with different clothing.[1]

Detective Irwin testified that Appellant admitted to him that Appellant went to the pharmacy and then to the hospital after he attended his doctor's appointment. Appellant also admitted that he had contact at the hospital with Anthony James, the person who typically drove Appellant to work. Mr. James retrieved some of Appellant's clothing from Mr. James' vehicle, he provided the clothing to Appellant, and Appellant changed his clothes. However, Appellant told Detective Irwin that he did not go inside the hospital for anything.[2]

Appellant's own testimony also established that he violated the work release rules. Appellant admitted that the PRC employee who drove him to his doctor's appointment told him to have the River Valley staff contact PRC when he was leaving. Appellant claimed that he asked the doctor to contact PRC, but the doctor stated that she had sent all the information to the front desk where he would retrieve his paperwork. Appellant also claimed

[1] Transcript, October 11, 2019, at 13-16, 20, 22-24.
[2] Transcript, October 11, 2019, at 26-27.

that the doctor told him to go the pharmacy to pick up the medicine she prescribed for him. Despite knowing that he was not permitted to go anywhere or speak to anyone without authorization or permission from PRC, Appellant admitted that he left River Valley and walked to the pharmacy. He also admitted that he spoke to Mr. James, who he claimed he ran into at the hospital when Mr. James, who was in the hospital lobby, saw Appellant at the bus stop near the hospital lobby and came outside. He also admitted that he changed his clothes at the hospital after Mr. James retrieved them from Mr. James' vehicle.[3]

When confronted with his testimony from the hearing held on September 5, 2019, at which Appellant stated his girlfriend met him at River Valley and he changed his clothes there,[4] Appellant claimed he misunderstood the question at that hearing.[5] The court did not find credible Appellant's statements that he asked the doctor to call PRC or that he misunderstood the questions at the September 5, 2019 hearing. Appellant's statements were ever changing. The court believes that Appellant changed his story to try to manipulate the court and the individuals who were investigating his behaviors and activities between the hours of approximately 1:45 p.m. and 4:15 p.m. on August 6, 2019. The court believes Appellant initially said he changed his clothes at River Valley because he was authorized to be at that location. He did not say that at the second hearing because after Mr. Loiselle and Detective Irwin testified, he realized that video surveillance from PRC and the pharmacy depicted him in the same clothing.

No one knows for sure where Appellant was after he left the pharmacy or

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[3] Transcript, October 11, 2019, at 34-39.
[4] Transcript of Defendant's Statement, September 5, 2019, at 2-4.
[5] Transcript, October 11, 2019, at 41-48.

from whom he obtained a change of clothing. All of the evidence, however, shows that Appellant left River Valley, went to the pharmacy, and then proceeded to some other location where he had contact with someone who provided him with a change of clothing. Other than the doctor's appointment at River Valley, PRC did not authorize or approve any of these activities. Eventually, Appellant conceded that he was "not disputing he was wrong in regards to leaving River Valley and going over to the pharmacy, which was a violation of PRC's rules."[6] Therefore, Appellant's claim that the evidence was insufficient to prove that he violated the terms of his IP clearly lacks merit.

Appellant next contends that the court erred by not giving more weight to the evidence that the Lycoming County Prison had already sanctioned him to disciplinary lock up for 180 days, and therefore a state sentence was not necessary to vindicate the authority of the court. As the court explained in its resentencing order, the sanction imposed by the prison addressed Appellant's behaviors in relation to his incarceration; it did not address whether he was amenable to IP supervision. Based on the totality of the circumstances, which included not only the violations but also Appellant's prior supervision history, his minimization of his behaviors and his manipulation of the legal process, the court found that Appellant was not amenable to continued supervision through the IP program. Appellant had little insight into what he was doing wrong; had very little insight into his responsibilities, and failed to comply with the requirements of his supervision. His behaviors in this case appeared to be part of a pattern in Appellant's overall supervision history where Appellant, for lack of a better term, chose to make his own rules and chose to minimize any of his

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[6] Transcript, October 11, 2019, at 55.

misbehaviors. Appellant did not notify anyone whatsoever as to what he was doing, where he was or when he would return. Moreover, he had unauthorized contact with another individual. A defendant cannot decide what rules he intends to follow and when he intends to follow them.

Appellant did not want the court to impose any sanction on him. The court could not do so, particularly where, as here, Appellant not only violated the conditions of IP, but he also lied to the court. Appellant provided conflicting statements to the court about who provided the change of clothing to him and where that occurred. Appellant is lucky he did not end up with new criminal charges such as perjury or the like because of the varied statements he provided.

The court considered Appellant's time in disciplinary lock up when it imposed his sentence. The court gave him credit for time served for the entire time he was on work release and in disciplinary lock up. With this credit, Appellant only has to serve four to five months to reach his minimum and be eligible for parole.

Appellant also alleges that the court erred by failing to recognize that probation is still an effective tool for his rehabilitation, as specified in his motion for reconsideration. Appellant was not on probation. The court never found that probation was an appropriate or effective tool in this case. Neither probation nor IP are effective tools to rehabilitate Appellant because he does not follow the rules. He has no insight into his behaviors and he fails to accept responsibility for his actions. Instead, he chooses to make his own rules and to minimize his behaviors.

Appellant submits that the court and adult probation were not satisfied with

his original plea agreement and that the probation violation hearing was vindictive. Appellant and his counsel repeatedly confuse probation and IP. The court did not hold a probation violation hearing; it held an IP violation hearing. The hearing was not vindictive. The hearing occurred because of Appellant's violations of the work release rules, which he was required to comply with during the work release portion of his IP sentence. The court cannot speak for adult probation, but the court did not have any dissatisfaction with Appellant's plea agreement. If the court had been dissatisfied with the plea agreement, the court would have rejected it. The court found Appellant violated the conditions of his IP because all of the evidence presented at the hearing, including Appellant's own statements, established the violations. The sentence imposed was the result of Appellant's violations, his lack of insight into his own behaviors, his lack of responsibility for his actions, and his lack of candor and veracity to the court. Despite all of these factors, the court imposed a sentence that requires Appellant to serve an additional four to five months of incarceration before he is eligible for parole. If the Board does not parole Appellant at his minimum, it will be due to Appellant's actions and attitudes, and not the fault of the court.

In his remaining issues, Appellant asserts that the sentence of one to two years of incarceration a state correctional institution was unduly harsh and excessive, an abuse of discretion and does not rehabilitate him or promote the interest of the public as specified in his motion for reconsideration. In his motion for reconsideration, Appellant made the following averments: (1) no evidence was presented that he committed new crimes while on release for his medical appointment; (2) he had no other write-ups for violations of Lycoming County Prison or PRC rules; (3) he was sanctioned by the Lycoming County Prison; (4)

although he was sanction to 180 days of disciplinary lock up, he was released from disciplinary lock up after 150 days for good behavior; (5) the sentence inflicts too severe a punishment in light of his actions; (6) the sentence is too harsh, considering the nature of the violations and the length of imprisonment; (7) the sentence does not rehabilitate Appellant so he can become a productive member of society and thus promote the interest of the public as well as Appellant; and (8) the court arrived at a manifestly unreasonable decision in light of Appellant's actions. Appellant asserted that, despite his violations, the court should have sentenced him to a county sentence and continued Intermediate Punishment or Probation with Restrictive Conditions.

> 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)).

In a probation or intermediate punishment 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.

Upon revocation of an IP sentence, "the sentencing alternatives available to the court shall be the same as the alternatives available at the time of initial sentencing." 42 Pa. C.S.A. §9773(b); *Commonwealth v. Philipp*, 709 A.2d 920, 921 (Pa. Super. 1998). At the resentencing hearing, however, the court is not bound by the terms of the plea agreement. *Commonwealth v. Wallace*, 870 A.2d 838, 842-43 (Pa. 2005).

Appellant pled guilty to delivery of heroin, an ungraded felony and a violation of 35 P.S. §780-113(a)(30). The statutory maximum term of imprisonment for a Schedule I narcotic, such as heroin, is fifteen years. 35 P.S. §780-113(f)(1). When, however, a person has one or more prior convictions for violating 35 P.S. §780-113(a)(30), the person may be imprisoned for up to twice the term otherwise authorized. 35 P.S. §780-115(a). Appellant's prior record score (PRS) was a repeat felon (RFEL), which included a prior conviction for violating 35 P.S. §780-113(a)(30). Therefore, the maximum sentence the court could have imposed upon re-sentencing Appellant was 30 years (less the 521-day maximum of the incarceration portion of his original split sentence).[7] The court imposed a maximum sentence

[7] The court would not have imposed a statutory maximum sentence for the violation in this case. The court is

of two years, which was less than the three years Appellant was supposed to serve on IP. Clearly, the maximum sentence imposed by the court was not excessive.

As the underlying offense and the violation occurred before January 1, 2020, neither the sentencing guidelines nor the resentencing guidelines apply in this case. 204 Pa. Code §§303.1(b), 307.2(b). Even if the guidelines applied, however, the court did not impose an excessive sentence. The offense gravity score (OGS) for this offense was a six, and Appellant's PRS was RFEL. Therefore, the standard guideline range for Appellant's minimum sentence was 27-40 months and the mitigated range was 21-27 months. The court imposed a minimum sentence of one year and gave appellant credit for the time he served on work release and in disciplinary lock up. The net result was that Appellant only had to serve an additional four or five months of incarceration to be eligible for parole. Therefore, contrary to Appellant's assertions, the court did consider the fact that prison officials removed Appellant from work release and placed him in disciplinary lock up.

If the court adds the 250-day minimum of his original split sentence to the one-year minimum sentence imposed following IP revocation and re-sentencing, the total minimum is 615 days or approximately 20 months, which is below the mitigated range. Even if the court adds the entire 521-day incarceration portion of Appellant's split sentence to the minimum violation sentence, the total would be 886 days or approximately 29 months, which would fall within the bottom end of the standard range.

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merely explaining and highlighting the lawful maximum sentence for Appellant's conviction.

Appellant wanted the court to look at his violation in a vacuum and impose a county sentence and continued IP. The court had already tried a county sentence followed by IP, which did not work. Appellant violated the conditions of his IP sentence within a matter of weeks. Furthermore, Appellant's violation was merely the tip of the iceberg. At re-sentencing, the court must consider all of the facts and circumstances, and not merely the conduct that constituted the probation or IP violation. Due to Appellant's violations, the court revoked his IP sentence. Appellant was not merely before the court for a sanction on his violation, but rather for a re-sentencing for the crime of delivery of heroin. When the court revokes a sentence of probation or IP, the court re-sentences the person for the underlying crime. The court may utilize any sentencing alternative, and it is not bound by the plea agreement.

The court considered the nature and seriousness of the crime of delivery of heroin, the protection of the public, and the character and rehabilitative needs of Appellant. Appellant is only looking at what he perceives his rehabilitative needs are and what he views as a minor violation. He is not looking at the bigger picture.

Delivery of heroin is an ungraded felony offense. It is a serious crime that has a significant impact on the purchaser and on the community. Heroin is highly addictive. With each sale, there is the possibility that the purchaser will overdose. It also has a significant impact on public safety and the provision of public services, such as emergency medical services (particularly ambulance services, paramedics, and hospital emergency rooms and their staffs), police who must respond not only to the underlying drug offense but the crimes addicts commit to support their habits, and support services for the purchaser and

his or her family. The opiod epidemic is one of the major problems in modern society.

The court also considered Appellant's history and characteristics. Appellant had a significant criminal history. His PRS was RFEL. Appellant complained that his crimes occurred twenty years ago but Appellant conveniently failed to recognize that, at the time he committed this offense, he was on probation for another offense from another county. He also was not complying with his probation conditions and, as a result, there was an outstanding warrant or detainer. Both the current violation and the outstanding warrant or detainer showed that Appellant was no longer a suitable candidate for county supervision.

Appellant also refused to recognize and accept the limits on his actions and his interactions with others. Appellant made much of the fact that Anthony James, the person from whom he allegedly obtained his change of clothing, was his approved or authorized driver. Just because Mr. James was authorized to drive Appellant to work on other occasions did not mean that Appellant could have contact with Mr. James on the afternoon of August 6, 2019. Mr. James was not Appellant's driver for this appointment because Mr. James was at the hospital due to his son having a medical emergency. A PRC employee drove Appellant to his medical appointment.

Appellant also was not completely honest with the investigators or the court. Appellant kept changing the details regarding his whereabouts and activities. At the hearing on September 5, 2019, Appellant told the court that his girlfriend brought him a change of clothing and he changed inside River Valley. At the hearing on October 11, 2019, Appellant claimed that he ran into Mr. James while he was waiting for the bus and Mr. James provided him with a change of clothing. Appellant told Detective Irwin that he never went inside the

hospital. During the hearing on January 22, 2020, Appellant stated that if the PRC employee had driven to the hospital to look for him he would have seen him sitting there waiting at the bus stop, suggesting that he never went inside the hospital. Appellant's statements simply were not credible. Appellant obviously changed his clothes somewhere. The court does not believe that Appellant stripped down and changed his clothes on a public sidewalk at the bus stop near the hospital. If Appellant's statements had been consistent and he had shown any remorse or acceptance of responsibility, things may have been different. Instead, his lack of honesty and his failure to accept responsibility for his actions contributed to the court concluding that IP was no longer a viable alternative for Appellant.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
Eric Birth, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)