

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-551-2019
	:	
vs.	:	
	:	
ZACKERY TATE,	:	CRIMINAL DIVISION
Defendant	:	

OPINION

On May 2, 2019, Defendant was charged with sixteen (16) counts all relating to the alleged possession and delivery of controlled substances occurring between February 12, 2019 and March 19, 2019. Defendant plead guilty to Counts 2 and 6 – possession with intent to deliver, both felonies, and was sentenced on July 20, 2020. The Offense Gravity Score (hereinafter “OGS”] listed on the Guilty Plea Colloquy and the Pre-Sentencing Report was a 6 for both of the above counts. On Count 2, among other things, Defendant was sentenced to a period of incarceration of nine (9) to eighteen (18) months. On Count 6, among other things, Defendant was sentenced to five (5) years of supervision to run consecutive to the period of incarceration. At the request of the Defendant, Defendant’s report date was deferred to August 10, 2020. Upon Defendant’s failure to report on this date, a Bench Warrant was issued but was later vacated as the Defendant did report to the Lycoming County Prison on August 11, 2020.

On July 30, 2020, Defendant filed a Motion for Reconsideration and argument was held on August 25, 2020. Defendant argues that he had previously negotiated a plea agreement with the former District Attorney’s administration and that the sentence imposed

was inconsistent with that agreement. The Commonwealth noted that the OGS of 6 as listed on the Pre-Sentencing Report and Guilty Plea Colloquy is incorrect and instead should be a 5. The Commonwealth also indicated that it has no objection to reducing the minimum incarceration period in light of this oversight.

Pursuant to the Pennsylvania Commission on Sentencing's Basic Sentencing Matrix, the Counts to which Defendant plead guilty hold an OGS of 5. 204 P.S. § 303.15. According to the Pre-Sentencing Report and as agreed to by Counsel, Defendant had a Prior Record Score [hereinafter "PRS"] of 1 at the time of sentencing.¹ The standard range for an OGS of 6 and a PRS of 1 is 6-14 month on each count. 204 P.S. § 303.16(a). The standard range for an OGS of 5 and a PRS of 1 is 1-12 months on each count. 204 P.S. § 303.16(a). It is well settled in Pennsylvania that the trial court is not bound by the terms of the plea agreement between the Commonwealth and the Defendant. *Com. v. White*, 787 A.2d 1088, 1091 (Pa.Super. 2001) ("While the Commonwealth and a criminal defendant are free to enter into an arrangement that the parties deem fitting, the terms of a plea agreement are not binding upon the court. Rather the court may reject those terms if the court believes the terms do not serve justice").

Initially, Defendant was sentenced to a minimum of nine (9) months incarceration on Count 2 and five (5) months supervision on Count 6. Therefore, the sentence on Count 2 still falls within the standard sentencing range for an OGS of 5 (1-12 months) and the sentence on Count 6 falls below the guidelines. Defendant could have been sentenced to an aggregated minimum incarceration between 2 and 24 months. While the Defendant may have negotiated a plea deal with the Commonwealth, as stated above, the Court is not bound

¹ This was also listed incorrectly on the Guilty Plea Colloquy, which indicated that Defendant had a PRS of 0.

by those negotiations. Defendant has pointed to no specific mitigating circumstances² as to why the Court should reduce his sentence to electronic monitoring only, as requested by the Defendant. However, the Court recognizes and acknowledges that the mistake that was made on the Guilty Plea Colloquy and the Pre-Sentencing Report regarding the OGS rating may have influenced the Court's determination of the Defendant's minimum sentence on Count 2. The Court, based upon the totality of the circumstances surrounding the charges against the Defendant, determined a sentence above the bottom of the standard sentencing range was appropriate. Additionally, the Court took into consideration that the Defendant would only be placed on supervision on Count 6. For these reasons, the Court will reduce the Defendant's sentence on Count 2 to an indeterminate period of incarceration of six (6) to eighteen (18) months.

ORDER

² While Defendant argues that he has lived a crime free life since he posted bail, that he may be scheduled for upcoming surgery, and that he is responsible for his children and his mother's estate in support of his reduced sentence, these are not mitigating circumstances that the Court would typically consider under 42 Pa.C.S.A. § 9711(e).

AND NOW, this 2nd day of **September, 2020**, upon consideration of Defendant's Motion for Reconsideration and the Commonwealth's response thereto, Defendant's Motion is **GRANTED** in part. Defendant will continue to serve a period of incarceration on Count 2, delivery of a controlled substance. However, that incarceration period will be reduced from nine (9) to eighteen (18) months to six (6) to eighteen (18) months in the Lycoming County Prison. Defendant shall receive credit for time served from May 27, 2019 to May 24, 2019 and from August 11, 2020 to the date of this Order. All other sentencing provisions set forth in this Court's Sentencing Order of July 20, 2020 remain in effect.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (MW)
Andrea Pulizzi, Esquire
CC; APO
Warden (2)
Victim/Witness Coordinator
Gary Weber – Mitchell Gallagher