IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CP-41-CR-0001604-2019**
	:	**CP-41-CR-0001044-2019**
vs.	**:**	**CP-41-CR-0001921-2013**
	:	
	:	
DAKOTA TAYLOR,	**:**	
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 December 22, 2020.

By way of background, on October 7, 2014, Appellant entered an open guilty plea to all of the charges under Information CR-1921-2013. On December 16, 2014, Appellant was sentenced to 28 months to 56 months' incarceration in a state correctional institution on Count 1, Robbery; a consecutive two years of probation on Count 6, Tampering with Physical Evidence; and one year of probation on Count 7, Possession of Drug Paraphernalia concurrent to Count 6. The remaining charges merged for sentencing purposes. Appellant was given credit for time served from November 3, 2013 to June 10, 2014.

On June 28, 2019, Appellant was arrested on controlled substance and related offenses filed under Information 1044-2019. The new charges constituted a violation of Appellant's probation under 1921-2013. His probation violation was kept at a preliminary, and Appellant was released on continued supervision.

In August 2019, Appellant relapsed on opiates and he failed to report. In early September, he was taken into custody and fake urine was found on his person. As a result, he was charged with Possession of an Instrument of Crime and Furnishing or Attempting to Furnish Drug-Free Urine under Information 1604-2019.

On June 23, 2020, Appellant pleaded guilty to Count 4, Possession of a Controlled Substance (cocaine), and Count 5, Possession of Drug Paraphernalia, both ungraded misdemeanors under case 1044-2019, as well as Count 2, Furnishing or Attempting to Furnish Drug-Free Urine, a misdemeanor of the third degree under case 1604-2019. The court sentenced Appellant to 2 ½ years of probation[1] consecutive to Appellant's probation under 1923-2013. Despite violating his probation under 1921-2013 by committing new criminal offenses,[2] the court did not revoke Appellant's probation. Instead, as special conditions of all of Appellant's probationary sentences, the court directed him to attend and complete Medically Assisted Treatment (MAT) Court, as well as the Reentry Services Program.

Unfortunately, Appellant did not do well on supervision. He tested positive for opiates (morphine and codeine) and admitting relapsing on heroin in late July 2020. He missed a check-in at the Reentry Services Program on July 31, 2020 and tested positive for fentanyl on August 3 and August 5. He contacted West Branch Drug and Alcohol and was

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[1]The 2 ½ years consisted of one year of probation for Appellant's possession of cocaine, 6 months of probation for possessing drug paraphernalia, and one year of probation for furnishing or attempting to furnish drug free urine.

[2] Appellant remained on parole for the robbery until January 10, 2021. (Transcript, 12/22/2020, at 9). Nevertheless, the court had the authority to revoke Appellant's probation even though Appellant had not yet begun to serve any of his probationary sentences at the time of his various violations. *See Commonwealth v. Sierra*, 752 A.3d 910, 912 (Pa. Super. 2000); *Commonwealth v. Ware*, 737 A.3d 251, 253 (Pa. Super. 1999); *Commonwealth v. Dickens*, 475 A.2d 141 (Pa. Super. 1984); *Commonwealth v. Wendowski*, 420 A.2d 628 (Pa. Super. 1980).

accepted into treatment on August 9, 2020. Unfortunately, he left against medical advice on August 11, 2020, and his probation officer detained him on August 14, 2020. He was released to an inpatient rehabilitation at Pyramid Duncansville on September 1 and completed the program on September 17, 2020. He tested positive for morphine on September 18, 2020 and for fentanyl on September 26, 2020. His probation officer detained him on October 1, 2020.

On November 19, 2020, Appellant admitted he violated his probation by testing positive for fentanyl in late July 2020, as well as on August 3, 2020, August 5, 2020 and September 26, 2020; testing positive for morphine on September 18, 2020; failing to check in at Reentry Services on July 31, 2020; and failing to provide a urine sample at Reentry Services on August 1, 2020. The court accepted Appellant's explanation that he left an inpatient program against medical advice due to the high number of COVID cases. Appellant claimed that he did not use controlled substances after he completed his inpatient rehabilitation on September 17, 2020, but the test results belied Appellant's claims. The court revoked Appellant's probationary sentences, ordered a Pre-Sentence Investigation report (PSI) and scheduled re-sentencing for December 22, 2020.

On December 22, 2020, the court sentenced Appellant to an aggregate period of 18 months to 4 years' incarceration in a state correctional institution, which consisted of 6 months to 2 years' incarceration on Count 6, Tampering with Physical Evidence under 1921-2013; 6 months to 1 year of incarceration on Count 4, Possession of a Controlled Substance under 1044-2019; and 6 months to 1 year of incarceration on Count 2, Furnishing Drug Free

Urine under 1604-2019.[3] The court recommended Appellant for the State Drug Treatment Program, and both the court and the Commonwealth waived any potential ineligibility related to Appellant's robbery conviction under 1921-2013. The court also noted Appellant was eligible for a Recidivism Risk Reduction Incentive (RRRI) minimum of 13 ½ months.

On December 31, 2020, Appellant filed a motion for reconsideration in which he asserted that his sentence was manifestly excessive and a sentence of state incarceration was not warranted. Appellant noted that he spent 212 days or about 7 months incarcerated on these charges, and while the new probation guidelines did not apply, they were important to consider. Appellant contended that the aggregate sentence of 18 months to 4 years was manifestly excessive in comparison to the guideline ranges and the charges did not warrant a state sentence. The court disagreed and summarily denied Appellant's motion on January 5, 2021.

On January 20, 2021, Appellant filed a notice of appeal. Appellant contends that the court abused its discretion when imposing each sentence. When aggregated, Appellant was sentenced to a period of 18 months to 4 years' incarceration in a state correctional institution. Appellant contends the court's sentence was "manifestly excessive as to constitute too severe punishment. The court cannot agree.

> 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.

[3] No further punishment was imposed on Count 5, Possession of Drug Paraphernalia under 1044-2019.

Commonwealth v. Davis, 241 A.3d 1160, 1177-78 (Pa. Super. 2020), quoting *Commonwealth v. Shugars*, 895 A.2d 1270, 1275 (Pa. Super. 2006). "Although Pennsylvania's system stands for individualized sentencing, the court is not required to impose the 'minimum possible' confinement." *Davis*, 241 A.3d at 1178, quoting *Commonwealth v. Moury*, 992 A.2d 162, 171 (Pa. Super. 2010)(citation omitted). "A sentencing court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question. Rather, the record as a whole must reflect the court's reasons and its meaningful consideration of the facts of the crime and the character of the offender." *Davis*, *id*. (citations omitted). Furthermore, an appellant is not entitled to a volume discount by having all of his sentences run concurrently. *Commonwealth v. Clary*, 226 A.3d 571, 581 (Pa. Super. 2020); *Commonwealth v. Swope*, 123 A.3d 333, 341 (Pa. Super. 2015). Moreover, "a trial court does not necessarily abuse its discretion in imposing a seemingly harsh post-revocation sentence when the [appellant] received a lenient sentence and then failed to adhere to the conditions imposed upon him." *Commonwealth v. Pasture*, 107 A.3d 21, 28 (Pa. 2014).

The court did not impose this sentence based on partiality, prejudice, bias or ill will. The court imposed a state sentence and stated that Appellant was eligible for the State Drug Treatment Program because, despite warnings, sanctions, and every level of county treatment programs – ranging from outpatient counseling to a partial program to an inpatient rehabilitation program to Medically Assisted Treatment (MAT) Court – nothing at the county level worked. Appellant's probation officer recommended the State Drug Treatment Program because she believed that Appellant would benefit from a structured step-down program. The court agreed.

The court understands that Appellant and his counsel were requesting a county sentence and another opportunity to complete the Reentry Services Program. The court did not believe such a sentence would be appropriate. At some point, enough is enough. The court utilized all of the local options to address Appellant's rehabilitative needs and substance abuse disorder. Nothing worked. It was time to give Appellant the opportunity to participate in the State Drug Treatment Program. If Appellant is unwilling or unable to complete that Program, then while he is incarcerated he and the community will be protected from Appellant's substance abuse disorder and the criminal activities that occur due to such.

The court did not revoke Appellant's probationary sentences at the drop of a hat. Rather, the court gave Appellant multiple opportunities to remain on probation and take advantage of county resources. When Appellant was originally sentenced in case 1921-2013, he wrote a letter to the court expressing how his arrest saved his life, he realized the second chance he had been given, and he promised he was ready to move on with his life and the court would never see him again. Unfortunately, things did not work out as Appellant had predicted. While Appellant was on probation in case 1921-2013, he committed new crimes in two separate cases, 1044-2019 and 1604-2019. However, the court gave Appellant yet another chance. The court allowed Appellant to remain on probation in case 1921-2013 and imposed sentences of probation in his new cases. The court increased the programs and services to Appellant. The court placed Appellant on MAT Court and the Reentry Services Program. When he still relapsed, the court sent him to an inpatient treatment program, which Appellant left due to the number of COVID cases. The court then sent Appellant to another

inpatient program, this time at Pyramid Duncansville. Appellant completed this program on September 17, 2020, but then immediately tested positive for morphine on September 18, 2020 and for fentanyl on September 26, 2020. Put simply, the court bent over backwards to address Appellant's rehabilitative needs, but Appellant's conduct and condition got worse instead of improving.

Appellant's primary argument seems to focus on the new probation violation sentencing guidelines. At the re-sentencing hearing, however, Appellant's counsel conceded that those guidelines do not apply to these cases. Transcript, 12/22/2020, at 8, 17.

Even when one examines those guidelines, all of the sentences except one were within them. The range for Tampering With Physical Evidence was RS-6, and the court imposed a minimum sentence of 6 months. The range for Possession of a Controlled Substance was 3-14 months, and the court imposed a minimum sentence of 6 months. The range for Furnishing or Attempting to Furnish Drug-Free Urine was RS-4. Although the court imposed a minimum sentence of 6 months on this offense, which was slightly above the range, the court imposed guilt without further punishment for Possession of Drug Paraphernalia, which also had a guideline range of RS-4. In the court's view, the slightly higher sentence for Furnishing or Attempting to Furnish Drug-Free urine was offset by the imposition of guilt without further punishment for Possession of Drug Paraphernalia. The court could have imposed a sentence of 3 to 12 months incarceration on both offenses to achieve the same aggregate minimum sentence, but to do so would have resulted in an additional 12 months on the maximum sentence or an aggregate sentence of 18 months to 5 years, instead of 18 months to 4 years. The court was not looking to impose a lengthy period

of state incarceration or state parole. Instead, the court wanted to give Appellant the opportunity to participate in the State Drug Treatment Program because county level programs and services had not worked.

After counsel stated the guideline ranges, he stated, "so besides the PCS they would all be probationary sentences more than likely." Transcript, 12/22/2020, at p.18. With all due respect to Appellant's counsel, this comment made no sense to the court. Albert Einstein said that the definition of insanity is doing the same thing over and over again and expecting a different result. Appellant's original sentences were terms of probation. The court was not going to impose probationary sentences again in light of Appellant's violations and the numerous opportunities the court had given him The court had utilized all available county resources. It was time to move on to options available through the state correctional system.

In conclusion, the court's sentences were not "manifestly excessive as to constitute too severe punishment" as claimed by Appellant. Rather, the sentences were appropriate, considering Appellant's crimes, his supervision history and violations, his rehabilitative needs, the protection of the public, and the previous use of programs and sanctions at the county level that did not work.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
Howard Gold, Esquire (APD)
Judge Marc Lovecchio
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)
CR-1044-2019
CR-1921-2013