

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 98-11,584; 98-11,585**
:
:
vs. :
:
:
DARRYL BAKER, :
Defendant : **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 Judgement of Sentence of April 18, 1999 and its Order of June 9, 1999 wherein the Court denied the defendant's Post Sentence Motions.

PROCEDURAL HISTORY:

On August 24, 1999, the defendant was arrested and charged with robbery, theft, receiving stolen property, simple assault and possession of an instrument of crime in case No. 98-11,584. On the same date, he was charged with robbery, theft, receiving stolen property, simple assault, retail theft and resisting arrest in case No. 98-11,585.

The defendant came before the Court for sentencing on April 18, 1999. In case No. 98-11,586, the Court sentenced the defendant to incarceration at a State Correction Institution for a minimum of forty (40) months and a maximum of seven (7) years on the robbery conviction, In so doing, the Court applied the enhancement for the use of a deadly weapon to the sentencing guidelines because the defendant brandished a crowbar or tire iron during this robbery. The defendant received a concurrent one (1) month to one (1) year sentence for possession an

instrument of crime. In case No. 98-11,585, the Court sentence the defendant to a consecutive period of incarceration of eight (8) months to two (2) years.

On April 19, 1999, the defendant filed a Post-Sentence Motion in which he asserted the Court erred in: (1) applying the deadly weapon used enhancement; (2) failing to adequately consider the mitigating circumstances; and (3) imposing an unduly harsh sentence. The Court denied the defendant's Post-Sentence Motion in an Order dated June 9, 1999.

On or about June 16, 1999, the defendant filed his Notice of Appeal, challenging the Court's rulings on the issues contained in his Post-Sentence Motion.

DISCUSSION

The defendant asserts the Court erred in applying the enhancement for use of a deadly weapon. The Court cannot agree. The deadly weapon enhancement is found in 204 Pa. Code §303.10(a) and states, in relevant part:

An offender has used a deadly weapon if any of the following were employed by the offender in a way that threatened or injured another individual or in furtherance of the crime: ...

(iii) Any device, implement, or instrumentality capable of producing death or serious bodily injury.

The defense argued the defendant possessed a deadly weapon, as opposed to using one. This Court found these contentions belied by the record. For example, the pre-sentence investigation indicated the defendant lifted the crowbar over his head, stating he was going to smash the cash register. N.T., at p. 3. He then used the crowbar to pry the cash drawer open, took the money and left. N.T., at p. 3-4. The clerk of the store testified that when she saw the crowbar she was afraid the defendant would swing the crowbar and hit her with it. N.T., at p. 22-23. She also stated he opened the register with the

crowbar. N.T., at p. 24. Even defendant admitted he had the crowbar so there would be less resistance and he used it to open the cash register. N.T., at p. 10. At the very least, this evidence establishes the crowbar was employed in furtherance of the crime, if not also in a way that it threatened the clerk. Therefore, the Court finds no error in utilizing the enhancement for use of a deadly weapon in this case.

Next, the defendant contends the Court erred in failing to adequately consider the mitigating circumstances. This simply is not the case. The Court considered the defendant's lack of a prior criminal record, his drug addiction and his ability to be rehabilitated, among others. N.T., at pp. 27-32. In light of those factors, the Court imposed a minimum sentence that was at the bottom end of the standard range. However, the Court did not run the two robberies concurrent or sentence in the mitigated range because to do so would minimize: (1) the fear the defendant instilled in the clerk by brandishing a crowbar and (2) the fact there were two separate robberies involving separate victims and separate communities.

The defendant's final assertion is that the sentence imposed was unduly harsh. The Court cannot agree. The Court imposed a minimum sentences that were at the bottom of the standard range of the sentencing guidelines.

For the foregoing reasons, the Court found no error in the sentence imposed on this defendant.

DATE: _____

By The Court,

Kenneth D. Brown, J.