

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 97-11,390

VS :

BRIAN HOY :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated January 24, 2001 wherein the Defendant was sentenced to undergo incarceration for a minimum of nineteen (19) months and a maximum of seven (7) years. Defendant was additionally sentenced to two (2) years of probation under the supervision of the Pennsylvania Board of Probation and Parole, consecutive to the sentence of incarceration. This sentence was imposed after the Defendant's intermediate punishment sentence was revoked after a finding that the Defendant violated the conditions of the intermediate punishment program.

Defendant filed a post sentence motion for reconsideration of the sentence on February 9, 2001, which was denied by the Court on February 14, 2001. Defendant filed his appeal on February 26, 2001. On appeal, Defendant argues that the aggregate sentence imposed by the Court was unduly excessive. Defendant additionally argues that the Court erred when it denied him credit for sanction time imposed while a participant in the Drug Court program.

Defendant's argument that the sentence imposed was unduly excessive presents a challenge to the discretionary aspects of sentence rather than the legality of sentence. [Commonwealth v. Brown](#), 741 A.2d 726 (Pa.Super. 1999), *citing* [Commonwealth v. Nelson](#), 446 Pa.Super. 240, 666 A.2d 714, 720 (1995), *appeal denied*, 544 Pa. 605, 674 A.2d 1069 (1996) (regarding claim of excessiveness of sentence as a challenge to the discretionary aspects of sentence). The right to appeal a discretionary aspect of sentence is not absolute. [Commonwealth v. Barzyk](#), 692 A.2d 211, 216 (Pa.Super.1997). A party who desires to raise such matters must petition the appellate court for permission to appeal and demonstrate that there is a substantial question that the sentence is inappropriate. 42 Pa.C.S.A. § 9781(b); [Commonwealth v. Cappellini](#), 456 Pa.Super. 498, 690 A.2d 1220, 1227 (1997).

A substantial question will only be found where an aggrieved party can articulate clear reasons why the sentence imposed by the trial court compromises the sentencing scheme as a whole. *Id.* The Superior Court will grant an appeal only when Defendant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process. [Commonwealth v. Brown](#), *supra*, *citing* [Barzyk](#) and [Cappellini](#), *supra*.

This Court would find that the sentence imposed of nineteen (19) months to (7) seven years was not inconsistent with the Sentencing Code or contrary to the norms which underlie the sentencing process. The longest allowable minimum and maximum sentence for criminal trespass, a felony of the third degree is 3.5 years to seven (7) years. See [Nelson](#), 666 A.2d at 720, (court held that a claim of excessiveness of

sentence does not raise a substantial question where the sentence is within the statutory limits.)

In determining Defendant's appropriate sentence, the Court was additionally cognizant of the standards set forth in 42 Pa.C.S.A. § 9721(b). That section provides that:

. . . the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.

(emphasis added)

The Court considered the Sentencing Guidelines in determining the time of incarceration for the Defendant's offense. The Defendant was found to have, and the Defendant does not dispute that he has a prior record score of five (5). The offense gravity score for criminal trespass, a felony of the third degree is three (3). The standard guideline range for the offense would therefore be six (6) to sixteen (16) months.

Although a minimum sentence of nineteen months is considered in the aggravated range, the Court determined this sentence to be appropriate after considering all of the factors in this case. The Court would find that it provided

adequate reasons on the record for sentencing the Defendant in the aggravated range.
(See N.T. 1/24/01, pp.12-15). The Court therefore rejects Defendant's argument.

Dated:

By The Court,

Nancy L. Butts, Judge

xc: Edward J. Rymza, Esquire (PD)
Kenneth Osokow, Esquire
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges