

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 97-11659; 98-11010;**
: **98-11301; 99-10624**
vs. : **98-10849; 99-10625**
: **99-11158**
:
WILLIAM JONES, :
: **1925(a) Opinion**
Defendant

**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 September 9, 1999 and docketed September 17, 1999.¹ The relevant facts are as follows:

In case number 97-11,659, the defendant pled guilty to theft by deception, a felony of the third degree, receiving stolen property and bad checks. The original plea agreement was for an open plea; however, the terms of the agreement were modified when the defendant subsequently pled guilty to other charges.

In case numbers 98-11,010 and 98-11,301, the defendant pled guilty to one consolidated count of theft and one consolidated count of bad checks, respectively. The terms of the plea agreement were for a one to two year sentence with the first year to be served as County Intermediate Punishment under 98-11-010, consecutive probation under 98-11,301 and five (5) years consecutive probation under 97-11-659 with restitution on all

¹The Court notes it reinstated the defendant's direct appeal rights in its order dated February 12, 2001 through a Post Conviction Relief Act (PCRA) petition.

cases to be made by sentencing. If restitution was not made by sentencing, the plea agreement provided for a two (2) year minimum sentence under 97-11,659 with a total of five (5) years consecutive probation under 98-11,010 and 98-11,301.

On July 29, 1999, the defendant pled guilty to Count 1, bad checks in case number 99-10,849, Count 1 bad checks in 99-10,624 and two (2) counts each of theft by deception and bad checks in 99-10,625. It was an open plea agreement.

On September 9, 1999, the defendant pled guilty to theft of leased services, a felony of the third degree in case number 99-11,158. The terms of the agreement were that the defendant receive a concurrent probationary sentenced.

On September 9, 1999, the Court sentence the defendant on all the above-mentioned cases. Since restitution was not fully paid, the Court sentenced the defendant to two to five (2-5) years incarceration at a state correctional institution in case number 97-11,659, a consecutive five (5) years probation in 98-11,010, a concurrent five (5) years probation in 98-11,301, 99-11,158, and 99-10,625, and a concurrent one (1) year probation in 99-10,849 and 99-10,624, as well as the payment of restitution and costs of prosecution.

On September 16, 1999, defense counsel filed a Motion of Reconsideration seeking a county sentence with work release so the defendant could maintain his self-employment. The Court summarily denied the motion, because the sentence was imposed in accordance with the terms of the plea agreement.

On or about August 14, 2000, the defendant filed a pro se PCRA petition in which he sought reinstatement of his appeal rights. Upon the agreement of counsel, the

Court reinstated these rights in its Order dated February 9, 2001 and directed counsel to file a Notice of Appeal within thirty (30) days. On March 8, 2001, defense counsel filed a Notice of Appeal. The Court directed the defense to file a concise statement of matters complained of on appeal within fourteen (14) days of its Order dated March 9, 2001. Unfortunately, defense counsel did not file this statement before his contract as conflict counsel expired on or about April 1, 2001.

The vacancy in the conflict attorney position was not filled until Gregory Stapp was hired on or about June 1, 2001. Fearing that Mr. Stapp would not realize the appeal statement was still outstanding, court staff contacted him in mid-June 2001. On June 27, 2001, Attorney Stapp filed a concise statement of matters complained of on appeal.

The first issue raised is whether the defendant received ineffective assistance of counsel in that counsel failed to inform the Court that the defendant paid a substantial amount of restitution. The Court finds that counsel was not ineffective. From the date of his first guilty plea on or about August 17, 1998 until his sentencing on September 9, 1999, the defendant had over one (1) year to make restitution. The sentencing hearings in defendant's cases were postponed due to a bench warrant and at least two (2) continuance requests, one of which was specifically to give the defendant more time to pay restitution. See Continuance dated April 16, 1999. Sentencing was not held until nearly four (4) months after the April 16 continuance, but the defendant still had not made full restitution. A review of the defendant's files reveal he was given ample opportunity to avoid a state prison sentence by paying the full amount of restitution but he

failed to do so. The terms of the plea agreement were for a two (2) year minimum sentence if the defendant did not make restitution. The Court merely sentenced the defendant in accordance with the plea agreement.

Furthermore, the defendant was given an opportunity to add anything he wished to counsel's statement on his behalf before the Court imposed sentence, and he did not mention the amount of restitution he paid. N.T., September 9, 1999, at p. 13.

The defendant next asserts the sentence was inappropriate in light of the defendant's payment of substantial amounts of restitution. The Court cannot agree. The defendant received a generous plea agreement. The defendant's prior record score was RFEL. The offense gravity scores were 5, 3 and 1. Therefore, the standard guideline ranges for the defendant's minimum sentences were twelve to eighteen (12-18) months, six to less than twelve months, and three to six (3-6) months, respectively. The two (2) year minimum sentence imposed by the Court was in accordance with the plea agreement and at the bottom of the standard guideline range for the defendant's felony theft in case number 97-11,659. The remaining probationary sentences were below the standard guideline ranges. In light of the above, the court cannot find that the sentences imposed were excessive or inappropriate.

The defendant's remaining appeal issues are moot as the Court reinstated his direct appeal rights.

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: Kenneth Osokow, Esq. (ADA)
Gregory Stapp, Esq.
Gary Weber, Esquire (Lycoming Reporter)
Work file
Superior Court (original & 1)