

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 00-10,024
 :
 GREGORY R. AMOS, :
 :
 Respondent : 1925(a) OPINION

Date: January 4, 2002

**OPINION IN SUPPORT OF THE ORDER OF OCTOBER 24, 2001 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant has been given the right to appeal pursuant to this Court's ruling of October 24, 2001, which granted Defendant Post-Conviction Collateral Relief Act petition. Defendant questions on appeal the propriety of his conviction and sentence for the offenses of criminal conspiracy and simple assault and the summary offense of harassment. Sentence was imposed on July 6, 2000, following a jury trial. Defendant was sentenced to consecutive sentences of six to twenty-four months on each of the conspiracy and simple assault convictions.

Defendant has filed a Concise Statement of Matters Complained of on Appeal on December 14, 2001. The issues raised by Defendant will be addressed *seriatim*.

1. Weight of the evidence as to verdict of guilty of criminal conspiracy.
2. Weight of the evidence as to verdict of guilty of offense of simple assault.
3. Trial counsel's ineffectiveness.
4. Failure to merge offenses for purposes of sentencing.
5. Abuse of discretion in imposing sentence.

Criminal Conspiracy is committed by a person with the intent of promoting or facilitating the commission of a crime. It is an unlawful agreement between one or more persons to engage in conduct, which constitutes such a crime. An overt act in pursuance thereof must also be proven. The evidence presented at trial was that Defendant and Anwar Amos came to assist an unidentified hooded individual who originally attacked Troy S. Ulzheimer. (Transcript of Jury Trial, May 25, 2000, p. 29). This evidence was sufficient to establish that a conspiracy existed.

Simple Assault is committed when a person attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another. The evidence at trial was that Defendant attacked, pushed and punched Troy S. Ulzheimer. Defendant was punching Troy left and right in the body area, which resulted in bruises, aches and pains and loss of work for three days. (Transcript of Jury Trial, May 25, 2000, p.24-25, 29-30). This was sufficient evidence, presented to the jury, to find beyond a reasonable doubt that Defendant was guilty of Simple Assault.

Defendant avers that trial counsel, James Protasio, Esquire, failed to provide adequate legal assistance. Defendant makes no specific allegation of trial counsel's ineffectiveness and therefore we cannot address any specific issue. Based upon a reading of the Transcript of the Jury Trial, dated May 25, 2000, this Court believes that Counsel was effective and provided Defendant with adequate legal assistance.

Defendant also contends that the sentence of July 6, 2000 was illegal in failing to merge the offenses. The Defendant received a sentence, for both the Criminal Conspiracy and Simple Assault, for a minimum of 6 months and a maximum of 24 months. The sentences

were to be served consecutively. These offenses are unable to be served concurrently, because they are two separate crimes, each with an element the other does not have and therefore, they do not merge.

Finally, Defendant avers that the Trial Court abused its discretion by imposing a sentence of one (1) year minimum and four (4) years maximum. The sentencing Order filed July 6, 2000, reflects this Courts reasoning for the imposed sentence.

BY THE COURT,

William S. Kieser, Judge

cc: District Attorney Office
Donald F. Martino, Esquire
Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)