

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 00-11,588
 :
 REGINALD JOHNSON, :
 :
 :
 Defendant : SUPPLEMENTAL 1925(a) OPINION

Date: *May 22, 2002*

SUPPLEMENTAL OPINION TO THE MAY 16, 2002 OPINION SUBMITTED IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This Opinion is issued as a supplement to this Court's prior 1925(a) Opinion dated and filed May 16, 2002. It is filed only to provide additional comment of this Court in relation to Defendant's contentions that his mandatory sentence for the charge of aggravated assault of ten to twenty years was improperly imposed pursuant to the mandatory sentencing provisions of 42 Pa. C.S. §9714 and also that the Court failed to state its reasons for imposing an aggravated range sentence for the offense of Possession of an Instrument of Crime. At the time the prior Opinion was prepared a sentencing transcript had not been lodged. Since that date a sentencing transcript for the hearing of December 13, 2001, has been lodged and the transcript of the sentencing hearing completely contradicts Defendant's contentions.

Section 9714 was applied because Defendant had previously been convicted of a crime of violence, specifically a second-degree murder conviction in 1965. Defendant asserts that the use of the mandatory sentencing provisions was improper in this Appeal because there was no appropriate evidence of his prior conviction introduced at the time of sentencing. The sentencing hearing transcript makes it clear that Defendant did not contest the fact that he had

previously been convicted of second-degree murder. This is made at the following sentencing transcript pages: 9, 10; 12; 20-22, Sentencing Hearing Transcript, December 13, 2001.

Specifically at page 12 Defendant's counsel makes the following statement: "Mr. Osokow's (Assistant District Attorney) right on the 10 years, we don't dispute that he's, in fact, gave us notice on that several months, I believe because it was something that we've talked to Mr. Johnson about the 10 years and such."

Defendant also raised sentencing issues in this Appeal that relate to the Court's failure to state its reasons for imposing an aggravated sentence for the offense of Possession of Instruments of Crime on the record. Again the sentencing transcript undermines Defendant's contentions. Those reasons were made specifically clear at the time of sentencing. *See* for example, pp. 33-35 of the Sentencing Hearing Transcript.

Accordingly, this Court again suggests that Defendant's Appeal should be denied.

BY THE COURT,

William S. Kieser, Judge

cc: William Miele, Esquire
Ken Osokow, Esquire
Judges
Suzanne R. Lovecchio (Law Clerk)
Gary L. Weber, Esquire (Lycoming Reporter)