

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1517-2019
	:	
vs.	:	
	:	
SCOTT ALLEN TREESE,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On October 25, 2019, Defendant was charged with Driving Under the Influence, second offense, along with two other related summary charges. Defendant initially pled guilty and was sentenced on June 29, 2020 but that Order was later vacated, the sentencing Judge citing “issues that have caused the plea agreement to potentially be unworkable.”¹ *See July 17, 2020 Order*. On October 16, 2020, Defendant again pled guilty to Driving Under the Influence of Alcohol (incapable of safely driving), second offense within ten (10) years, which was graded as a felony three offense because Defendant’s prior offenses included a homicide by vehicle related to driving under the influence. This was an open plea.

On January 5, 2021, following an extensive and detailed analysis, Defendant was sentenced by the Honorable Marc F. Lovecchio to eighteen (18) months to five (5) years of incarceration in a State Correction Institution, among other things. Judge Lovecchio stated that Defendant would be able to continue with his Vivitrol regimen while in state prison and would be eligible for the State Drug Treatment Program [hereinafter “SDTP”].

¹ Defendant would be unable to continue with his Vivitrol regimen if incarcerated in the Lycoming County Prison, to which he was initially sentenced.

On July 6, 2021, Defendant filed a pro se Motion for Post Conviction Collateral Relief and on September 1, 2021, Defendant, through newly appointed counsel, filed an Amended PCRA Petition. The Amended PCRA states: that Defendant would in fact receive no more than three (3) Vivitrol injections while in state prison; that subsequent to Judge Lovecchio's sentence, Defendant received an additional sentence out of Clinton County of six (6) months to two (2) years for simple assault to run consecutively; and that, because of the Clinton County sentence, Defendant was no longer eligible for the SDTP.

Upon agreement of the parties, Judge Lovecchio granted Defendant's PCRA Petition "to the extent that it seeks the reinstatement of his post sentence rights nunc pro tunc and his appeal rights nunc pro tunc." *See October 11, 2021 Order*. Thereafter, Defendant filed a Post-Sentence Motion for Reconsideration of Sentence, Nunc Pro Tunc on October 18, 2021. Argument was held before this Court on January 13, 2022² and, for the reasons set forth below, Defendant's Motion is denied.

Defendant argues that the intention of Judge Lovecchio's sentence was to "allow him to continue receiving Vivitrol treatment for his substance abuse disorder" and to "complete the State Drug Treatment Program." *See Post-Sentence Motion at Paragraphs 17 and 20*. Due to the length of his consecutive sentences in Lycoming County and Clinton County, Defendant is no longer eligible for the SDTP and Defendant requests that his prior sentence be vacated and he be resentenced to time served to allow him to participate in treatment programs. The Commonwealth argues that Defendant's eligibility for treatment programs, including the SDTP, was not Judge Lovecchio's primary consideration when he determined

² Defendant's Post-Sentence Motion is being heard and decided by this Court because Judge Lovecchio has since retired from the Bench.

Defendant's sentence. This Court agrees.

Initially, the Court notes that the coordinate jurisdiction rule “commands that upon transfer of a matter between trial judges of coordinate jurisdiction, a transferee trial judge may not alter resolution of a legal question previously decided by a transferor trial judge More simply stated, judges of coordinate jurisdiction should not overrule each other's decisions.” *Zane v. Friends Hosp.*, 836 A.2d 25, 29 (Pa. 2003) (internal citations omitted). In his sentencing Order of January 5, 2021, Judge Lovecchio set forth the information and factors he considered as well as a well-reasoned analysis for his decision. Specifically, Judge Lovecchio considered the following: the CRN evaluation; the LSIR; the presentence report; treatment records with respect to defendant's substance use disorder and mental health issues; records regarding the defendant's physical issues; records regarding defendant's employment; and statements made by counsel for the defendant, counsel for the Commonwealth, and the defendant himself. Additionally, Judge Lovecchio weighed other relevant factors including “the nature and circumstances of the offense, the guidelines, the defendant's history and character, [] the other statutory factors[,] . . . the defendant's rehabilitation needs, protecting the public, and the seriousness of the offense to the extent it has impacted a victim and/or the community.” *See January 5, 2021 Order at Page 1.*

Specifically, Judge Lovecchio stated the following:

Defendant has taken steps to accept responsibility in connection with this case, and he has taken steps to address his mental health and substance use disorder. He's actively engaged in counseling, and is being administered Vivitrol, which has significantly reduced, if not eliminated, his cravings.

...

In addressing defendant's rehabilitative needs, it is true that the defendant has addressed them on his own, and if anything needs to continue with his treatment, and continue with his counseling. Defendant cannot obtain a Vivitrol shot in the Lycoming County Prison or the Lycoming County Work Release Facility. He can obtain a Vivitrol shot in state prison. Defendant cannot obtain significant counseling in the Lycoming County Prison, but he can obtain counseling through the State Drug Treatment Program, which is a 24/7 treatment program which could possibly produce lifelong positive results.

Moreover, the Court has a hard time accepting what defendant is claiming with respect to his rehabilitation. Clearly the defendant had chances to rehabilitate himself in 1998, 2008, 2007, and 2012. He was convicted of four (4) DUI related offenses since 1998 thru 2012. He was arguably on parole for approximately three (3) years. Clearly defendant would have been required to undergo assessments and any and all recommended treatment. Four (4) prior times, or probably more accurately three (3) prior times defendant's efforts at rehabilitation failed.

Moreover, despite defendant claiming that when this incident occurred it hit him like a rock, and it crushed his soul, he had excuses, not reasons, why he continued to drink. In fact, he did not stop drinking until he allegedly

committed an offense which put him in jail for thirty (30) days. That offense remains outstanding, but the fact is he was put in jail for thirty (30) days. It was not until that incident that he sought counseling, sought the Vivitrol shot, and took his recovery seriously.

Defendant's rehabilitative needs are important and cannot be ignored. Yet in weighing an appropriate sentence under these circumstances, the Court has to place more weight on the seriousness of the offense, and protecting the public. Defendant's continued alcohol abuse can be understood as him suffering from substance use disorder. However, for decades the defendant has not taken the appropriate steps to undergo effective treatment. While he did not choose to suffer from an alcohol use disorder, he did choose not to obtain the necessary treatment. Perhaps via a Freudian slip he indicated that he "didn't think" there would be a medication that would reduce his cravings. The Court finds it hard, if not impossible, to believe that he showed up at counseling in August of 2019 after this incident allegedly occurred, yet was not advised as to any medication to assist him. Indeed, if you look at the CRN report he was not scheduled for an appointment until September of 2019, almost two (2) months after this incident occurred. He took no steps to voluntarily enter counseling, he was directed to enter counseling after his CRN was conducted.

The defendant, in the Court's opinion, lacks insight into his recovery. The Court is very concerned that what insight he does have is temporary, self-serving, and motivated only toward reducing any potential sentence. Given the fact that this is defendant's fifth DUI related offense, he has three (3) prior DUI's, has a homicide by vehicle while DUI related; and given the fact that this occurred within ten (10) to twelve (12) months after he was released from a three (3) to six (6) year sentence for homicide by vehicle yet chose to continue to drink, and chose to even drive, begs logic. Drinking may not have been a choice given his substance use disorder, but driving certainly was a choice.

...

Finally, the Court cannot agree with the defendant that protecting the public is best served by in-home detention/electronic monitoring. In essence, the defendant is arguing to the Court that his sobriety since March of last year outweighs his substance abuse disorder, which has raged for decades. Despite convictions, despite incarceration, despite treatments, despite damage to the defendant's relationships, perhaps employment, and other collateral issues, he has returned to drinking and/or relapsed. It is the Court's opinion that in weighing all of these factors the most appropriate sentence would involve a sentence where the defendant would be eligible for the state intermediate punishment, where he can prove that his sobriety is genuine, and that he is willing to address his issues long term.

See January 5, 2021 Order at Pages 1-4 (emphasis added).

All of the arguments that Defendant sets forth now are the same arguments presented before Judge Lovecchio. Nothing has changed, other than the fact that Defendant is unable to participate in the SDTP because he received an additional consecutive sentence from a separate county. It is clear, based on the above, that Judge Lovecchio considered all of Defendant's arguments but that, ultimately, Defendant's rehabilitative needs were not the driving factor behind Judge Lovecchio's analysis. Other factors, including the importance of protecting the community, outweighed Defendant's own needs. For these reasons, the Court will not vacate Judge Lovecchio's sentence and Defendant's Motion is denied.

ORDER

AND NOW, this 18th day of **January, 2022**, upon consideration of Defendant's Post-Sentence Motion for Reconsideration of Sentence, Nunc Pro Tunc, and for the reasons set forth above, the Motion is **DENIED**. The Court's Sentencing Order of January 5, 2021 shall remain in full force and effect.

Defendant is hereby notified that he has the right to appeal this order. An appeal is initiated by the filing of a Notice of Appeal with the Lycoming County Clerk of Courts within thirty (30) days after entry of this order. See Pa.R.App.P. 902, Pa.R.App.P. 903, Pa.R.App.P. 904. Defendant has the right to assistance of counsel in the preparation of the appeal. He has the right, if he is indigent, to appeal *in forma pauperis* (without the payment of costs and fees) and to proceed with assigned counsel as provided in Rule 122 of the Pennsylvania Rules of Criminal Procedure. He has a qualified right to bail under Rule 521(B) of the Pennsylvania Rules of Criminal Procedure. When the sentence imposed includes imprisonment of less than 2 years, the defendant has the same right to bail as before verdict unless the judge modified the bail order. When the sentence imposed includes imprisonment of 2 years or more, the defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge. In either scenario, the defendant's release on bail is conditioned on the defendant filing an appeal within 30 days after the entry of this order. If the Notice of Appeal is not filed in the Clerk of Courts' office with the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (M.Wade)
Public Defender (NS)
Gary Weber, Esq.
Alexandra Sholley – Judge Tira’s Office