

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JESSICA VAN FOSSEN	:	
	:	
Appellant	:	No. 958 MDA 1999

Appeal from the Judgment of Sentence entered November 19, 1998
in the Court of Common Pleas of Luzerne County,
Criminal, No. 1742 of 1998.

BEFORE: DEL SOLE, TODD and TAMILIA, JJ.

OPINION BY DEL SOLE, J:

Filed: March 20, 2000

¶ 1 Following her guilty plea Appellant received the following sentences:

1. Aggravated Assault, 72 months to 120 months
2. Criminal Conspiracy, 72 months to 120 months consecutive to the Aggravated Assault sentence.
3. Burglary, 48 months to 120 months, concurrent to the Criminal Conspiracy sentence.

¶ 2 Appellant raises one issue on appeal, namely that the sentences for Aggravated Assault and Criminal Conspiracy are illegal since the minimum sentence is greater than one-half the maximum. We agree.

¶ 3 Contrary to the position of the Commonwealth, that this is a discretionary sentencing issue, 42 Pa.C.S.A. § 9756(b) mandates that:

(b) Minimum sentence. —The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

J. S02014/00

This provision of the sentencing code is mandatory and it is not within the trial court's discretion to impose a minimum sentence that is greater than one-half the maximum. Therefore, we vacate the sentence and remand for resentencing.

¶ 4 Judgment of sentence vacate. Case remanded. Jurisdiction relinquished.