NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. DEBORAH K. MCKISSICK, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1022 MDA 2012

Appeal from the Judgment of Sentence entered February 13, 2012,
in the Court of Common Pleas of Snyder County,
Criminal Division, at No(s): CP-55-CR-0000344-2010

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, and ALLEN, JJ.

MEMORANDUM BY ALLEN, J.: Filed: January 4, 2013

Deborah K. McKissick ("Appellant") appeals from the judgment of sentence imposed following her convictions of theft by unlawful taking, receiving stolen property, and unauthorized use of an automobile.[1] We affirm.

We have gleaned the following facts from our review of the record. In 2010, Appellant was a paralegal at a law office handling Shelly Walter's bankruptcy petition. Ms. Walter's car, a Ford 150 pickup truck, was scheduled to be repossessed by GMAC, its lienholder. Appellant instructed Ms. Walter to leave her keys inside the truck, so it could be voluntarily

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[1] 18 Pa.C.S.A. §§ 3921(a), 3925(a), and 3928, respectively.

surrendered to GMAC. Appellant then went to Ms. Walter's home while she was at a court hearing, and took possession of Ms. Walter's truck for Appellant's personal use. Appellant never made arrangements for GMAC to repossess Ms. Walter's vehicle. Instead, Appellant began making payments on Ms. Walter's vehicle. When Ms. Walter learned that the truck registration was renewed, she became suspicious. Ms. Walter contacted law enforcement, and their investigation led to Appellant being charged with the above-referenced offenses.

Prior to Appellant's trial, a jury array was convened, and five potential jurors appeared wearing traditional Amish/Mennonite clothing. The five prospective jurors indicated that their religious beliefs barred them from serving on juries because they would not sit in judgment of their fellow man. The trial court dismissed the five Amish/Mennonite jurors prior to any formal *voir dire* by Appellant's counsel or the Commonwealth, and the case proceeded to trial.

On December 19, 2011, the jury convicted Appellant of theft by unlawful taking, receiving stolen property, and unauthorized use of an automobile. On February 13, 2012, the trial conducted a sentencing hearing, and assigned Appellant a record score of five, instead of Appellant's requested score of four. The trial court determined that Appellant's convictions for theft by unlawful taking and receiving stolen property merged, and sentenced Appellant to 12 to 24 months of incarceration, followed by 36 months of probation. The trial court made the foregoing

sentence consecutive to Appellant's sentence of 3 to 12 months for her conviction of unauthorized use of an automobile. Further, Appellant's minimum aggregate sentence was reduced to 11¼ months because the trial court determined that Appellant was eligible for the Recidivism Risk Reduction Initiative.

On February 23, 2012, Appellant filed timely post-sentence motions requesting a judgment of acquittal and challenging the sufficiency of the evidence supporting her convictions. Appellant also assigned error to the trial court for its dismissal of the five prospective Amish/Mennonite jurors, and for miscalculating Appellant's prior record score. On May 10, 2012, the trial court denied Appellant's post-sentence motions. Appellant filed a timely notice of appeal. Both the trial court and Appellant have complied with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

> I. Whether the court should enter a judgment of acquittal on Counts 1 and 3 of the information because the Commonwealth's evidence is legally insufficient to sustain the jury's guilty verdicts on those counts?
>
> II. Whether the Appellant is entitled to a new trial on the basis that the court erred by excusing five jurors based on their religious faith without allowing defense counsel to conduct *voir dire* of those jurors to determine whether they should have been excused for cause thereby denying Appellant a representative cross-section of persons on her jury panel?
>
> III. Whether the court erred in calculating Appellant's prior record score thereby rendering the sentenced imposed illegal?

Appellant's Brief at 8.

With regard to Appellant's first issue, we recognize:

> A motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge.
>
> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. *Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.* The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Abed, 989 A.2d 23, 26-27 (Pa. Super. 2010) (internal citation omitted) (emphasis in original).

As to Appellant's request for a new trial because the trial court dismissed five potential Amish/Mennonite jurors, we note that:

> [O]ur standard of review when faced with an appeal from the trial court's denial of a motion for a new trial is whether the trial court clearly and palpably committed an error of law that controlled the outcome of the case or constituted an abuse of discretion. In examining the evidence in the light most favorable to the verdict winner, to reverse the trial court, we must

> conclude that the verdict would change if another trial were granted.

Schmidt v. Boardman, 958 A.2d 498 (Pa. Super. 2008), *affirmed,* 11 A.3d 924 (Pa. 2011) (internal citations omitted).

Moreover:

> The test for determining whether a prospective juror should be disqualified is whether he is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the basis of answers to questions and demeanor.... It must be determined whether any biases or prejudices can be put aside on proper instruction of the court....[]... The decision on whether to disqualify [a juror] is within the discretion of the trial court and will not be reversed in the absence of a palpable abuse of discretion....

Commonwealth v. Wilson, 672 A.2d 293, 299 (Pa. 1996) ***citing Commonwealth v. Colson,*** 490 A.2d 811, 818 (Pa. 1985).

Appellant's last issue challenges the trial court's calculation of her prior record score. "A challenge to the calculation of the Sentencing Guidelines raises a question of the discretionary aspects of a defendant's sentence." ***Commonwealth v. Johnson,*** 758 A.2d 1214, 1216 (Pa. Super. 2000) (internal citation omitted). "When a defendant raises an issue that implicates the discretionary aspects of his sentence, the defendant must petition this Court for permission to appeal and demonstrate that there is a substantial question that the sentence imposed was not appropriate under the Sentencing Code." ***Id. referencing*** 42 Pa.C.S.A. §9781(b); and ***Commonwealth v. Tuladziecki*****,** 522 A.2d 17 (Pa. 1987). Here, Appellant has not filed a Pa.R.A.P. 2119(f) statement petitioning this Court for

permission to appeal her sentence, and showing that there is a substantial question that her sentence was improper. However, since the Commonwealth did not object to the absence of Appellant's Pa.R.A.P. 2119(f) statement, we may reach the issue of whether Appellant has raised a "substantial question" regarding the appropriateness of her sentence. ***See generally Commonwealth v. Gould,*** 912 A.2d 869 (Pa. Super. 2006). We have previously determined that "[a] claim that the sentencing court misapplied the Sentencing Guidelines presents a substantial question." ***Johnson, supra,*** at 1216 (internal citation omitted).

Mindful of the foregoing standards of review, we carefully examined the record and found Appellant's issues on appeal to be without merit. The Honorable Louise O. Knight, sitting as the trial court, has filed a comprehensive opinion, which we adopt and incorporate as our own. In her May 10, 2012 opinion, Judge Knight ably addressed Appellant's challenges to the sufficiency of the evidence, the dismissal of the five potential jurors, and the calculation of Appellant's prior record score. We therefore adopt the trial court's May 10, 2012 opinion as our own, and affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
	:	OF THE 17TH JUDICIAL DISTRICT
-vs-	:	OF PENNSYLVANIA
	:	SNYDER COUNTY BRANCH
DEBORAH K. McKISSICK,	:	CRIMINAL DIVISION
Defendant	:	NO. CP-55-CR-0344-2010

OPINION

Knight, S.J. – May 10, 2012

1. Background and Procedural History.

Before the Court is Defendant's timely filed Post-Sentence Motion. The Motion contains a Motion for Judgment of Acquittal on Counts 1 and 3 of the Information based on insufficiency of the evidence; a Motion for New Trial based on President Judge Michael H. Sholley's denial of the Defendant's challenge to the jury array; and a Motion to Modify Sentence based on an erroneous calculation of the Defendant's prior record score.

The Defendant was originally charged in a four count Information as follows: Count 1 – theft by unlawful taking, violation 18 Pa.C.S.A. §3921(a)(1); Count 2 – theft by deception, violation 18 Pa.C.S.A. §3922(a)1); Count 3 – receiving stolen property, violation 18 Pa.C.S.A.§3925(a); and Count 4 – unauthorized use of an automobile, violation 18 Pa.C.S.A. §3928. Her case was scheduled for jury selection on October 20, 2011. At the time of jury selection the presiding judge, Michael H. Sholley, summarily dismissed five of

the prospective jurors based on their affiliation with the Amish/Mennonite faith and on their stated position that because of their religious beliefs they could not sit in judgment upon "their fellow man" and could not serve as jurors without violating their religious beliefs. Upon learning of the dismissal the Defendant made a motion to the Court challenging the jury array. The motion was denied by Judge Sholley on December 6, 2011 in a written Order.

The Defendant proceeded to trial on December 19, 2011 before the undersigned judge. After presentation of the Commonwealth's case the Court granted a motion for judgment of acquittal on Count 2. The jury convicted the Defendant of the remaining 3 counts.

The Defendant was sentenced on February 13, 2012. Prior to imposition of sentence the Defendant challenged the calculation of her prior record score, contending that it should have been a "4" instead of a "5." The Court accepted the Probation Office's calculation of a "5", and sentenced the Defendant within the standard range of the sentencing guidelines. Thus, on Count 4 the Defendant was given a sentence of 3 to 12 months in a State Correctional Institution, and on Count 1, she was sentenced to 12 to 24 months in a State Correctional Institution, with 36 months of probation to follow. The sentence on Count 1 was consecutive to the sentence on Count 4. No sentence was imposed on Count 2 because it merged for sentencing purposes with Count 1. The Court additionally made the Defendant eligible for the Recidivism Risk Reduction Initiative (RRRI), which reduced her aggregate minimum sentence to 11-1/4 months.

For the reasons to follow we will deny Defendant's Post-Trial Motion.

2. Discussion.

2.1. The Motion for Judgment of Acquittal on Counts 1 and 3.

The Defendant was charged with theft of a Ford 150 pickup truck from an individual named Shelly Walter. The essential elements of the offense of "theft by unlawful taking" are that a defendant unlawfully takes, or exercises unlawful control over, movable property of another with the intent to deprive the owner of that property. 18 Pa. C.S.A.§3921(a). Defendant contends that the evidence failed to establish that she "intended to deprive the owner" of her vehicle. At most, she argues, she used the vehicle without the owner's consent.

The evidence showed that in the spring of 2010 the Defendant was working as a paralegal for an attorney named Elliott Weiss in Williamsport, PA. Attorney Weiss had been retained by Shelly Walter, of Selinsgrove, Pennsylvania, to file a bankruptcy petition. As part of the bankruptcy proceeding Ms. Walter agreed to surrender to GMAC a Ford 150 truck covered by a security agreement with GMAC. The Defendant had been in touch with Ms. Walter by phone at least two times to discuss the bankruptcy matters. On April 6, 2010 the Defendant, acting on behalf of Attorney Weiss, instructed Ms. Walter to leave her keys in the ignition so that GMAC could arrange for the repossession company to pick up the truck. However, the Defendant never notified the finance company to pick up the truck. On April 7, 2010 while Ms. Walter was at her bankruptcy hearing the Defendant went to Ms. Walter's house and took the truck out of the driveway. She then pretended to be the

truck owner – Ms. Walter – and began making payments to GMAC. At no time did the Defendant have Ms. Walter's permission or that of GMAC to "step into" Ms. Walter's shoes.

In June Ms. Walter received a new registration for the truck, which alerted her that something was wrong since she had not renewed the registration and assumed the truck was back in the hands of GMAC. She contacted GMAC and found it had no record of repossession of the truck. Ms. Walter then contacted the Selinsgrove Borough Police Department. Officer Mark Wolfberg initiated an investigation, which led to the Weiss firm and the name of the Defendant as an employee who had dealt with Ms. Walter. Upon learning from the Weiss firm that the Defendant no longer worked there, he requested the Defendant's phone number from the firm and called the Defendant on June 10, 2010. On the phone the Defendant told Wolfberg that as far as she knew the truck had been repossessed. A short time later on the same day the Defendant called Wolfberg back, apologized several times for lying, and admitted she had had the truck since April. She said that Ms. Walter and she had an agreement by which the Defendant would be taking over the truck payments. The Defendant additionally stated the truck was at a garage. Wolfberg advised her to bring the truck into the police station that day. The Defendant responded that she would bring the truck to the police on June 11. The next day the Defendant failed to appear with the truck.

On June 20, 2010 State Trooper Daniel Young called Officer Wolfberg to report that the truck had been found in Bruce Henry Park, a few blocks from

the Defendant's residence. The State Police took possession of the vehicle. Wolfberg, accompanied by another officer, went to the Defendant's residence with an arrest warrant. The Defendant was not present but her 15-year-old daughter was there. The officers asked her to get her mother on the phone. Upon reaching the Defendant the police requested her to return home. The Defendant refused, stating she would not come back and would not meet the police anywhere else, for that matter. When told that she must return, the Defendant stated, "I'm not coming back. If you want me, find me." When the police advised her that she would be entered in the data base as a fugitive, the Defendant responded, "Go ahead." The Defendant was later taken into custody.

Against these facts we set forth the standard for a sufficiency of the evidence challenge.

> Our well-settled standard of review when evaluating a challenge to the sufficiency of the evidence mandates that we assess the evidence and all reasonable inferences drawn therefrom in the light most favorable to the verdict-winner. *Commonwealth v. Salamone,* 897 A.2d 1209, 1213 (Pa.Super. 2006) (citation omitted). We must determine whether there is sufficient evidence to enable the fact finder to have found every element of the crime beyond a reasonable doubt. *Commonwealth v. Clark,* 895 A.2d 633, 634 (Pa.Super. 2006) (citation omitted).
>
> In applying the above test, we may not weigh the evidence and substitute our judgment for that of the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of

> fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Kerry, 906 A.2d 1237, 1240 (Pa.Super. 2006).

We find the evidence was clearly sufficient to show the Defendant's intent to deprive the owner of the truck. To begin, the Defendant never had the permission of either Ms. Walter or GMAC to take the truck. She fraudulently assumed Ms. Walter's identity and made payments on the truck without her knowledge. She lied to the police about the location of the truck. She promised to return the vehicle, and then failed to do so. Moreover, she evaded arrest.

The case facts are similar to those in *Commonwealth v. Rippy*, 732 A.2d 1216, 1223 (Pa. Super. 1223). In *Rippy* the defendant was charged with theft of a motor vehicle. The defendant contended he took the car from the victim but intended to return it. In analyzing the element of "intent to deprive the owner," even though the defendant had told the vehicle owners he would return the vehicle, the Superior Court focused on the fact that the defendant lied to police about the vehicle's location and concluded that "...where a defendant lies about the location of missing property, it may be inferred that he intended to deprive the owners of the property." *Id.* Additionally, in this case the

Defendant's avoidance of the police and refusal to submit to arrest is also relevant as to her consciousness of guilt. In conjunction with the other evidence of the Defendant's stealthfulness, it may be inferred that she acted to permanently deprive Ms. Walter of her truck. *Commonwealth v. Coyle*, 203 A.2d 782, 789 (Pa. 1964).

The Defendant argues that because the evidence failed to establish that the truck in this case was "stolen," as compared to "used without consent," there can be no conviction on Count 3 - receiving stolen property. Suffice it to say, since we have concluded that there was more than enough evidence to support the Defendant's conviction on the theft offense, we similarly conclude that there was sufficient evidence to prove the truck was stolen property.

2.2. Motion for New Trial.

The Defendant contends she is entitled to a new trial because Judge Sholley denied her motion challenging the jury array. Judge Sholley excused form the jury panel five prospective jurors based on their Amish or Mennonite faith without allowing the Defendant to voir dire the prospective jurors to determine whether they should have been excused for cause.

The Defendant relies upon 42 Pa. C.S.A. §4501 which sets forth the Commonwealth's Declaration of Policy regarding the right of all persons entitled to a jury trial having the right to jurors selected at random. The Policy includes a provision stating: "(3) A citizen shall not be excluded from service as a juror on the basis of race, color, religion, sex, national origin or economic

status." Admittedly, as well, there is no statutory exemption from jury duty by reason of one's religious beliefs. 42 Pa. C.S.A. §4503(A).

In its brief the Commonwealth refers to *Commonwealth v. Koehler*, 36 A. 3d 121, 143 (Pa. 2012), which states in pertinent part:

> The test for determining whether a prospective juror should be disqualified is whether he is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the basis of answers to questions and demeanor." *Commonwealth v. Cox*, 603 Pa. 223, 983 A.2d 666, 682 (2009) (citing *144 *Commonwealth v. Wilson*, 543 Pa. 429, 672 A.2d 293, 299 (1996)). The decision of whether to disqualify a juror is within the discretion of the trial court and will not be reversed in the absence of an abuse of discretion. *Id.*

Judge Sholley wrote in his Order denying Defendant's Motion, a copy of which is attached hereto, that when the particular prospective jurors were questioned by the tipstaff, all agreed that their religious faith as Amish/Mennonite prohibited them from sitting in judgment on their fellow man and that they could not serve as jurors without violating their religious/moral beliefs. Moreover as noted in footnote 7 of the Commonwealth's brief, Snyder County is heavily populated by persons of the Amish and Mennonite faith, who are easily distinguishable based on their attire and about whom it is well known that it is an article of their faith not to be involved service as a juror. John Hostetler, a renowned expert during his

lifetime on the Amish and Mennonite societies,[1] wrote in his book – Amish Society:

> The Amish do not resort to courts of law to settle disputes among themselves or with outsiders. They are admonished to suffer injustices rather than instigate lawsuits or defend themselves in court. They are forbidden to take an oath, serve on juries, or collect debts by using the courts.
>
> Emphasis added.
>
> Hostetler, John, Amish Society, John Hopkins University Press, 1993, at 256.

We know, as well, from our many years of experience as a trial judge well that when actually subject to voir dire, the Amish and Mennonites routinely request to be excused as jurors because of their religious beliefs. We have always granted such requests. While technically speaking, the five excused prospective jurors should have been held for the voir dire process, we see no error in Judge Sholley's exercise of his discretion to excuse them in advance.

2.3. The Motion to Modify Sentence.

The Defendant contends our sentence was illegal because we did not calculate her prior record score as a "4", instead of a "5." Defendant argues that because she challenged the score, it was the Commonwealth's burden to present evidence to overcome her objections. She cites two cases in support of her position.

[1] Professor Hostetler served as a key expert witness for the Amish at the trial court level in the famous case of *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which exempted the Amish (and Mennonites) from compulsory education beyond the 8th grade.

We do not find the two cases cited by Defendant precisely to support her argument of a burden of proof on the Commonwealth. In *Commonwealth v. Maleno*, 502 A.2d 617 (Pa Super. 1985), the Superior Court found that the trial court erred by utilizing precisely the burden of proof the Defendant urges upon us. Citing *Commonwealth v. Charles*, 488 A.2d 1126 (1985), the Superior Court wrote:

> ...the pronouncement of the court as to the Commonwealth's burden of proof runs counter to our holding in *Commonwealth v. Charles,* 339 Pa.Super. 284, 488 A.2d 1126 (1985), that:
>
> > "... the defense has the burden of alleging invalid prior convictions, and that if the allegations appear to have merit, the court ordinarily should inquire into the circumstances surrounding the convictions. If the allegations warrant it, the court should require the production of evidence by the Commonwealth showing the validity of the convictions. If the defendant fails to prove to the satisfaction of the court that the inference of constitutional adjudications is wrong, the court may infer that a presentence report showing convictions is accurate, and proceed on that basis."
>
> *Maleno,* 502 A.2d at 618 – 619.

42 Pa. C.S.A. §9737 requires the Court to obtain a criminal history of the defendant, normally from the county probation department. The information provided by that department is presumed to be accurate, and may be accepted by the Court as such "until proven otherwise." 502 A.2d at 619. According to *Maleno*, the key is that the Court is not required automatically to reject the presentence report information in the face of a challenge from the defendant merely because it is not rebutted by the Commonwealth. The Court at the threshold has the discretion to determine if the defendant's challenge has

merit. If not, then no rebuttal by the Commonwealth is required. In the present case, the Court accepted the probation department calculation and was unwilling to accept the Defendant's challenge without some further proof, which the Defendant never provided, and which the Defendant has now admitted does not exist because the records have been destroyed.[2] Defendant's Motion at paragraph 18, page 6.

Similarly. the second case cited by the Defendant, *Commonwealth v. Kerstetter*, 580 A.2d 1134 (Pa. Super. 1990), does not purport to say what the Defendant claims. In *Kerstetter* the defendant argued that the sentencing court relied upon an inaccurate presentence report. At the sentencing hearing the defendant had made numerous objections to statements in the report.[3] The Court imposed its sentence without indicating its finding in regard to the objections. The Superior Court stated, "...the sentencing court should make a determination of which version it accepts as facts." In the Defendant's case we made it clear that we accepted the prior record score calculation of the probation department. We were unwilling at sentencing to give credence to the Defendant's claim without record proof, which the Defendant was then unable to provide, and which, it turns out, she would never have been able to provide. because the records have been destroyed.

Notwithstanding the calculation of the prior record score, we agree with the Commonwealth that the Defendant's argument about the prior record score

[2] The Defendant admits she cannot produce a record because it has been destroyed, yet seeks to penalize the Commonwealth for not producing the same nonexistent record..

[3] None of the challenges were to the accuracy of the prior record score.

is of no moment because in giving the Defendant a minimum sentence of 12 months, we sentenced her in the standard range sentence of the sentencing guidelines for either prior record score. With a score of 5 the standard range is 12 to 18 months; with a score of 4, it is 9 to 16 months. Given her prior criminal history, which includes multiple offenses involving stealth and deception akin to the present offense, a standard range sentence was extremely lenient.[4] Moreover, contrary to Defendant's contention, she was not "entitled" to a sentence of intermediate punishment. She has experienced the full menu of dispositions available in our criminal justice system to no effect. Confinement in a state correctional institution was the appropriate place of confinement, and is appropriate under the sentencing guidelines even if we had awarded her a prior record score of "4." A prior record score of "4" would have made the Defendant a Level 3 offender. With a score of "5" she is a Level 4 offender. With either Level, "total confinement in a state facility" is within the Guidelines. Compare 204 Pa. Code § 303.11(b)(3)(Level 3 offenders) with 204 Pa. Code Section § 303.11(b)(5)(Level 4 offenders). Also see the Basic Sentencing Matrix at 24 Pa. Code Section 303.16, showing an SCI to be within the "place of confinement" guidelines for either a Level 3 or Level 4 offender.

[4] The presentence report shows that the Defendant has multiple convictions for bad checks and theft, and a felony conviction for forgery. Her prior case dispositions have included Rule 586 settlements, ARD, fines, probation, county imprisonment and intermediate punishment.

3. Conclusion.

For the reasons stated, the Defendant's Post-Sentence Motion will be denied.

BY THE COURT:

Knight, S.J.

Copies to: Hon. Michael H. Sholley, P.J.
Hon. Michael T. Hudock, J.
Hon. Harold F. Woelfel, Jr., P.J.
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