NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. MICHAEL ANTONIO LOPES, JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1192 MDA 2012

Appeal from the Judgment of Sentence June 7, 2012
In the Court of Common Pleas of Centre County
Criminal Division at No(s): CP-14-CR-0002097-2009

BEFORE: MUNDY, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.: Filed: February 6, 2013

Appellant, Michael Antonio Lopes, Jr., appeals from the June 7, 2012 judgment of sentence recommitting him to the balance of his aggregate maximum sentence, 16 months and 52 days incarceration, following revocation of his parole. After careful review, we affirm.

From our review of the certified record, we summarize the pertinent facts and procedural history of this case as follows. On January 21, 2010, Appellant entered a negotiated plea to one count each of driving under the influence (DUI), resisting arrest, and disorderly conduct.[1] On the same

---

* Retired Senior Judge assigned to the Superior Court.

[1] 75 Pa.C.S.A. § 3802(a)(1), 18 Pa.C.S.A. §§ 5104, and 5503(a)(4), respectively.

date, the Court of Common Pleas of Centre County sentenced Appellant at count one DUI to a term of incarceration of 72 hours to six months; at count two resisting arrest to a term of incarceration of five days to 12 months consecutive to count one; and at count three disorderly conduct to one year probation consecutive to count two.[2] The trial court gave Appellant credit for eight days' time served and issued a separate order approving Appellant's parole and setting forth various special conditions. Subsequently, Appellant's supervision was transferred to Beaver County.

On February 11, 2011, Appellant was arrested in Beaver County for DUI, and fleeing and eluding a police officer. Appellant pled guilty to the charges on May 25, 2011. On November 22, 2011, the trial court issued a bench warrant to arrest Appellant for violating conditions of his parole. Appellant was transferred to the Centre County correctional facility on May 30, 2012. Thereafter, on June 7, 2012, a revocation hearing was held, at which Appellant, through his counsel, admitted to the alleged parole violations. N.T., 6/7/12, at 3-4. Appellant argued, however, that his original sentence should not be considered aggregated and that revocation of the parole for count one DUI was improper.[3] ***Id.*** at 4. The trial court

---

[2] Appellant was also sentenced to pay a $200.00 fine for summary violation of driving while operating privileges are suspended, 75 Pa.C.S.A. § 1501 (a).

[3] Aggregation of consecutive sentences has been defined as follows.

(Footnote Continued Next Page)

deemed Appellant's original consecutive incarceration sentences to be aggregated and revoked Appellant's parole accordingly. The trial court recommitted Appellant on count one DUI for a period of five months and 27 days, and on count two resisting arrest for a consecutive period of 11 months and 25 days.

Appellant filed a post-sentence motion/petition for reconsideration of parole revocation and sentencing, averring the trial court erred in revoking Appellant's parole at count one since the violation occurred after the expiration of that parole. The trial court held a hearing on Appellant's motion on June 26, 2012. At the conclusion of the hearing, the trial court denied Appellant's motion. N.T., 6/26/12, at 16. This timely appeal followed.[4]

Appellant raises the following issues on appeal.

> I. Did the Revocation Court err in implicitly finding that [A]ppellant's sentences for Count 1,

(Footnote Continued) ––––––––––––––––––––

> Aggregation of sentences is simply the combining of multiple consecutive sentences of total confinement and treating them as if they were a single sentence. The minimum sentences are added together to arrive at an aggregated minimum sentence while the maximum sentences are added together to arrive at an aggregated maximum sentence.

12 West's Pa. Prac., Law of Probation and Parole § 4:9 (2012-2013 ed.), ***see Jamieson v. Pennsylvania Board of Probation and Parole***, 478 A.2d 152 (1984); ***Commonwealth v. Harris***, 620 A.2d 1175, 1179 (Pa. Super. 1993), appeal denied 645 A.2d 1115 (Pa. 1993); 42 Pa.C.S.A. § 9757.

[4] Appellant and the trial court have complied with Pa.R.A.P. 1925.

> Driving Under the Influence, and Count 2, Resisting Arrest, were aggregated, when at the time of the original Sentencing Hearing, [A]ppellant was sentenced to time served as his minimum sentences on both counts with immediate parole and paroled from the Bench without objection from the Centre County District Attorney's Office?
>
> II. Did the Revocation Court err in revoking [A]ppellant's parole on Count 1, Driving Under the Influence, at a Parole Revocation Hearing held on June 7, 2012, when the maximum term of parole was completed on July 18, 2010?
>
> III. Did the Revocation Court err in revoking [A]ppellant's parole on Count 2, Resisting Arrest, at a Parole Revocation Hearing held on June 7, 2012, when the maximum term of parole was completed on January 16, 2011?

Appellant's Brief at 7.

When asked to address a trial court's decision to revoke an appellant's parole, we are mindful of the following principles guiding our review.

> [T]he purposes of a court's parole-revocation hearing—the revocation court's tasks—are to determine whether the parolee violated parole and, if so, whether parole remains a viable means of rehabilitating the defendant and deterring future antisocial conduct, or whether revocation, and thus recommitment, are in order. The Commonwealth must prove the violation by a preponderance of the evidence and, once it does so, the decision to revoke parole is a matter for the court's discretion. In the exercise of that discretion, a conviction for a new crime is a legally sufficient basis to revoke parole.
>
> Following parole revocation and recommitment, the proper issue on appeal is whether the revocation court erred, as a matter of law, in deciding to revoke parole and, therefore, to recommit the defendant to confinement.

> Accordingly, an appeal of a parole revocation is not an appeal of the discretionary aspects of sentence.

Commonwealth v. Kalichak, 943 A.2d 285, 290-291 (Pa. Super. 2008) (citations omitted).

In his first issue, Appellant argues that, although imposed consecutively, his January 21, 2010 sentences for count one DUI and count two resisting arrest were not aggregated, since the trial court "[o]rdered immediate parole on both counts, and did **not** [o]rder that the paroles run consecutively." Appellant's Brief at 19 (emphasis in original). Notwithstanding the foregoing statement, Appellant concedes that the January 21, 2010 sentence for count two was ordered to run consecutively to the sentence imposed for count one. ***Id.*** Appellant asserts, "[e]ven though the sentence on count 2 was imposed consecutively to count 1, aggregation did not apply because immediate parole on both counts from the [b]ench was [o]rdered." ***Id.***

The trial court responds that aggregation of consecutive sentences is mandatory under 42 Pa.C.S.A. § 9757. Trial Court Opinion, 8/15/12, at 3, *citing* ***Commonwealth v. Ford-Bey***, 590 A.2d 782, 783 (Pa. Super. 1991). Section 9757 provides as follows.

> Whenever the court determines that a sentence should be served consecutively to one being then imposed by the court, or to one previously imposed, the court shall indicate the minimum sentence to be served for the total of all offenses with respect to which sentence is imposed. Such minimum sentence

> shall not exceed one-half of the maximum sentence imposed.

42 Pa.C.S.A. § 9757. "This statute mandates automatic aggregation of sentences once a trial court imposes a consecutive sentence." ***Commonwealth v. Allshouse***, 33 A.3d 31, 35 (Pa. Super. 2011), *citing* ***Ford-Bey***, ***supra***, *appeal denied*, 49 A.3d 441 (Pa. 2012). Accordingly, the trial court, having found Appellant's admitted violation occurred prior to the expiration of his aggregate parole term, revoked Appellant's parole and recommitted him on both counts one and two. Upon review, we agree.

Nevertheless, based on his analysis of the history behind the enactment of section 9757, Appellant maintains that the purpose of aggregating consecutive sentences is to "eliminate multiple parole applications from one defendant." Appellant's Brief at 16. Since this policy consideration is not implicated in a situation where a defendant is paroled at sentencing due to credit for time served, Appellant urges this court to recognize "an exception to the mandatory sentence aggregation," and determine the trial court erred "in an application of law in implicitly aggregating these two sentences." ***Id.*** at 18, 19. Appellant avers "[p]arole is not a sentence, and there was no basis for these two periods of parole to be aggregated." ***Id.*** at 19. We disagree.

Appellant's argument misconstrues the record and misinterprets the law. It is clear from the record that the trial court understood the sentences were aggregated. By order dated January 21, 2010 and filed January 22,

2010, the trial court approved Appellant's release on parole based on the total of eight days' time served, making no distinction between the counts. Appellant's proposed exception would directly contradict section 9757 by creating one aggregated minimum sentence and two non-aggregated maximum sentences. Therefore, Appellant's first issue is devoid of merit.

Appellant's next two issues challenge the trial court's jurisdiction to revoke Appellant's parole on the ground his alleged violation occurred after the expiration date for Appellant's parole. Appellant's Brief at 20. Appellant claims his parole on count one expired on July 18, 2010 and his parole on count two expired on January 16, 2011, notwithstanding the trial court "imposed this sentence consecutively to [c]ount [one]." ***Id.*** at 20, 21. Here, Appellant reasserts his contention that the parole on his sentences ought not be considered aggregated. Additionally, Appellant contends, without citation to authority, that his parole periods should not be considered consecutive. As we have disposed of Appellant's argument in the preceding discussion of his first issue, we conclude Appellant's second and third issues are similarly devoid of merit.

In light of the foregoing, we conclude the trial court committed no legal error in recognizing Appellant's consecutive parole as aggregated. Nor do we discern any abuse of discretion by the trial court in revoking Appellant's parole and recommitting him on both counts one and two. Accordingly, we affirm Appellant's June 7, 2012 judgment of sentence.

Judgment of sentence affirmed.