

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

SHAWN CHRISTIAN MURRAY

Appellant

No. 80 MDA 2014

Appeal from the Judgment of Sentence December 18, 2013
In the Court of Common Pleas of Franklin County
Criminal Division at No(s): CP-28-CR-0001694-2009

BEFORE: LAZARUS, J., STABILE, J., and MUSMANNNO, J.

JUDGMENT ORDER BY LAZARUS, J.:

FILED JUNE 24, 2014

Shawn Christian Murray appeals from the judgment of sentence imposed by the Court of Common Pleas of Franklin County following revocation of his probation. After careful review, we vacate and remand for resentencing.

The trial court summarized the relevant facts as follows:

On January 7, 2010, . . . Shawn Murray pled guilty to one count of terroristic threats. He was sentenced on the same day by the Honorable Richard J. Walsh to six to twelve months' in the Franklin County Jail followed by thirty-six months' probation. [Murray] was granted credit for time served and was to be paroled at the expiration of his minimum sentence. On March 16, 2011, [Murray] was found to be in violation of the terms of his January 7, 2010 sentence, and was resentenced by Judge Walsh to six to twelve months' in the Franklin County Jail followed by thirty-six months' probation. [Murray] was again granted credit for time served. On October 3, 2012, before the Honorable Douglas W. Herman, [Murray] was found to be in violation of the terms of his sentence once again, yet sentencing was deferred pending the resolution of his new DUI charge.

After the disposition of his DUI charge, on December 18, 2013, [Murray] was resentenced by the Honorable John Walker, Senior Judge, to nine to sixty months in a State Correctional Institution to be served at the expiration of his DUI sentence.

Trial Court Opinion, 2/26/14, at 1.

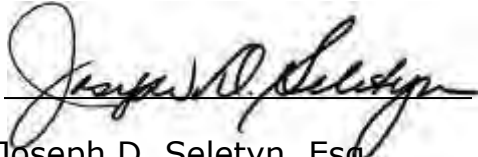
Terroristic threats, 18 Pa.C.S. § 2706, is a misdemeanor of the first degree, and accordingly, the maximum legal sentence is five years' incarceration. **See** 18 Pa.C.S. § 1104(1). A defendant is entitled to credit for time served where the sentence imposed following revocation of probation, when combined with time already served, exceeds the maximum sentence the defendant could have originally received. **See Commonwealth v. Williams**, 662 A.2d 658 (Pa. Super. 1995). "As long as the new sentence imposed does not exceed the statutory maximum when factoring in the incarcerated time served, the sentence is not illegal." **Commonwealth v. Crump**, 995 A.2d 1280, 1284 (Pa. Super. 2010). Here, imposition of the maximum sentence without credit for all prior incarcerations for the January 7, 2010 conviction for terroristic threats constitutes an illegal sentence, which we are compelled to vacate.

Judgment of sentence vacated. Case remanded for proceedings consistent with this memorandum. Jurisdiction relinquished.¹

¹ In her Pa.R.A.P. 1925(a) opinion, the Honorable Carol L. Van Horn recognizes that Murray's sentence was illegal and requests that this Court remand for resentencing.

J-S37006-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/24/2014