NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. BOB POPE Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 291 MDA 2012

Appeal from the Judgment of Sentence January 9, 2012
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0001507-2003

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

MEMORANDUM BY PANELLA, J.: **FILED MAY 06, 2013**

Appellant, Bob Pope appeals from the judgment of sentence entered on January 9, 2012, in the Court of Common Pleas of Dauphin County, following the revocation his probation and re-sentencing after remand in accordance with this Court's order of October 6, 2011. Additionally, Pope's court-appointed counsel, Andrea L. Haynes, Esquire, has petitioned to withdraw and has submitted an ***Anders***[1] brief in support thereof, contending that Pope's appeal is frivolous. After careful review, we grant Attorney Haynes's petition to withdraw as counsel and we affirm Pope's judgment of sentence.

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[1] ***Anders v. California***, 386 U.S. 738 (1967).

A panel of this Court previously summarized the early procedural history of this case in Pope's direct appeal from his amended judgment of sentence.

> On November 3, 2003, [Pope] entered a plea of *nolo contendere* to two counts each of criminal solicitation to commit rape, statutory sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, indecent exposure, and corruption of minors, as well as to one count of criminal use of a communication facility.
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> On March 11, 2004, he was sentenced to two to four years of imprisonment, followed by five years of probation. At the conclusion of the sentencing hearing, Pope was advised of his post-sentencing rights. Pope did not file a direct appeal.
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> On August 29, 2005, Pope file a petition for relief under the Post Conviction Relief Act ("PCRA"). On May 23, 2007, the amended petition was denied in part and granted it [sic] in part. The court granted the petition as it pertained to an illegal sentence based on improper merge of some of the counts, and vacated the sentences as those counts.
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> On August 1, 2007, Pope was re-sentenced to the original sentence of two to four years of imprisonment, followed by five years of probation. On August 8, 2007, Pope filed a timely post-sentence motion. The order denying the motion was not entered by the prothonotary until March 7, 2008. [A] timely appeal followed.

Commonwealth v. Pope, 599 MDA 2008, at 2-3 (Pa. Super., filed April 3, 2009) (footnotes omitted). This Court affirmed the judgment of sentence. On January 12, 2009, Pope faced a revocation hearing at which the trial court determined Pope was not in violation of his probation.

On January 19, 2011, Pope again faced revocation proceedings. After a hearing, the trial court resentenced Pope to an aggregate period of 24 to 48 months' incarceration followed by 168 months' probation. Pope did not file a motion to modify sentence. Pope filed a notice of appeal on February 8, 2011. Counsel filed a statement of intent to file an ***Anders*** brief in lieu of a concise statement of matters on February 24, 2011.

This Court, by way of a memorandum opinion filed on October 6, 2011, denied counsel's petition to withdraw finding the sentence imposed by the trial court to be "facially illegal". ***Commonwealth v. Pope***, 289 MDA 2011, at 10 (Pa. Super., filed October 6, 2011). Specifically, this Court determined that, "the trial court, when sentencing [Pope] on January 19, 2011, mistakenly referenced the vacated March 11, 2004 sentencing order as containing the extant sentence instead of the August 1, 2007 sentencing" and, as such, "the trial court sentenced [Pope] to counts previously determined to have merged." ***See id***., at 5. To correct the error, this Court vacated Pope's judgment of sentence and remanded for re-sentencing.

Upon remand, Pope appeared before the Honorable Richard Lewis[2] for re-sentencing. At that time, Pope made an oral motion to proceed *pro se*, which, after a lengthy colloquy by the trial court, was granted. At the re-sentencing hearing, the Commonwealth merged Counts 3, 4, 9, 10, 11, 12,

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[2] Judge Lewis was assigned to the case after Judge Jeanne Turgeon recused upon a request by Pope.

13, and 14 into Count 1 after which, Pope was resentenced to concurrent terms of 24 to 48 months' imprisonment on Counts 7 and 8. Pope was not re-sentenced on Count 15. This timely appeal followed.

Preliminarily, we note that Attorney Haynes has petitioned to withdraw and has submitted an ***Anders*** brief in support thereof contending that Pope's appeal is frivolous. The Pennsylvania Supreme Court has articulated the procedure to be followed when court-appointed counsel seeks to withdraw from representing an appellant on direct appeal:

> [I]n the ***Anders*** brief that accompanies court-appointed counsel's petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel arguably believes supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Commonwealth v. Santiago, 602 Pa. 159, 178-79, 978 A.2d 349, 361 (2009).

We note that Attorney Haynes has complied with all of the requirements of ***Anders*** as articulated in ***Santiago***.[3] We will now proceed

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[3] Additionally, Attorney Haynes confirms that she sent a copy of the ***Anders*** brief to Pope as well as a letter explaining to Pope that he has the right to proceed *pro se* or the right to retain new counsel. A copy of the letter is appended to Attorney Haynes's petition, as required by this Court's decision
(Footnote Continued Next Page)

to examine the issues set forth in the ***Anders*** brief, which Pope believes to be of arguable merit.

In his ***Anders*** brief, Pope raises the following issues:

> I. WHETHER THE TRIAL COURT ERRED WHEN IT INCREASED APPELLANT'S SENTENCE ON COUNT 1 FROM 12-24 MONTHS TO 24-48 MONTHS IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSE?
>
> II. WHETHER THE TRIAL COURT ERRED WHEN [sic] SENTENCED APPELLANT TO 120 MONTHS PROBATION ON COUNTS 7 AND 8 IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSE?
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> III. WHETHER THE TRIAL COURT ERRED IN INCREASING THE SENTENCE ON COUNTS 2, 5, 6, AND 15 IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSE?
>
> IV. WHETHER THE TRIAL COURT ERRED IN FAILING TO MERGE COUNTS 7 AND 8 INTO COUNTS 5 AND 6 WHERE THE CHARGES ARE DERIVED FROM THE SAME SET OF FACTS AND CIRCUMSTANCES?
>
> V. WHETHER THE TRIAL COURT ERRED IN REVOKING APPELLANT'S SENTENCE WHERE THE SUPERIOR COURT CONCLUDED THAT APPELLANT'S AUGUST 1, 2007, SENTENCING ORDER WAS THE EXTANT ORDER AT THE TIME OF APPELLANT'S REVOCATION, AND WHERE THAT ORDER DID NOT CONTAIN ANY OF THE CONDITIONS WHICH APPELLANT WAS FOUND TO HAVE VIOLATED.

Anders Brief, at 4.

(Footnote Continued) ———————————

in ***Commonwealth v. Millisock***, 873 A.2d 748 (Pa. Super. 2005), in which we held that "to facilitate appellate review, … counsel *must* attach as an exhibit to the petition to withdraw filed with this Court a copy of the letter sent to counsel's client giving notice of the client's rights." ***Id***., at 749 (emphasis in original).

After examining the issue contained in the ***Anders*** brief and after undertaking our own independent review of the record, we concur with counsel's assessment that the appeal is wholly frivolous.

Furthermore, we are confident that the trial court ably and methodically reviewed all the evidence and considered all of the relevant factors in re-sentencing Pope upon remand. In its thorough and well-written opinion filed pursuant to Pa.R.A.P. 1925(a), the trial court addresses all of issues Pope raised herein on appeal and aptly disposes of same. We can find no error in the sentence or in the court's rationale. Accordingly, we affirm based on that opinion. ***See*** Trial Court Opinion, 6/12/12, at 1-9.

Judgment of sentence affirmed. Petition to withdraw as counsel granted.

Judgment Entered.

Mary A. Stroyell

Deputy Prothonotary

Date: 5/6/2013

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
V. :
:
BOB POPE : NO. 1507 CR 2003
: 291 MDA 2012

MEMORANDUM OPINION

Appellant, Bob Pope, appeals the judgment of sentence entered by this Court on January 9, 2012 upon revocation of his probation. In his Notice of Appeal, Appellant asserts that the sentence imposed on January 9, 2012 by this Court is illegal within the statutes and laws of the Commonwealth of Pennsylvania. In the Notice of Appeal, Appellant also requested that counsel be appointed to his case but specified that "said counsel be assigned pro bono, as the Petitioner has filed and been granted a motion for ineffectiveness of counsel against the Dauphin County Public Defenders [*sic*] Office.[1]"

[1] With respect to this issue, a "motion for ineffectiveness of counsel" had not been granted, rather, Appellant was granted leave to proceed *pro se*. (N.T. 1/9/12, Sentencing at 4-10). However, to address Appellant's request for appointment of counsel, the Superior Court issued an Order dated April 18, 2012 requiring that, within 30 days of the date of the Order, this Court determine whether Appellant is entitled to appointment of counsel and if so, appoint counsel to represent him. Upon review of Appellant's request for counsel, it was determined that an ineffectiveness of counsel claim with respect to the Dauphin County Public Defender's Office was being improperly raised on direct appeal. A hearing was held on May 10, 2012, at which time representatives from the Public Defenders Office and the Dauphin County District Attorney's Office were present, where it was explained to Appellant that an ineffectiveness of counsel claim may not be raised on direct appeal rather, must be raised in a claim under the Post-Conviction Relief Act (PCRA). Additionally, it was explained to Appellant which of the other issues that he is raising may be pursued on direct appeal, which may be pursued under the PCRA, and which may be pursued by way of either procedure. It was also explained that if Appellant desires appointed counsel for pursuit of his direct appeal he would be represented by Dauphin County Public Defender's Office, who cannot raise the ineffectiveness issue against itself. Therefore, Appellant would have to wait to pursue his ineffectiveness of counsel claim, at another time, under a PCRA Petition. The other alternative presented to Appellant was that he could withdraw his direct appeal and forego his right to pursue any appeal issues he has raised which may not be raised in a PCRA Petition, file a PCRA Petition which may include the ineffectiveness of counsel issue, and be appointed counsel who is not a Dauphin County Public Defender to represent him on the PCRA Petition. As Appellant was not prepared to make his choice at the time of the hearing, the Public Defender agreed to present his options in letter-form. By letter dated May 11, 2012, Appellant notified this Court of his choice to accept representation by the Dauphin County Public Defender's Office and pursue his direct appeal. By Order dated May 23, 2012, this Court granted Appellant's request for appointment of counsel.

For the reasons set forth below this Court finds that the sentence imposed in its January 9, 2012 Order is not illegal. This opinion is written pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On November 3, 2003, Appellant entered a plea of *nolo contendere* on two counts each of criminal solicitation[3] to commit rape,[4] statutory sexual assault,[5] involuntary deviate sexual intercourse,[6] aggravated indecent assault,[7] indecent assault,[8] indecent exposure,[9] and corruption of minors,[10] and one count of criminal use of a communication facility.[11] On March 11, 2004, Appellant was sentenced to two (2) to four (4) years imprisonment, followed by five (5) years of probation. Appellant later filed a petition for relief under the Post Conviction Relief Act (PCRA)[12] on August 29, 2005. The PCRA Petition was denied in part and granted in part as it pertained to an illegal sentence based on improper merger of some of the counts, and an Order was issued vacating the sentences as to those counts. As a result of the PCRA hearing and decision, on August 1, 2007, Appellant was resentenced to the original sentence of two (2) to four (4) years of imprisonment, followed by five (5) years of probation. A timely post-sentence motion was filed and subsequently denied. The Superior Court affirmed the judgment of

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[2] The early procedural background was summarized in the Superior Court memorandum *Commonwealth v. Pope*, 974 A.2d 1189 (Pa. Super. 2009) (unpublished memorandum) and repeated in the unpublished memorandum issued on October 6, 2011 which remanded the matter to this Court.

[3] 18 Pa.C.S.A. § 902.

[4] 18 Pa.C.S.A. § 3121(a)(1).

[5] 18 Pa.C.S.A. § 3122.1.

[6] 18 Pa.C.S.A. § 3123(a)(1).

[7] 18 Pa.C.S.A. § 3125(1).

[8] 18 Pa.C.S.A. § 3126(a)(1).

[9] 18 Pa.C.S.A. § 3127.

[10] 18 Pa.C.S.A. § 6301(a)(1).

[11] 18 Pa.C.S.A. § 7512(a).

[12] 42 Pa.C.S.A. § 9541.

ence on April 3, 2009. *Commonwealth v. Pope*, 974 A.2d 1189 (Pa. Super. 2009) published memorandum).

Appellant appeared before the Honorable Judge Jeanine Turgeon of this Court for a ocation hearing on January 19, 2011. Judge Turgeon found that Appellant had violated his bation and re-sentenced him on that date to an aggregate term of incarceration of 24 to 48 nths followed by 168 months of probation. Appellant appealed Judge Turgeon's January 19, 11 judgment of sentence. In reviewing the appeal, the Superior Court *sua sponte* reviewed the ntenced imposed by Judge Turgeon as it had determined that it was facially illegal. The perior Court concluded that Judge Turgeon had mistakenly referred to the original March 4, 04 sentencing Order which had been vacated by the PCRA Order, rather than the extant ugust 1, 2007 Order, and had sentenced Appellant to counts previously determined to have erged. (*See* Oct. 6, 2011 unpublished Superior Court memorandum, p. 5). The Superior Court acated the judgment of sentence and remanded the case for resentencing in conformity with the ugust 1, 2007 sentencing Order.

Appellant appeared before Judge Turgeon again on November 22, 2011, at which time he equested that the Court recuse itself from the case. (Notes of Testimony of Sentencing 1/9/12,[13] t 3-4). Judge Turgeon granted Appellant's request. (*Id.*) Appellant then appeared before this Court on January 9, 2012 for re-sentencing. At that time, Appellant made an oral Motion to proceed *pro se* which, after lengthy colloquy by the Court, was granted. (N.T 1/9/12, Sentencing, at 5-10).

[13] Hereinafter "N.T, 1/9/12, Sentencing."

Based upon review of the October 6, 2011 Superior Court memorandum and Appellant's record, the Commonwealth had agreed that counts 3, 4, 9, 10, 11, 12, 13 and 14 merge into nt 1. (N.T. 1/9/12, Sentencing, at 4). This Court re-sentenced Appellant to 24 to 48 months rceration in a state correctional institution on counts 1, 2, 5 and 6, to run concurrently owed by 120 months of probation on counts 7 and 8, to run concurrently with each other and secutively with Count 1. (N.T. 1/9/12, Sentencing, at 20-21).

On February 7, 2012, Appellant filed a Notice of Appeal to the Pennsylvania Superior urt and on February 24, 2012, this Court entered an Order which directed the appellant to file Statement of Matters Complained of on Appeal within twenty one (21) days from the date of e Order. Additionally, the Order directed the appellant to provide a brief within twenty one 1) days of the filing of the statement of matters and thereafter, the Commonwealth was irected to file a response within twenty one (21) days. The appellant filed his Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) on March 9, 2012. As of the writing of this opinion, neither party has submitted a brief.

DISCUSSION

Appellant's Notice of Appeal claims that this Court's January 9, 2012 sentencing Order is illegal. In support of his claim, Appellant asserts eight (8) issues in his Concise Statement of Errors Complained of on Appeal.[14]

[4]Although improperly asserted on direct appeal as they are not related to the January 9, 2012 Order which is on ppeal, we note that Issues 6, 7, and 8 have already been resolved. Issue 6 relates to Appellant's request for ppointment of counsel which was addressed by this Court's May 23, 2012 Order discussed in footnote 1, *supra.* ssue 7 relates to Appellant's request for transcripts which was addressed by this Court's March 22, 2012 Order. ssue 8 relating to Appellant's claim that the Court erred by ordering him to file a Statement of Errors Complained f on Appeal is resolved by pointing to the Court's authority to issue such an order found in Pa.R.A.P. 1925(b).

An illegal sentence is one that exceeds the statutory limits. *Commonwealth v. Archer*, 722 A.2d 203, 209 (Pa. Super. 1998) *citing* *Commonwealth v. Ellis*, 700 A.2d 948, 958 (Pa. Super. 1997). "It is well established that a sentencing court can impose a sentence that is the maximum period authorized by statute." *Commonwealth v. Saranchak*, 544 Pa. 158, 176, 675 A.2d 268, 277(Pa. 1995); 42 Pa.C.S.A. § 9756(a). Pennsylvania Courts have established the principle that "the term 'illegal sentence' is a term of art that our Courts apply narrowly, to a relatively small class of cases." *Commonwealth v. Berry*, 877 A.2d 479, 483 (Pa. Super. 2005). This class of cases includes: (1) claims that the sentence fell "outside of the legal parameters prescribed by the applicable statute"; (2) claims involving merger/double jeopardy; and (3) claims implicating the rule in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). *See* *Commonwealth v. Jacobs*, 900 A.2d 368, 372-373 (Pa. Super. 2006) (citations omitted). These claims implicate the fundamental legal authority of the court to impose the sentence that it did. *Id.*

The Supreme Court of Pennsylvania has very recently reiterated the principle that that the revocation of probation places a defendant in the same position he was in at the time of the original sentencing. *Commonwealth v. Mazzetti*, 2012 Pa. LEXIS 1311 (Pa. Supreme Court, June 4, 2012) *citing* *Commonwealth v. Wallace*, 582 Pa. 234, 870 A.2d 838 (Pa. 2005). Thus, upon revocation of probation, the sentencing court has all of the alternatives available at the time of the initial sentencing. See 42 Pa.C.S. § 9771(b); *Wallace*, 870 A.2d at 842-43.

The double jeopardy clause breaks down into three general rules which preclude a second trial or a second punishment for the same offense: (1) retrial for the same offense after acquittal; (2) retrial for the same offense after conviction; (3) multiple punishments for the same offense at one trial. The judiciary views these rules as expressions of self-evident moral precepts: It is

wrong to retry a man for a crime of which he previously has been found innocent, wrong to harass him with vexatious prosecution, and wrong to punish him twice for the same offense. Commonwealth v. Mills, 286 A.2d 638, 641 (Pa. 1971). A defendant who violates the conditions of his parole and/or probation is placed in the same position that he was in at the time of the original conviction. The sentencing court has the statutory authority to resentence a defendant to a term of total confinement as punishment for the violations, and such punishment will not constitute a "second punishment" for the same offense. Commonwealth v. Mysnyk, 527 A.2d 1055, 1058 (Pa. Super. 1987) (internal citations omitted). See 42 Pa.C.S. § 9721(a), § 9771(b) and (c); *see also* Commonwealth v. Pierce, 497 Pa. 437, 441 A.2d 1218 (1982) and Commonwealth v. Hunter, 321 Pa.Super. 333, 468 A.2d 505 (1983).

Appellant's first issue on appeal claims that the Court erred when it increased the sentence on Count 1 from 12-24 months to 24-48 months, [*sic*] a violation of the Double Jeopardy Clause. This Court finds that Appellant's claim of error is without merit.

As the Superior Court pointed out, the extant sentencing order applicable in this case was entered on August 1, 2007. That Order provides for a sentence of "24 to 48 months at a state correctional institution with a consecutive 60 months probation." (*See* 10/6/11 Superior Court memorandum, p. 6). Appellant was re-sentenced by this Court, at Count One, to "a sentence of state incarceration for a term of not less than 24 months nor more than 48 months" to run concurrently with Counts Two, Five and Six. (N.T. 1/9/12, Sentencing at 20-21). Further, the sentence which was imposed at Count One when Appellant initially pled no contest in 2003 provided for 24 to 48 months incarceration in a state correctional institution. (*See* 10/6/11 Superior Court memorandum, p. 6 *citing* N.T. 3/11/04, Sentencing, at 16-18, 19, C.R. at 74). This Court did not increase Appellant's sentence at Count One as claimed by Appellant. As this

Court had all the sentencing alternatives available at the original sentencing, it committed no error by imposing the sentence provided in the August 1, 2007 Order and no double jeopardy principles are implicated.

Next, Appellant argues that the Court erred when it sentenced him to 120 months probation on Counts 7 and 8, [*sic*] a violation of the Double Jeopardy Clause. On Counts 7 and 8, Appellant was charged with criminal solicitation to commit aggravated indecent assault which is graded as a second degree felony. (*See* 10/6/11 Superior Court memorandum, p. 2; N.T., 1/9/12, Sentencing, at 2; 18 Pa.C.S. § 902; 18 Pa.C.S. § 3125). A court may sentence a person convicted of a second degree felony for a term of imprisonment of not more than ten years. 42 Pa.C.S. § 1103. This Court finds that no error was committed in the re-sentencing applied to Counts 7 and 8, which sentences run concurrently with each other and consecutively with Counts 1, 2, 5, and 6, as they are within the parameters of statutory limits for a felony of the second degree. Once again, no double jeopardy issues are implicated by this argument.

Appellant also contends that the Court erred when it increased the sentence on Counts 2, 5, 6 and 15, when no other counts merged into them, [*sic*] a violation of the Double Jeopardy Clause. With respect to Counts 2, 5, and 6, as stated above, the Appellant was sentenced to state incarceration for a term of not less than 24 months nor more than 48 months to run concurrently. (N.T., 1/9/12, Sentencing at 20-21). Review of the August 1, 2007 sentencing order again shows that these sentences have not changed. In fact, the August 1, 2007 sentencing order also provides for a consecutive 5 years probation at each count which was not imposed by this Court. (*See* 10/6/11 Superior Court memorandum, p. 6). With respect to Count 15, in the August 1, 2007 sentencing order Appellant was sentenced to 9 to 48 months incarceration with a consecutive 36 months probation. (*Id.*) The record for the January 9, 2012 resentencing hearing

indicates that although Appellant had appeared for revocation hearings subsequent to his original sentencing on March 11, 2004, that particular Count was not subject to resentencing. (N.T., 1/9/12, Sentencing, at 2-3). Therefore, this Court finds that Appellant's claim of error is without merit because no sentence was imposed at Count 15 in the January 9, 2012 Order.

Appellant's fourth claim of error on appeal is that the Court erred when it failed to merge Counts 7 and 8 into Counts 5 and 6, even though the exact same information was used to substantiate these charges, [*sic*] the counts therefore should have merged. The issue of merger was addressed in Appellant's PCRA Petition which resulted in the August 1, 2007 sentencing Order that the Superior Court determined to be the extant Order to be applied when this matter was remanded. The August 1, 2007 Order was appealed to the Superior Court and affirmed. (*See* 10/6/11 Superior Court memorandum, p.8; *Commonwealth v. Pope*, 974 A.2d 1189 (Pa. Super. 2008) (unpublished memorandum). This issue was never before this Court.

Appellant's next argument essentially claims that this Court was not permitted to sentence him because the "Superior Court decision number 289 MDA 2011,[15] states that, [']We are constrained to vacate the judgement [*sic*] of sentence and remand for resentencing in recognition that the August 1, 2007 sentencing order was the extant order at the time of the appellants [*sic*] revocation[']." Appellant cites to 42 Pa. C.S. § 9754[16] and 42 Pa. C.S. § 9771[17] to argue that since his "purported technical violations were not in [the August 1, 2007] court order, the defendant did not violate his probation."

A revocation hearing was held before Judge Turgeon in which she found that Appellant had violated his probation. (*See* 10/6/11 Superior Court memorandum, p.10 *citing* N.T. 1/19/11,

[15] 10/6/11 Superior Court unpublished memorandum.
[16] 42 Pa.C.S. § 9754 "Order of probation."
[17] 42 Pa.C.S. § 9771 "Modification or revocation of order of probation."

Revocation, at 36-37; N.T. 1/9/12, Sentencing, at 3-4). The issue was argued by Appellant again before this Court during the sentencing hearing, at which time the Court explained to him that the issues of any probation violations and the finding that his probation should be revoked had already been ruled on by Judge Turgeon and the Superior Court, and therefore, the Court was proceeding to sentencing. (N.T. 1/9/12, Sentencing, at 18).

This Court finds that Appellant's claims of error are without merit as the sentence imposed on January 9, 2012 is not illegal.

Memorandum Opinion dated June 11, 2012

RICHARD A. LEWIS, JUDGE

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