NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. HERBERT COTTRELL Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3245 EDA 2012

Appeal from the Judgment of Sentence October 24, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0007017-2009;
CP-51-CR-0008301-2009; CP-51-CR-0408251-2005

BEFORE: GANTMAN, J., OLSON, J., and WECHT, J.

MEMORANDUM BY GANTMAN, J.: **FILED DECEMBER 10, 2013**

Appellant, Herbert Cottrell, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following revocation of his probation. We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises the following issues for our review:

> WAS NOT THE EVIDENCE INSUFFICIENT AS A MATTER OF LAW TO ESTABLISH A TECHNICAL VIOLATION OF PROBATION, WHERE[,] AT THE TIME OF HIS VIOLATION HEARING, APPELLANT HAD BEEN OUT OF CUSTODY FOR ONLY SIX MONTHS, AND DURING THAT TIME PERIOD HE HAD COMPLIED WITH DRUG TREATMENT, WAS ATTENDING GED CLASSES, HAD OBTAINED A FORKLIFT OPERATOR CERTIFICATE, AND THE COMMONWEALTH

> FAILED TO PRESENT ANY EVIDENCE THAT HE HAD FAILED TO COMPLY WITH ANY OF HIS PROBATIONARY CONDITIONS?
>
> DID NOT THE [TRIAL] COURT ERR AS A MATTER OF LAW IN SENTENCING APPELLANT TO A MANIFESTLY EXCESSIVE SENTENCE OF 2 TO 4 [YEARS'] INCARCERATION FOR A TECHNICAL VIOLATION OF PROBATION[,] WHERE APPELLANT HAD NOT BEEN CONVICTED OF ANY NEW CRIME, THE RECORD DID NOT DEMONSTRATE ANY LIKELIHOOD THAT APPELLANT WOULD COMMIT A NEW CRIME IF NOT INCARCERATED, INCARCERATION WAS NOT ESSENTIAL TO VINDICATE THE AUTHORITY OF THE COURT, AND THE SENTENCE IMPOSED FAR SURPASSED WHAT WAS REQUIRED TO PROTECT THE PUBLIC OR FOSTER APPELLANT'S REHABILITATION?

(Appellant's Brief at 3).

When reviewing the outcome of a revocation hearing, this Court is limited to determining the validity of the proceeding and the legality of the judgment of sentence imposed. ***Commonwealth v. Heilman***, 876 A.2d 1021 (Pa.Super. 2005). Notwithstanding the stated scope of review suggesting only the legality of a sentence is reviewable, an appellant may also challenge the discretionary aspects of a sentence imposed following revocation. ***Commonwealth v. Sierra***, 752 A.2d 910 (Pa.Super. 2000). ***See also Commonwealth v. Cappellini***, 690 A.2d 1220 (Pa.Super. 1997) (addressing discretionary aspects of sentence imposed following revocation of probation).

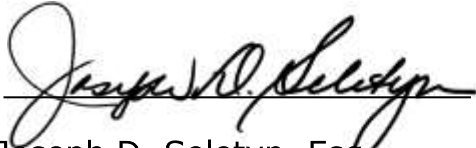
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Genece E. Brinkley, we conclude Appellant's issues merit no relief. The trial court

opinion comprehensively discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion, dated April 18, 2013, at 5-12) (finding: **(1)** Appellant failed to earn his GED, failed to seek and maintain employment, failed to stay drug free, and failed to stay out of trouble since his first appearance before court in 2005; Appellant's failure to accomplish terms and conditions of his sentence over past seven years indicates inability to reform; probation was, therefore, not effective means to rehabilitate Appellant; Commonwealth established Appellant was in violation of probation/parole by preponderance of evidence; **(2)** Appellant properly raised and preserved his sentencing issues for appellate review; sentence was within statutory limits and was reasonable exercise of court's discretion in light of Appellant's criminal history, failure to comply with probation and house arrest, failure to get his GED, failure to find job, and failure to make sincere effort to rehabilitate himself while serving court's sentence; court properly considered factors pursuant to 42 Pa.C.S.A. § 9721 (protection of public, gravity of offense in relation to impact on victim and community, and defendant's rehabilitative needs); given Appellant's dreadful history on supervision, incarceration was appropriate means to vindicate court's authority). The record supports the trial court's decision; therefore, we see no reason to disturb it. Accordingly, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

*JUDGE OLSON CONCURS IN THE RESULT.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/10/2013

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH	:	**CP-51-CR-0408251-2005**
	:	**CP-51-CR-0008301-2009**
vs.		**CP-51-CR-0007017-2009**
	:	**SUPERIOR COURT**
HERBERT COTTRELL	:	**NO. 3245 EDA 2012**

RECEIVED
APR 18 2013
APPEALS/POST TRIAL

OPINION

BRINKLEY, J. **APRIL 18, 2013**

Defendant Herbert Cottrell appeared before this Court for a violation of probation hearing. This Court found him in technical violation, and as a result, terminated his parole and revoked his probation. He was sentenced to 2 to 4 years state incarceration plus 7 years reporting probation. Defendant appealed this judgment of sentence to the Superior Court and raised the following issues on appeal: (1) whether the evidence was sufficient to prove Defendant was in technical violation of his probation; and (2) whether the sentence imposed was manifestly excessive. This Court's judgment of sentence should be affirmed.

FACTS AND PROCEDURAL HISTORY

On December 4, 2004, Defendant was arrested and charged with retail theft. On June 6, 2005, he appeared before this Court and pled guilty to this crime. Pursuant to his negotiated plea agreement, this Court sentenced him to 3 to 23 months county incarceration plus 1 year reporting probation, with immediate parole.

CP-51-CR-0408251-2005 Comm. v. Cottrell, Herbert
Opinion

On October 25, 2006, Defendant was released on parole. He never reported to the Probation Department and was placed on wanted cards. On May 15, 2007, he was arrested in Philadelphia and charged with retail theft. This charge was later withdrawn. On July 21, 2007, he was arrested in Montgomery County and charged with retail theft. He pled guilty to this crime and was sentenced to 6 to 23 months county incarceration plus 3 years reporting probation. On August 2, 2007, Defendant was scheduled to appear before this Court for a violation hearing. However, he failed to appear and a bench warrant was issued.[1]

On January 30, 2008, Defendant was paroled from Montgomery County Prison. He failed to report to Philadelphia's Probation Department and on March 2, 2008 he was once again placed on wanted cards. On September 20, 2008, Defendant was arrested in Philadelphia and charged with retail theft (CP-51-CR-0008301-2009). On November 24, 2008, he was sent back to Montgomery County Prison based upon a violation of probation. He was released on parole on February 15, 2009 and yet again failed to report to Philadelphia's Probation Department. On May 12, 2009, he was arrested in Philadelphia and charged with retail theft (CP-51-CR-0007017-2009).

On October 22, 2009, Defendant appeared before this Court and pled guilty to the two new retail theft cases (CP-51-CR-0008301-2009 and CP-51-CR-0007017-2009). Pursuant to his negotiated plea, this Court sentenced him to 11 ½ to 23 month county incarceration plus 1 year reporting probation to run concurrent with any other sentence. Defendant was ordered to attend drug treatment, receive vocational training, seek and maintain employment, and stay out of trouble with the law.

That same day, this Court conducted a violation hearing. Based upon his new convictions, this Court found Defendant in direct violation, and as a result, terminated his parole

[1] This Court later learned that Defendant was incarcerated in Montgomery County prison on this date.

and revoked his probation. Defendant was sentenced to 11 ½ to 23 months county incarceration plus 5 years reporting probation, to run concurrent with any other sentence, with credit for time served if applicable. He was ordered to complete 90 days in the Options drug treatment program, receive vocational training, and pay fines, costs, and restitution at the rate of $25/month.

On September 23, 2011, Defendant was paroled first to a halfway house and then to Luzerne Treatment Center. In February 2012, he was referred to Minsec for drug treatment. On April 5, 2012, Defendant was arrested and charged with retail theft. This charge was later *nolle prossed.*

On October 24, 2012, Defendant appeared before this Court for his second violation hearing. First, this Court reviewed Defendant's criminal history since his first court appearance in 2005. Defendant's probation officer, Brittany Burgess, recommended a period of incarceration. (N.T. 10/24/12, p. 3-9).

Defense counsel argued that Defendant attended several drug treatment programs, had not tested positive for drugs, and had just started receiving outpatient drug treatment at Wedge Medical Center when he was arrested for retail theft in April 2012. He further argued that Defendant was reporting regularly to his probation officer, he was attending a GED program, and had earned a fork lift operator certificate from the OSHA re-entry program while living at the halfway house. Defense counsel argued that aside from Defendant's new arrest, which did not result in a direct violation, Defendant had been in compliance and recommended that this Court continue probation. Id. at 9-12.

Noel DeSantis, Esquire, on behalf of the Commonwealth, argued that Defendant had a history of ten retail theft convictions and that he committed additional retail thefts every time he

was released from custody. She argued that Defendant was not taking his county sentences seriously and recommended consecutive state sentences. Id. at 12-14.

Next, Defendant spoke on his own behalf. He stated that he was enrolled in drug treatment at Wedge and that he was trying to pay his fines and costs. He further stated that he was attending GED classes twice a week at Philadelphia FIGHT. Id. at 15-17.

This Court found Defendant in technical violation for failing to get his GED, not paying fines and costs, and failing to seek and maintain employment. In addition, he failed to produce any documentation verifying drug treatment at Wedge. This Court terminated his parole and revoked his probation on all three cases. On CP-51-CR-0408251-2005, this Court sentenced Defendant to 2 to 4 years state prison. On CP-51-CR-0007017-2009 and CP-51-CR-0008301-2009, this Court sentenced him to 7 years reporting probation, to run concurrent with one another but consecutive to his 2 to 4 year term of incarceration. This resulted in an aggregate sentence of 2 to 4 years state incarceration plus 7 years reporting probation.

On November 6, 2012, Defendant filed a Petition to Vacate and Reconsider Sentence. On November 26, 2012, Defendant filed a Notice of Appeal to Superior Court. On January 16, 2013, this Court ordered that defense counsel file a Concise Statement of Errors Complained of on Appeal Pursuant to Pa. R.A.P. 1925 and defense counsel did so on February 4, 2013.

ISSUES

I. **WHETHER THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THAT DEFENDANT WAS IN TECHNICAL VIOLATION OF HIS PROBATION.**

II. **WHETHER THE SENTENCE IMPOSED WAS MANIFESTLY EXCESSIVE FOR A TECHNICAL VIOLATION.**

DISCUSSION

I. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THAT DEFENDANT WAS IN TECHNICAL VIOLATION OF HIS PROBATION.

The evidence presented at the violation hearing was sufficient to establish that Defendant was in technical violation of his probation. Sentencing following a revocation of probation is vested within the discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. Commonwealth v. Fish, 2000 PA Super. 152, 752 A.2d 921, 923 (2000) (quoting Commonwealth v. Smith, 447 Pa. Super. 502, 669 A.2d 1008, 1011 (1996)). "An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will." Commonwealth v. Griffin, 2002 PA Super. 203, 804 A.2d 1, 7 (2002). Great weight must be given to the sentencing court's decision since the sentencing court is "in the best position to view defendant's character, displays of remorse, defiance or indifference, and overall effect and nature of the crime." Fish, 752 A.2d at 923. Therefore, when considering an appeal from a sentence imposed after the revocation of probation or parole, appellate review is limited to the determination of "the validity of the probation revocation proceedings and the authority of the sentencing court to consider the same sentencing alternatives it had at the time of the initial sentencing." Commonwealth v. MacGregor, 2006 PA Super 336, 912 A.2d 315 (Pa. Super. Ct. 2006) (citing 42 Pa.C.S. §9771(b); Commonwealth v. Gheen, 455 Pa. Super. 499, 688 A.2d 1206, 1207 (1997)).

In order to support a revocation of probation or parole, the Commonwealth must show by a preponderance of the evidence that a defendant violated his probation or parole. Commonwealth v. Shimonvich, 2004 PA Super. 340, 858 A.2d 132, 134 (2004) (citing

Commonwealth v. Smith, 368 Pa. Super. 354, 358, 543 A.2d 120, 122 (1987)). To prove a fact by the preponderance of the evidence, the Commonwealth must prove that the existence of the contested fact is more probable than its nonexistence. Commonwealth v. Scott, 2004 PA Super. 184, 850 A.2d 762, 764 (2004) (citing Commonwealth v. Del Conte, 277 Pa. Super. 296, 419 A.2d 780 (1980)).

A violation of probation hearing's main purpose is "to determine whether [probation] remains a viable means of rehabilitation..." Shimonvich, 858 A.2d at 136 (quoting Mitchell, 632 A.2d at 936-937). Parole and probation are intended to "provide a means to achieve rehabilitation without resorting to incarceration." Commonwealth v. Ballard, 2003 PA Super. 2, 814 A.2d 1242, 1245 (2003) (citing Del Conte, 419 A.2d at 780)). When deciding whether to revoke probation, the court must balance "the interests of society in preventing future criminal conduct by the defendant against the possibility of rehabilitating the defendant outside of prison." Id. Thus, "a probation violation is established whenever it is shown that the conduct of the probationer has indicated that probation has proven to be an ineffective vehicle to accomplish rehabilitation and not sufficient to deter against future antisocial conduct." Commonwealth v. Infante, 585 Pa. 408, 421, 888 A.2d 783, 791 (2005) (quoting Commonwealth v. Brown, 503 Pa. 514, 524, 469 A.2d 1371, 1376 (1983)). This encompasses both direct and technical violations. Technical violations "can support revocation and a sentence of incarceration when such violations are flagrant and indicate an inability to reform." Commonwealth v. Carver, 2007 PA Super. 122, 923 A.2d 495, 498 (2007).

In the case at bar, the Commonwealth established by the preponderance of the evidence that Defendant was in violation of his probation/parole. At the violation hearing, the Commonwealth argued that Defendant committed new retail thefts every time he was released

from custody, highlighting his history of ten retail theft convictions. Since Defendant's original appearance before this Court in 2005, he had failed to earn his GED, failed to seek and maintain employment, and had failed to stay drug free. In the **seven years** since his original appearance before this Court, Defendant failed to complete any of the conditions of his sentence. This Court explained on the record:

> I have given him numerous opportunities to try to get himself together. And each time he came out and he's not done what he's supposed to do. So he hasn't gotten a GED since 2005. He hasn't gotten a job since 2005 and even before that. He has not consistently maintained his sobriety throughout.
>
> So this sentence is to help him to finally get drug treatment. Obviously, the county system is not helping him. He's been to numerous programs in the county. It's not helping him. So this time, hopefully, the State system will help him with all of his issues.

(N.T. 10/24/12, p. 18). As stated above, a violation is established whenever the probationer's "conduct has indicated that probation has proven to be an ineffective vehicle to accomplish rehabilitation." Probation clearly was not serving as an effective means to rehabilitate Defendant since after **seven years** he still had not made any significant progress towards earning a GED, finding a steady job, maintaining his sobriety, or staying out of trouble with the law. Defendant's failure to accomplish any of the terms and conditions of his sentence over the past seven years clearly "indicat[ed] an inability to reform." Carver, 923 A.2d at 498. Accordingly, this Court properly found Defendant in technical violation of his probation/parole.

II. THIS COURT PROPERLY SENTENCED DEFENDANT TO 2 TO 4 YEARS STATE INCARCERATION PLUS 7 YEARS REPORTING PROBATION AFTER FINDING HIM IN TECHNICAL VIOLATION OF HIS PROBATION/PAROLE.

Under Pennsylvania law, sentencing is a "matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of

discretion." Commonwealth v. Ferguson, 2006 PA Super. 18, 893 A.2d 735, 739 (2006) (quoting Commonwealth v. Hyland, 2005 PA Super. 199, 875 A.2d 1175, 1184 (2005)). An abuse of discretion requires more than the showing of a mere error in judgment; rather, an appellant must demonstrate that the trial court was "manifestly unreasonable" or exercised judgment that was the result of "partiality, prejudice, bias, or ill-will." Commonwealth v. Griffin, 2002 PA Super. 203, 804 A.2d 1, 7 (2002).

It is well settled in Pennsylvania that there is no absolute right to appeal the discretionary aspects of a sentence. Commonwealth v. Mouzon, 571 Pa. 419, 425, 812 A.2d 617, 621 (2002). The decision of whether or not to make a sentence consecutive or concurrent is completely within the discretion of the sentencing court. Commonwealth v. Marts, 2005 PA Super. 418, 889 A.2d 608, 612 (citing Commonwealth v. Koren, 435 Pa. Super. 499, 646 A.2d 1205, 1208 (1994)). To challenge discretionary aspects of a sentence, the appellant must first raise that claim at the sentencing hearing or in post-sentencing motions. Pa. R.A.P. § 302; Commonwealth v. Dodge, 2004 PA Super. 338, 859 A.2d 771 (2004). Defendant properly raised these claims in his post-sentence motion. Next, the appellant must "set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence." Commonwealth v. Simpson, 2003 PA Super. 260, 829 A.2d 334, 336-337 (2003) (quoting Pa. R.A.P. 2119(f); Commonwealth v. Tuludziecki, 513 Pa. 508, 522 A.2d 17, 19 (1987)). Appellants must also demonstrate a substantial question by setting forth "a plausible argument that the sentence violates a particular provision of the Sentencing Code or is contrary to the fundamental norms underlying the sentencing process." Commonwealth v. Boyer, 2004 PA Super. 303, 856 A.2d 149, 152 (2004) (citing Commonwealth v. McNabb, 2003 PA Super. 57, 819 A.2d 54, 56 (2003)). Pennsylvania courts have held that "claims that a penalty is

excessive and/or disproportionate to the offense can raise substantial questions." Commonwealth v. Malovich, 2006 PA Super. 183, 903 A.2d 1247, 1253 (2006) (citing Commonwealth v. Parlante, 2003 PA Super. 169, 823 A.2d 927, 929 (2003)). Thus, Defendant has properly preserved his sentencing issues for appellate review.

Once probation or parole has been revoked, a sentence of total confinement may be imposed if any of the following conditions exist: the defendant has been convicted of another crime; the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or, such a sentence is essential to vindicate the authority of court. 42 Pa.C.S. § 9771(c); Commonwealth v. Coolbaugh, 2001 PA Super. 77, 770 A.2d 788, 792 (2001). In the case at bar, the sentence imposed was essential to vindicate the authority of the court. The record clearly demonstrated that county sentences and programs had not served to rehabilitate Defendant as he completely ignored this Court's orders and failed to accomplish a single thing this Court told him to do. Instead of using the past seven years while on county parole and probation to work on his rehabilitation, Defendant continued to commit retail thefts, absconded from supervision, and spent time incarcerated in Montgomery County. He never earned his GED and never found a job. Each time this Court gave Defendant the opportunity to avoid state prison and turn his life around through county programs, Defendant showed complete contempt for this Court's orders and continued to do what he wanted to do. He only enrolled in drug treatment and a GED course at the "eleventh hour" when he knew he had to appear before this Court for a violation hearing. As this Court stated at the violation hearing:

> Now, I have had him since 2005. I can look at that period of time as well as his history of not complying with what I said to do. So I understand your argument, but the bottom line is, he hasn't done anything he was supposed to do.

> And a lot of people do what he did. A lot of people, at the last minute, they try to get enrolled. They come in here—and they actually bring their paperwork though—they come in here and say, look, in the last two weeks, this is what I've done. I signed up for my GED. And then after that, I signed up for this and I signed up for that. A lot of people do that. That doesn't make them not in technical violation because they try to do something at the last minute.

(N.T. 10/24/12, p. 20-21). This Court further explained, "[T]his sentence is absolutely necessary to vindicate the authority of this Court and to help this defendant understand that he has to comply with every single term and condition of my sentence as well as whatever the State parole Board requires. And he has not complied with my sentence." (N.T. 10/24/12, p. 23-24). After more than seven years, it was abundantly clear to this Court that county probation/parole was not serving as a viable means to rehabilitate Defendant. Therefore, this Court properly sentenced Defendant to a term of total confinement in state prison and this sentence should be affirmed on appeal.

When considering an appeal from a sentence imposed after the revocation of probation or parole, appellate review is limited to the determination of "the validity of the probation revocation proceedings and the authority of the sentencing court to consider the same sentencing alternatives it had at the time of the initial sentencing." Commonwealth v. MacGregor, 2006 PA Super. 336, 2006 Pa. Super. LEXIS 4088, 3 (2006) (citing 42 Pa.C.S. § 9771(c)); Commonwealth v. Gheen, 455 Pa. Super. 499, 688 A.2d 1206, 1207 (1997)). The sentencing court is limited only by the maximum sentence it could have imposed at the time of the original sentencing. Id. Pursuant to 204 Pa. Code 303.1(b), sentencing guidelines do not apply to sentences imposed as a result of revocation of probation, intermediate punishment or parole.

"[W]hen a trial court imposes a sentence that is within the statutory limits, 'there is no abuse of discretion unless the sentence is manifestly excessive so as to inflict too severe a

punishment'." Mouzon, 812 A.2d at 624-625 (quoting Commonwealth v. Person, 450 Pa. 1, 297 A.2d 460 (1972)). In addition, a sentence will not be disturbed unless the appellate court determines that the sentence is "unreasonable." Reasonableness is determined by examining the four statutory factors set forth in 42 Pa. C.S.A. § 9781(d) as well as the general sentencing standards outlined in 42 Pa. C.S.A. § 9721(b). Commonwealth v. Walls, 592 Pa. 557, 571, 926 A.2d 957, 965 (2007). 42 Pa. C.S.A. § 9781(d) requires that the appellate court consider: "(1) [t]he nature and circumstances of the offense and the history and characteristics of the defendant; (2) the opportunity of the sentencing court to observe the defendant, including any presentence investigation; (3) the findings upon which the sentence was based; and (4) the guidelines promulgated by the commission." 42 Pa. C.S.A. § 9721(b) requires consideration of the protection of the public, the gravity of the offense in relation to the impact of the victim and the community and the rehabilitative needs of the defendant. There is no requirement that a sentencing court's imposition of sentence be the "minimum possible confinement." Walls, 592 Pa. at 571, 926 A.2d at 965.

In the case at bar, Defendant was sentenced to an aggregate sentence of 2 to 4 years state incarceration plus 7 years reporting probation. This sentence was within the statutory limits and was reasonable in light of all relevant factors. As stated above, the length of incarceration was solely within this Court's discretion and was limited only by the maximum sentence that could have been imposed at the original sentencing. Under Pennsylvania law, the maximum sentence for retail theft, a felony of the third degree, is 7 years, a $15,000 fine, or both. This sentence was well within the statutory limits and was a reasonable exercise of the Court's discretion in light of Defendant's criminal history, failure to comply with probation and house arrest, failure to get his

GED, failure to find a job, and utter failure to make any sincere effort to rehabilitate himself while serving this Court's sentence. After sentencing Defendant, this Court explained:

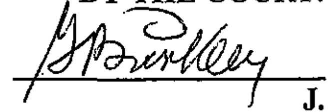
> I mean, I realize this last case didn't go, but he had three cases with me previously. He had one case in Montgomery County. So, obviously, whatever his drug-related issues are, they have not been resolved. And even when the State told him to do what he needed to do, he did just enough to stay out of trouble with them. But here he is and no better off than he was in 2005, just older. He's just an older drug addict. Hopefully, sir, you'll get yourself together this time.

(N.T. 10/24/12, p. 22-23). Furthermore, this Court properly considered the factors set forth in 42 Pa. C.S.A. § 9721: the protection of the public, the gravity of Defendant's offense in relation to the impact on the victim and the community, and his rehabilitative needs. Defendant's conduct demonstrated that he was not taking measures to become a productive member of society. His history indicated that he would likely commit further retail thefts. A term of state incarceration was the most appropriate sentence under the circumstances since county incarceration, county parole, county probation, and county drug treatment programs all had failed to rehabilitate Defendant. When making this determination, this Court considered all relevant information about this Defendant which was available to this Court. She reviewed Defendant's criminal history on the record, listened to recommendations by defense counsel and the Commonwealth, and heard what Defendant had to say on his own behalf. After taking all of this into consideration, this Court found it appropriate to sentence Defendant to a term of state incarceration. As stated above, there is no requirement that this Court impose the "minimum possible sentence." Rather, based upon Defendant's ongoing failure to take adequate measures to rehabilitate himself through various county programs, this Court found it appropriate to sentence Defendant to 2 to 4 years state incarceration plus 7 years reporting probation. Accordingly, this sentence should not be disturbed on appeal.

CONCLUSION

After review of the relevant case law, statutes, and testimony, this Court committed no error. This Court properly sentenced Defendant to 2 to 4 years state incarceration, plus 7 years reporting probation, after finding him to be in technical violation of his probation/parole. Accordingly, this Court's judgment of sentence should be affirmed.

BY THE COURT:



J.