NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ARNELL ALEXANDER COOK Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 488 WDA 2012

Appeal from the Judgment of Sentence February 16, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0016566-2010

BEFORE: BOWES, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY LAZARUS, J. Filed: March 15, 2013

Arnell Alexander Cook appeals from his revocation of probation sentence after the trial court determined he violated a no-contact order, a condition of his original sentence.[1] On appeal, Cook challenges the legality of his sentence. After careful review, we vacate and remand for resentencing.

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* Retired Senior Judge assigned to the Superior Court.

[1] The imposition of sentence following the revocation of probation is vested within the sound discretion of the trial court. We will not disturb the sentence absent an abuse of that discretion. ***Commonwealth v. Sierra***, 752 A.2d 910, 913 (Pa. Super. 2000). On appeal following the revocation of probation, our Court will consider challenges to both the legality of the final sentence and the discretionary aspects of an appellant's sentence. ***Commonwealth v. Ferguson***, 893 A.2d 735, 737 (Pa. Super. 2006).

In May 2011, Cook entered a guilty plea to aggravated assault of a police officer,[2] simple assault[3] and resisting arrest.[4] For the aggravated assault conviction, Cook was sentenced to 6-12 months in prison (with 147 days' credit) to be paroled within 48 hours, 24 months of probation for simple assault, and no further penalty for resisting arrest. In addition, a condition of Cook's simple assault sentence included him having no contact with the victim. Sentencing Order, 5/12/2011.

On February 16, 2012, the trial court held a ***Grazier***[5] hearing, after which the court determined that Cook had violated the no-contact condition of his original sentence. Specifically, the trial court determined that Cook violated the no-contact order by threatening the victim and his one-month old daughter in July 2011; when revoking his probation, the court noted that Cook had made no effort to rehabilitate himself. N.T. Probation Revocation Hearing, 2/16/2012, at 4; ***see Commonwealth v. Carver***, 923 A.2d 495 (Pa. Super. 2006) (focus of probation violation hearing is whether conduct of probationer indicates that probation has proven to be effective vehicle to

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[2] 18 Pa.C.S.A. § 2702(a)(3).

[3] 18 Pa.C.S.A. § 2701(a)(1).

[4] 18 Pa.C.S.A. § 5104.

[5] ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998).

accomplish rehabilitation and sufficient deterrent against future antisocial conduct).

Upon revoking his probation, the trial court sentenced Cook as follows: 1-2 years' imprisonment, 204 days' credit for aggravated assault, plus fees and costs, and no further penalty imposed on the simple assault or resisting arrest convictions. Order of Sentence for Probation Violation, 2/16/2012.

Cook claims that the trial court's sentence is illegal because when it revoked his probation, the court was limited to resentencing him on the simple assault charge. Instead, the court resentenced Cook on the aggravated assault conviction, which only included a condition of parole, not probation. Because this renders his sentence illegal, we must vacate and remand.

The options available to a trial court when faced with parole and probation violations are very distinct. Once a court revokes a defendant's *probation*, it has the same sentencing options available that existed at the time of the original sentencing. ***Commonwealth v. Ware***, 737 A.2d 251, 254 (Pa. Super. 1999) (citation omitted). By contrast, when a defendant violates his or her *parole*, the court is limited to ordering the defendant to serve the balance of his or her previously imposed sentence; the procedure is considered a recommittal, not a new sentence. ***Commonwealth v. Carter***, 485 A.2d 802, 805 n.2 (Pa. Super. 1984).

In her Pa.R.A.P. 1925(a) opinion, the trial court deems Cook's claim on appeal meritless, stating:

> It is clear from the record that this Court did not distinguish the counts or apply the probation to a different count than the original sentence. The written Sentencing Order which was prepared by this Court's staff, placed the probation on Count 2 of the information and was clearly a clerical error and not in compliance with the verbatim transcript of this Court's Order and this Court's intent.
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> At the revocation hearing, this Court similarly did not distinguish the counts or apply the revocation sentence to a specific count.
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> The transcripts of both hearings, read together, reflect this Court's intent that the probation and the revocation sentence be imposed at the same counts. An obvious clerical error in the written order does not make the sentence illegal.

Pa.R.A.P. 1925(a) Opinion, 9/11/2012, at 3-4.

While the trial judge may have intended the probation to apply to all counts of the sentence, her signed, written sentencing order clearly indicates otherwise. It is a "well-established principle that an appellate court will look only to the written judgment of sentence signed by the trial judge in considering the illegality of a sentence, and not to oral statements made by [her] in the process of passing sentence." ***Commonwealth v. Evans***, 385 A.2d 540, 542 (Pa. Super. 1978). ***See Commonwealth v. Kennedy***, 868 A.2d 582, 591-92 (Pa. Super. 2005) ("to determine [the] intention [of the sentencing judge,] the reviewing court limits itself to the language of the written judgment, despite oral statements of the sentencing judge not incorporated into it.").

Moreover, while it is well-settled that a trial court has the inherent, common-law authority to correct clear clerical errors in its orders, ***Commonwealth v. Quinlan***, 639 A.2d 1235 (Pa. Super. 1994), the error

must have been obvious and clear on its face to be subject to later correction. ***See Commonwealth v. Borrin***, 12 A.3d 466, 473-74 (Pa. Super. 2011) (only when trial court's intentions are clearly and unambiguously declared during sentencing hearing can there be "clear clerical error" on face of record amenable to later correction; if trial court's stated intentions during sentencing hearing are ambiguous, then terms in sentencing order control and trial court cannot correct its perceived mistake).

Based on the record, including reference to both the original sentencing and revocation hearing transcripts, we do not find that there is a clear clerical error on the face of the sentencing order. The court's oral sentence is, at best, vague with regard to the probation and parole conditions. In fact, as the Commonwealth points out in its brief, the court's on-the-record sentence "admits of two possible interpretations: the court imposed a split sentence of incarceration at count 1, Aggravated Assault, or that the court imposed a term of incarceration at that count and a separate term of probation at count 2, Simple Assault." Commonwealth's Brief, at 7. Accordingly, we may not permit the court's perceived error to trump our reliance on the docketed and signed written sentencing order. ***Borrin***, ***supra***.

Here, the written sentencing order, entered on the docket and signed by the trial judge, indicates that Cook's probationary sentence was attached to his simple assault conviction. However, in revoking Cook's probation, the

court resentenced him on his aggravated assault sentence. Because his aggravated assault sentence had a condition of parole, not probation attached to it, the court did not have the authority to resentence Cook on the aggravated assault conviction. ***Carter***, ***supra***. Thus, Cook's sentence is illegal and must be vacated. On remand, the court is instructed to resentence Cook to an appropriate revocation sentence,[6] in conformity with its original, written sentence.

Judgment of sentence vacated. Case remanded for resentencing. Jurisdiction relinquished.

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[6] Cook argues, in the alternative, that the court should immediately discharge him because he has fully served his sentence on the aggravated assault bill. We, however, do not find this to be the proper recourse where the trial court has the authority to enter a new sentencing order that conforms to its intention when it imposed the revocation sentence and which does not increase Cook's original 2011 aggregate sentence. ***See Commonwealth v. Adams***, 504 A.2d. 1264 (Pa. 1985) (en banc) (where trial court revoked defendant's probation and intended to impose revocation sentence on robbery bill, but improperly noted revocation sentence on expired aggravated assault bill, judge could correct order as long as correction did not result in increase in aggregate sentence); ***see also Commonwealth v. Thomas***, 280 A.2d 651 (Pa. Super. 1971) (modification sentence imposed on defendant which increases punishment constitutes further or double jeopardy).