

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

Vs. :

No. CR-120-2013

ALAINNA BUNCH,  
Defendant :

Brian Gazo, Esquire  
Carole Walbert, Esquire

Counsel for Plaintiff  
Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - January 11<sup>th</sup>, 2018

On October 19, 2017, this Court sentenced the Defendant, Alainna Bunch, (hereinafter "Bunch") to a period of incarceration in the Carbon County Correctional Facility of five (5) months to twelve (12) months for a probation violation of the original sentence imposed on May 22, 2014. On November 17, 2017, Bunch appealed that sentence. This Opinion is in response to that appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On October 14, 2012, Bunch was arrested and charged with violations of 18 Pa.C.S.A. § 908(a), Possession of a Prohibited Offensive Weapon, and 35 P.S. § 780-113(a)(16), Possession of a Controlled Substance. On May 22, 2014, Bunch entered a guilty

plea<sup>1</sup> to the Possession of a Prohibited Offensive Weapon charge and was immediately sentenced to one (1) year of probation and ordered to pay the court costs and costs of prosecution in an amount not less than Fifty Dollars (\$50.00) per month. As part of the "special provisions" of that sentence, Bunch was to also render fifty (50) hours of community service and be subject to the standard conditions of release adopted by the Court. On that same date, Bunch met with a representative of the Carbon County Adult Probation Office and executed a document entitled "Conditions of Supervision." Condition #3 of that document reads as follows: "You will refrain from the violation of all Municipal, County, State and Federal Criminal Statutes, as well as provisions of the Vehicle Code and Liquor Code. You must notify your probation/parole officer of any arrest, citation within seventy-two (72) hours of occurrence." Bunch executed this document on May 22, 2014.

While on suspension, Bunch was alleged to have committed various offenses of the Vehicle Code, including Driving Under the Influence of Alcohol or Controlled Substance, a violation of 75 Pa.C.S.A. § 3802(d). This was alleged to have occurred on March 15, 2015.

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<sup>1</sup> Bunch was originally placed on Accelerated Rehabilitation Disposition (ARD) for these charges on April 11, 2013 but was revoked on November 22, 2013 for various violations of that program.

On June 9, 2015, Adult Probation Officer Joseph Bettine filed a Petition for Revocation of Parole/Probation against Bunch. Bettine alleged that Bunch violated three (3) conditions of her supervision, namely: 1) that she was charged with DUI and related summary offenses; 2) that she failed to make a concerted effort to pay her court costs; and 3) that she did not complete her community service hours.

On June 22, 2015, Bunch waived her Gagnon I hearing. Her initial Gagnon II hearing was scheduled for September 25, 2015, but was continued due to the unresolved new charges. Similarly, the Gagnon II hearing was thereafter continued numerous times for the same reason. After Bunch was convicted on new charges, her Gagnon II hearing was scheduled for May 19, 2017, but it was continued to give her an opportunity to apply for a public defender. From that date forward, Bunch was assigned various public defenders<sup>2</sup> to represent her at the Gagnon II hearing.

On August 25, 2017, Bunch failed to appear for her Gagnon II hearing and subsequently a warrant was issued for her arrest. This warrant was eventually served on Bunch and thereafter she was

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<sup>2</sup> Bunch was initially assigned Attorney Adam Weaver. Due to a breakdown in the Attorney-Client relationship, Attorney Weaver was permitted to withdraw. Attorney Hollianne Snyder represented Bunch next; however, Attorney Snyder left the Public Defender's Office and Attorney Matthew Mottola was then assigned to represent Bunch. After representing Bunch at the Gagnon II hearing, Mottola, too, was forced to withdraw due to a breakdown in Bunch's relationship with a different Public Defender in the DUI case. The Court appointed Attorney Carole Walbert to represent Bunch for the purposes of this Appeal, which had previously been perfected by Attorney Mottola before his withdrawal.

incarcerated. On October 19, 2017, her Gagnon II hearing was held.

After hearing testimony and argument from both Bunch and the Commonwealth, this Court determined that the facts of the case warranted revocation of Bunch's probation. As a result, the Court then resentenced Bunch to a period of incarceration of five (5) months to twelve (12) months in the Carbon County Correctional Facility with credit for twenty-four (24) days served to that date. On November 17, 2017, an Appeal was filed on Bunch's behalf. Thereafter, on November 20, 2017, this Court directed Bunch to file her 1925(b) Statement of Matters Complained of on Appeal, which she did on December 11, 2017. In that Statement, Bunch alleged that: A) The Court failed to consider the extensive period of time that the Defendant served on Probation following Sentencing and during her period of ARD, which period of time should have been evaluated prior to imposition of a minimum 5 month sentence; B) The Court, in sentencing Defendant to incarceration, improperly considered 3 alleged probation violations when, in fact, the Commonwealth had withdrawn two of the alleged violations in the course of the Gagnon II proceedings; and C) the Sentence of incarceration was an abuse of discretion in that the alleged subsequent offense provided for minimal incarceration, the sentence of 5 - 12 months did not consider the considerable length of time that Defendant had already served on probation, and considered alleged violations that had been withdrawn, and did not

consider the Defendant's personal circumstances as presented at the hearing.

#### LEGAL DISCUSSION

When revoking a sentence of probation, "the sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing, due consideration being given to the time spent serving the order of probation." 42 Pa.C.S.A. § 9771(b). Section 9771(c)(1) further states that total confinement may be imposed if the Defendant has been convicted of another crime. In *Commonwealth v. Pasture*, 107 A.3d 21, 28-29 (Pa. 2014) (internal citations omitted), our Supreme Court has stated:

[A] trial court does not necessarily abuse its discretion in imposing a seemingly harsher post-revocation sentence where the defendant received a lenient sentence and then failed to adhere to the conditions imposed on him. In point of fact, where the revocation sentence was adequately considered and sufficiently explained on the record by the revocation judge, in light of the judge's experience with the defendant and awareness of the circumstances of the probation violation, under the appropriate deferential standard of review, the sentence, if within the statutory bounds, is peculiarly within the judge's discretion.

At the revocation hearing, Bunch successfully<sup>3</sup> argued that Carbon County Adult Probation Officer Joseph Bettine's recommendation of six (6) to twelve (12) months of incarceration was an excessive period of time in light of the fact that Bettine withdrew two (2) of the violations and that Bunch otherwise

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<sup>3</sup> This Court imposed the five (5) to twelve (12) months sentence appealed herein.

succeeded on supervision. Now in this appeal, Bunch argues that the Court failed to take into consideration these same issues and that any period of incarceration would impact her custodial rights in and to her children.

As previously noted, Bunch was initially placed on ARD supervision on these charges; however, due to her failure and inability to follow the terms and conditions of that supervision, she was revoked from that program. While the Court would agree that while serving this sentence, Bunch was only charged with new offenses one (1) time, that one (1) time is an egregious violation of her supervision. The Court does note that, after the filing of the Petition to Revoke Probation, Bunch satisfied her community service and Court costs. But the fact remains that these were violations of her supervision, albeit technical ones, because she did not complete them prior to the end of her supervision.

Bunch also contends that the Court did not consider her personal circumstances when it resentenced her. This Court believes she is referring to the custody of her two (2) children. The Court did consider that and notes that the children were then and now in the custody of their father, a parent who was no stranger to them and had not only been in the process of securing primary custody of them, but was already an integral part of their lives.

In imposing the five (5) to twelve (12) month sentence, the Court took into consideration the fact that throughout this case,

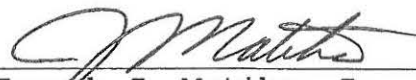


Bunch was on supervision for a period of time, both ARD and regular probationary supervision, and she violated both. The violations that are part of this Appeal were threefold, and while Bunch was successful in completing her community service and paying off her court costs before her Gagnon II hearing, the fact remains that she violated her probation in three (3) different ways. It should be noted that while the recommendation of the Commonwealth was for a minimum of six (6) months of incarceration, the Court only sentenced Bunch to a minimum of five (5) months. This Court did take into consideration the issues raised by Bunch, both at the Gagnon II hearing and in this Appeal. Such a sentence was well within this Court's discretion pursuant to 42 Pa.C.S.A. § 9771.

CONCLUSION

For these reasons stated herein the Appellate Court should affirm the Trial Court's sentence.

BY THE COURT:

  
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Joseph J. Matika, J.

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CARBON COUNTY  
CLERK OF COURTS  
WM. C. HOGINLEY