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

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Appellee	:	
	:	
v.	:	No. CR-40-2018
	:	
JESSIE JAMES,	:	
	:	
Appellant	:	

Robert S. Frycklund, Esquire — Counsel for Appellee
Assistant District Attorney

Brian J. Collins, Esquire — Counsel for Appellant
Conflict Counsel

MEMORANDUM OPINION

Serfass, J. - June 13, 2022

Jessie James (hereinafter "the Appellant") appeals from this Court's Orders of October 28, 2021, pursuant to which he was sentenced following a jury trial to a period of incarceration of not less than eighteen (18) months nor more than sixty (60) months. We file the following Memorandum Opinion in accordance with Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be denied and that our Sentencing Orders of October 28, 2021 be affirmed.

FACTUAL AND PROCEDURAL HISTORY

Appellant was identified as a subject selling cocaine and other controlled substances following an investigation conducted by Officer Matthew Schwarz of the Jim Thorpe Police Department and other members of the Carbon County Drug Task Force. Arrangements were made for a confidential informant, later identified as Jeremy Rawlins, to make

a controlled purchase of cocaine from Appellant near his residence situated at 75 Bear Creek Drive, Jim Thorpe, Carbon County, Pennsylvania. Mr. Rawlins contacted Appellant via telephone to arrange controlled purchases of cocaine which took place on September 13, 2017 and September 20, 2017 near Appellant's residence. Agent Kirk Schwartz, then-Carbon County Drug Task Force Coordinator, and other officers observed these controlled purchases and performed field tests which indicated the presence of cocaine from the September 13, 2017 purchase and suspected counterfeit cocaine from the September 20, 2017 purchase. Subsequent lab analysis identified the substance from the September 13, 2017 purchase as cocaine, but did not identify the composition of the substance from the September 20, 2017 purchase. Arrangements were then made for Mr. Rawlins to purchase Percocet tablets from Appellant on November 16, 2017. On that date, Appellant was taken into custody before the transaction took place based on the September 13, 2017 and September 20, 2017 controlled purchases.

Appellant was charged with three (3) counts of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver, (35 Pa.C.S.A. §780-113 §§(a)(30)); Intentional Possession of a Controlled Substance by a Person not Registered (35 P.S. §780-113 §§(a)(16)); Conspiracy - Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver (18 Pa.C.S.A. §903); and Criminal Use of Communication Facility (18 Pa.C.S.A. §7512 §§(a)).

On August 18, 2020, Appellant filed an "Omnibus Pretrial Motion", which included a habeas corpus motion challenging the

sufficiency of the evidence supporting the charges, a motion to disclose the identity of the confidential informant, a motion to compel discovery, and a reservation of rights to file supplemental pre-trial motions. On October 6, 2020, we entered an order granting Appellant's habeas corpus motion as to Count 4 - Delivery of a Controlled Substance pertaining to the attempted controlled purchase on November 16, 2017 and dismissing that charge, denying the habeas corpus motion in all other respects, and dismissing the remaining motions as moot. (Court's Order of October 6, 2020).

Following a jury trial held on June 10-11, 2021, Appellant was found guilty on all five (5) remaining counts. On October 28, 2021, Appellant was sentenced to a period of incarceration in a State Correctional Institution of not less than eighteen (18) months nor more than sixty (60) months. (Court's Orders of October 28, 2021).

On November 7, 2021, Appellant filed "Post-Sentence Motions" which included an acquittal motion, a motion for a new trial based upon the weight of the evidence, and a motion for a new trial based upon ineffective assistance of counsel. Appellant requested that this Court: (1) enter a judgment of acquittal for the charges contained in Count 2 - Delivery of a Controlled Substance pertaining to the controlled purchase on September 20, 2017 and Count 5 - Conspiracy to Deliver a Controlled Substance, arguing that the Commonwealth failed to prove that Appellant delivered a controlled substance on that date and that Appellant participated in a conspiracy because the alleged co-conspirator was a confidential informant; and (2) vacate

his sentence and order a new trial, arguing that the verdict was against the weight of the evidence and that Alexandria J. Crouthamel, Esquire, rendered ineffective assistance of counsel at trial. (Appellant's Post-Sentence Motion, 11/7/21).

On February 2, 2022, Appellant filed a "Motion for Leave to File an Amended Post-Sentence Motion Asserting Racial Bias and Permitting Defendant to Submit a Juror's Affidavit and Statement". Appellant requested that this Court: (1) grant him leave to file an amended post-sentence motion alleging juror misconduct based on racial bias and premature deliberations; and (2) grant him leave to submit a juror's affidavit and testimony concerning juror misconduct. Appellant's request was based on defense counsel's communication with Lonnie Hird, who served as an alternate juror during Appellant's trial, who stated that members of the principal jury made purported racist comments pertaining to Appellant being African-American during the course of the trial. (Appellant's Motion for Leave to Amend, 2/2/22).

On March 18, 2022, we entered an order denying Appellant's motion for leave to amend finding that a decision on the proposed supplemental motion could not be made in compliance with the time limits of Pa.R.Crim.P. 720(B)(3), noting that Mr. Hird was an alternate juror who did not participate in deliberations with the principal jurors and did not communicate any concerns relative to any comments of his fellow jurors until seven (7) months after the trial

had concluded.[1] (Court's Order of 3/18/22). That same day, Appellant filed a "Motion to Submit the Affidavit of Lonnie Hird to Supplement the Record on Appeal". On April 1, 2022, we entered an order denying that motion.

On April 6, 2022, we entered an order granting in part and denying in part Appellant's "Post-Sentence Motions" finding that that the Commonwealth failed to produce sufficient evidence to sustain a conviction on the charge of Count 2 - Delivery of a Controlled Substance, but did produce sufficient evidence to sustain a conviction on the charge of Count 5 - Conspiracy to Deliver a Controlled Substance, that the jury's verdict did not go against the weight of the evidence, and that Attorney Crouthamel did not render ineffective assistance of counsel at trial. (Court's Order of April 6, 2022).

On April 18, 2022, Appellant filed an Appeal to the Superior Court of Pennsylvania seeking review and reversal of this Court's October 28, 2021 sentencing order. On April 28, 2022, we entered an order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance

[1] Appellant's timely post-sentence motion was filed on November 7, 2021. Therefore, a decision on that motion was required to be filed no later than March 7, 2022. Appellant's motion for leave to amend was filed on February 2, 2022. A hearing on both the motion for leave to amend and the initial post-sentence motion was held on February 17, 2022. During that hearing, Appellant made an oral motion for a thirty (30) day extension of the one hundred twenty (120) day time limit for rendering a decision on his post-sentence motion. We granted that oral motion which extended the time for the Court's decision until April 6, 2022. Following a teleconference with counsel on March 15, 2022 discussing the logistics of a potential hearing on an amended post-sentence motion, our decision to deny Appellant's motion for leave to amend was based on both the limited time remaining to dispose of the post-sentence motion and the issues with scheduling and coordinating a lengthy hearing including the testimony of at least fourteen (14) witnesses within the allotted time frame.

with our order, Appellant filed his "Concise Statement of Matters Complained of on Appeal" on May 16, 2022.

ISSUES

In his Concise Statement, Appellant raises the following issues:

1. Whether the Trial Court erred in denying Appellant's motion for a new trial based upon ineffective assistance of counsel;
2. Whether the Trial Court erred in denying Appellant's "Motion for Leave to File an Amended Post-Sentence Motion Asserting Racial Bias and Permitting Defendant to Submit a Juror's Affidavit and Statement";
3. Whether the Trial Court erred in denying Appellant's motion for judgment of acquittal on the charge of Conspiracy to Deliver a Controlled Substance; and
4. Whether the Trial Court erred in denying Appellant's motion for a new trial based upon the weight of the evidence.

DISCUSSION

1. Appellant's Ineffectiveness Claim

Appellant asserts that Attorney Crouthamel, defense counsel at trial, failed to object to and/or request a mistrial based upon Mr. Rawlins' testimony regarding when he met Appellant. Appellant argues that there was no rational basis or strategy excusing Attorney Crouthamel from seeking a mistrial or an instruction regarding this evidence.

Initially, we note that absent three (3) limited exceptions within the trial court's discretion, "claims of ineffective

assistance of counsel are to be deferred to PCRA review; trial courts should not entertain claims of ineffectiveness upon post-verdict motions; and such claims should not be reviewed upon direct appeal." Commonwealth v. Holmes, 79 A.3d 562, 576 (Pa. 2013). These exceptions include (1) where there are extraordinary circumstances where a discrete claim is apparent from the record and meritorious to the extent that immediate consideration best serves the interests of justice; (2) where there is good cause shown and the defendant knowingly and expressly waived his right to seek subsequent PCRA review; and (3) where the defendant is statutorily precluded from obtaining subsequent PCRA review. Commonwealth v. Rosenthal, 233 A.3d 880, 886-87 (Pa.Super. 2020). We recognize that neither the second nor third exception is applicable to the instant matter.[2] Therefore, Appellant argues that his claim is clearly meritorious and apparent from the record such that the interests of justice would be best served by our immediate review. We disagree.

The "meritorious and apparent from the record" exception is limited to exceptional circumstances. Holmes, 79 A.3d at 576. In an unpublished decision, the Superior Court defined the exception as follows: "[A]n extraordinary circumstance is one where counsel's ineffectiveness is so blatant and 'so shocking to the judicial conscience' that there is no need for a hearing and the court is

[2] In paragraph 5 of his "Post-Sentence Motions", Appellant stated that he "... does not waive the right to seek subsequent relief under the PCRA." *See* Appellant's "Post-Sentence Motions", 11/7/21, p. 3.

compelled to grant relief." Commonwealth v. Alford, No. 1052 WDA 2020, 2021 WL 2907814, at *4 (Pa.Super. Jul. 9, 2021). While the trial court retains discretion to address ineffectiveness claims on post-sentence motions, "the presumption weighs heavily in favor of deferring such claims to collateral review." Commonwealth v. Knox, 165 A.3d 925, 928 (Pa.Super. 2017). We find that Appellant's ineffectiveness claim does not rise to the level of an extraordinary circumstance warranting immediate review.

Notwithstanding our determination regarding consideration of Appellant's ineffective assistance claim, we note that even if this Court were to review such claims at this stage of the proceedings, the record indicates that Attorney Crouthamel was not ineffective in her performance at trial.

> In Pennsylvania, courts apply a three-pronged test for analyzing whether trial counsel was ineffective, derived from our application in Pierce of the performance and prejudice test articulated by the United States Supreme Court in *Strickland*. The *Pierce* test requires a PCRA petitioner to prove: (1) the underlying legal claim was of arguable merit; (2) counsel had no reasonable strategic basis for his action or inaction; and (3) the petitioner was prejudiced—that is, but for counsel's deficient stewardship, there is a reasonable likelihood the outcome of the proceedings would have been different. If a petitioner is unable to prove any of these prongs, his claim fails.

Commonwealth v. Simpson, 112 A.3d 1194, 1197 (Pa. 2015) (internal citations omitted).

> 'Generally, where matters of strategy and tactics are concerned, counsel's assistance is deemed constitutionally effective if he chose a particular course that had some reasonable basis

> designed to effectuate his client's interests.' A claim of ineffectiveness generally cannot succeed through comparing, in hindsight, the trial strategy employed with alternatives not pursued.

Commonwealth v. Hammond, 953 A.2d 544, 558 (Pa.Super. 2008)(*quoting* Commonwealth v. Washington, 927 A.2d 586, 599-600 (Pa. 2007)).

Appellant argues that Attorney Crouthamel had no reasonable strategic basis for not objecting to or requesting a curative instruction concerning Mr. Rawlins' testimony stating that he engaged in drug trafficking with Appellant prior to the instant charges. Attorney Crouthamel testified that she chose not to object to Mr. Rawlins' testimony regarding these alleged prior transactions because she believed she could impeach the witness on cross-examination and did not want to draw the jury's attention to these alleged prior transactions through an objection or instruction. We find that Attorney Crouthamel had a reasonable strategic basis in deciding not to object to Mr. Rawlins' testimony and in not seeking a jury instruction.

Even if we were to accept Appellant's argument that Attorney Crouthamel's decision did not have a reasonable strategic basis, we do not find that Appellant was prejudiced by Attorney Crouthamel's failure to object or request an instruction. "Prejudice in the context of ineffective assistance of counsel means demonstrating there is a reasonable probability that, but for counsel's error, the outcome of the proceeding would have been different." Commonwealth v. Keaton, 45 A.3d 1050, 1061 (Pa.Super. 2012).

> Prejudice is established when [a defendant] demonstrates that counsel's chosen course of action had an adverse effect on the outcome of the proceedings. The [defendant] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. ...

Commonwealth v. Mullen, 267 A.3d 507, 512 (Pa.Super. 2021) (*quoting* Commonwealth v. Chambers, 807 A.2d 872, 883 (Pa. 2002)).

In a case where a defendant raised an ineffectiveness claim based on trial counsel's failure to object to a witness' testimony referencing the defendant's violent behavior, the Superior Court held that there was not a reasonable probability that the jury ultimately would have reached a different verdict where there was other sufficient evidence supporting the conviction. Commonwealth v. Cook, 952 A.2d 594, 617-18 (Pa. 2008). We find that based on the testimony of Agent Schwartz and Mr. Rawlins regarding the controlled purchases and the evidence presented regarding the recovered items and lab analysis, it is reasonably probable that the outcome of the trial would not have been different. Therefore, we find that this Court did not err in denying Appellant's motion for a new trial based upon ineffective assistance of counsel.

2. Appellant's Motion for Leave to Amend

Pursuant to Pa.R.Crim.P. 720(B)(3)(a), a post-sentence motion must be decided within one hundred twenty (120) days of the date of filing unless, for good cause shown, the court grants a thirty (30)

day extension for such decision in accordance with Pa.R.Crim.P. 720(B)(3)(b). Commonwealth v. Perry, 820 A.2d 734, 735 (Pa.Super. 2003). As previously noted, we denied Appellant's motion for leave to amend finding that a decision on the proposed supplemental motion could not be made in compliance with the time limits of Pa.R.Crim.P. 720(B)(3).

The foregoing notwithstanding, we find that even if this Court granted Appellant's motion for leave to amend and Appellant filed an amended post-sentence motion including a motion for a new trial based upon juror misconduct, Appellant would not be entitled to such relief.

Generally, during an inquiry into the validity of a verdict, a juror may not testify about any statement made or incident that occurred during the jury's deliberations. Pa.R.E. 606(b)(1). This rule, known as the no-impeachment rule, has limited exceptions. The U.S. Supreme Court has defined one such exception being the inquiry into purported racial bias influencing the deliberation process. In Pena-Rodriguez v. Colorado, a defendant was convicted of harassment and unlawful sexual contact following a jury trial. Pena-Rodriguez v. Colorado, 137 S.Ct. 855, 857 (2017). Immediately after the discharge of the jury, two jurors told defense counsel that, during deliberations, one of the jurors expressed anti-Hispanic bias toward the defendant and his alibi witness. Id. While acknowledging the juror's apparent bias, the trial court denied the defendant's motion for a new trial. Id. The Colorado Court of Appeals and the Colorado

Supreme Court both affirmed on the basis that there was not an applicable exception to the state's no-impeachment rule. Id.

The U.S. Supreme Court reversed and remanded, holding that:

> [W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.
>
> Not every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry. For the inquiry to proceed, there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

Id. at 869.

There is limited caselaw from Pennsylvania's appellate courts regarding the application of the above-stated exception. In Commonwealth v. Rosenthal, our Superior Court held that where several jurors told jokes or stories during deliberations that cast individuals of Italian and Irish ancestry in a negative light, the exception outlined in Pena-Rodriguez was not implicated because these jokes and stories were not directed towards the defendant or any

other participant in the trial nor did the jurors rely on these stereotypes in rendering their verdict. Rosenthal, 233 A.3d at 886. In an unpublished decision, the Superior Court noted that "for a trial court to ignore the no-impeachment rule, defendants must produce some evidence that the 'racial animus' was a 'significant motivating factor' that led a juror to vote guilty." Commonwealth v. Young, No. 1305 MDA 2017, 2018 WL 2947919, at *6 n.9 (Pa.Super. Jun. 13, 2018).

"'It is within the discretion of the trial court to determine whether a defendant has been prejudiced by misconduct or impropriety to the extent that a mistrial is warranted.'" Commonwealth v. Pope, 14 A.3d 139, 145 (Pa.Super. 2011) (*quoting* Commonwealth v. Brown, 786 A.2d 961, 972 (Pa. 2001)).

Here, we do not find that the alleged statements of the jurors, even if they were made, warrant a new trial. Pena-Rodriguez is clear that the jurors must have relied on racial animus in their decision-making to violate the Sixth Amendment. We find that the instant matter is distinguishable from the facts found in Pena-Rodriguez. Here, Mr. Hird served as an alternate juror during Appellant's trial and did not participate in deliberations with the twelve (12) principal jurors. Mr. Hird did not communicate any concerns regarding any comments of his fellow jurors to any courthouse personnel either during or immediately after the trial. Mr. Hird's communication with defense counsel was not independent as defense counsel sought out Mr. Hird's allegations of racial bias. Defense counsel's initial contact with Mr. Hird occurred in November 2021 and Mr. Hird did not respond

until January 2022, seven (7) months after the trial had concluded. None of the other thirteen (13) jurors have made similar allegations of racial bias. No other evidence was provided indicating that the jurors made these purported statements or relied on racial stereotypes or animus during the deliberation process.

"Only in clear cases of improper conduct by jurors, evidenced by competent testimony, should a verdict that is supported by the evidence be set aside and a new trial granted." Johnson v. Frazier, 787 A.2d 433, 436 (Pa.Super. 2001) (*citing* Pittsburgh Nat'l Bank v. Mutual Life Ins. Co. of New York, 417 A.2d 1206, 1209 (Pa.Super. 1980), *aff'd*, 425 A.2d 383 (Pa. 1981)).

Based upon the foregoing, we find that even if there was sufficient time for this Court to fully consider and render a decision on an amended post-sentence motion in compliance with Pa.R.Crim.P. 720(B)(3), the alleged statements of the jurors do not constitute misconduct warranting a new trial. Therefore, we find no merit in Appellant's claim that this Court erred in denying his motion for leave to amend.

3. Appellant's Motion for Judgment of Acquittal

Appellant asserts that the Commonwealth failed to present sufficient evidence that he could form a conspiracy to deliver a controlled substance with Jeremy Rawlins, a confidential informant.

> A motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that

> charge. ... A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. *When reviewing a sufficiency claim[,] the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.*

Commonwealth v. Stahl, 175 A.3d 301, 303-4 (Pa.Super. 2017) (internal citations omitted).

"To sustain a conviction for Conspiracy, the Commonwealth must establish that the 'defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and, (3) an overt act was done in furtherance of the conspiracy.'" Commonwealth v. Arrington, 247 A.3d 456, 461 (Pa.Super. 2021) (*quoting* Commonwealth v. Fisher, 80 A.3d 1186, 1190 (Pa. 2013)). "Except as provided in [18 Pa.C.S.A. §904 §§(b)], it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that the person whom he solicits or with whom he conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime." 18 Pa.C.S.A. §904 §§(a)(2).

Appellant argues that Mr. Rawlins, who acted as an agent for the police, is not a person who shares a criminal intent to commit a

crime as contemplated within the statute. While there is limited caselaw on this particular subject, the Superior Court in an unpublished decision held that there was sufficient evidence to uphold a conspiracy conviction where a defendant agreed to deliver cocaine to a confidential informant and then delivered said cocaine, and reiterated that the statute does not require that all parties have criminal intent. Commonwealth v. Woodson, No. 1378 MDA 2011, 2013 WL 11282822, at *2-3 (Pa.Super. Mar. 12, 2013).

Mr. Rawlins testified that he made arrangements via telephone to meet Appellant to purchase cocaine on September 13, 2017 and September 20, 2017. Agent Schwartz testified that he and other officers observed Appellant at these controlled purchases. We find that the record contains sufficient evidence to support the charge of conspiracy against Appellant. Therefore, we find that this Court did not err in denying Appellant's motion for judgment of acquittal on the charge of Conspiracy to Deliver a Controlled Substance.

4. Appellant's Weight of the Evidence Claim

Lastly, Appellant argues that the testimony of Mr. Rawlins and Agent Schwartz regarding the controlled purchases was so tenuous, vague and uncertain that a new trial is warranted.

> 'The weight of the evidence is exclusively for the finder of fact, which is free to believe all, part, or none of the evidence[.]' It is the purview of the fact-finder to 'assess the credibility of the witnesses' and resolve inconsistent testimony. Thus, a trial court should not grant a motion for a new trial 'because of a mere conflict in the testimony or because the judge on the same facts would have

> arrived at a different conclusion,' but only when 'certain facts are so clearly of greater weight' than others that 'the jury's verdict is so contrary to the evidence as to shock one's sense of justice.'

Commonwealth v. Brown, 212 A.3d 1076, 1085 (Pa.Super. 2019), *appeal denied*, 221 A.3d 643 (Pa. 2019) (internal citations omitted).

> Moreover, we note that "[t]rial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.'"

Commonwealth v. Widmer, 744 A.2d 745, 752 (Pa. 2000).

Mr. Rawlins testified that he made arrangements via telephone to meet Appellant to purchase cocaine on September 13, 2017 and September 20, 2017. Agent Schwartz testified that he and other officers observed these controlled purchases. Officers arrested Appellant on November 16, 2017 before the third transaction took place based on the September 13, 2017 and September 20, 2017 controlled purchases.

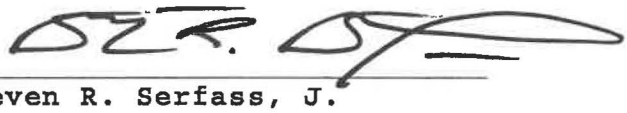
In a similar case where a defendant was convicted of delivering cocaine based on the testimony of a confidential informant and the trial court denied the defendant's motion for a new trial based upon the weight of the evidence, the Superior Court held that "[t]he jury was free to make credibility determinations and accept or reject [the confidential informant]'s testimony, and all the other testimony, as it chose." Commonwealth v. West, 937 A.2d 516, 522 (Pa.Super. 2007).

Here, we do not find that the jury's verdict is so contrary to the evidence as to shock our sense of justice. Therefore, we find that this Court did not err in denying Appellant's motion for a new trial based upon the weight of the evidence.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Orders of October 28, 2021, sentencing Appellant to a period of incarceration in a State Correctional Institution of not less than eighteen (18) months nor more than sixty (60) months, be affirmed accordingly.

BY THE COURT:



Steven R. Serfass, J.