

Franklin County Legal Journal
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Commonwealth v. Forsyth

Commonwealth of Pennsylvania v.
Justin Marshal Forsyth, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch Criminal Action No. 2011-860

HEADNOTES

Criminal Law: Escape

1. A defendant who is a fugitive from justice during the appellate process forfeits the right to file post-sentence motions or an appeal.

Criminal Law: Sentencing and Punishment: Modification of Sentence

1. A trial court lacks jurisdiction to modify a sentence more than 30 days after imposition. 42 Pa. C.S. § 5505.
2. When a defendant is sentenced to imprisonment in the county jail, a court may—at any time—make the defendant eligible for work release. 42 Pa. C.S. § 9813(a).
3. The court's ability to make a defendant work-release eligible is an exception to the general rule prohibiting modification of orders after 30 days.

Appearances:

Franklin County District Attorney's Office

Stephen N. Necaster, Esquire, Attorney for the Defendant

OPINION

Before Meyers, J.

The Court issues this opinion to explain its prior order which made the Defendant, Justin Marshall Forsyth, eligible for work-release.

On May 1, 2013, the Court sentenced Forsyth *in absentia* to 9 to 60 months in the Franklin County Jail for DUI, graded as a first-degree misdemeanor. The Court's sentencing order did not make Forsyth eligible for work-release. Forsyth did not file a post-sentence motion or an appeal.¹

On July 24, 2013, Forsyth moved to be made eligible for work release. The Commonwealth objected, arguing that the Court lacked jurisdiction to modify the sentencing order because more than 30 days had passed since sentencing. The Court disagrees.

Generally, a trial court cannot modify its orders more than 30 days after the order is entered on the docket. 42 Pa. C.S. § 5505. However, where a defendant is sentenced to incarceration in the county jail, the court of common pleas may make the defendant eligible for work release at any time:

Notwithstanding any provision of law, if any offender has been sentenced to undergo imprisonment in a county jail for a term of less than five years, the court, at the time of sentence or at any time thereafter upon application made in accordance with this section, may enter an order making the offender eligible to leave the jail during necessary and reasonable hours for the purpose of working at his employment, conducting his own business or other self-employed occupation, including housekeeping and attending to the needs of family, seeking employment, attending an educational institution, securing medical treatment or for other lawful purposes as the court shall consider necessary and appropriate.

42 Pa. C.S. § 9813(a) (emphasis added). Conditions are attached, including notice and an opportunity to be heard

¹ Any post-sentence motion or appeal would have been subject to the fugitive forfeiture rule, because Forsyth was not apprehended until after the time to file an appeal expired. See Commonwealth v. Doty, 997 A.2d 1184 (Pa. Super. 2010).

for victims, and the ability of jail officials to recommit an offender who violates regulations or is a safety risk. *Id.* § 9813(b) and (c). Section 9813(a) operates as an exception to the general prohibition against modification of orders after 30 days.

Section 9813 clearly applies to Forsyth. He is serving a local sentence. And § 9813(a) clearly allows the Court—at any time—to make him eligible for work release. For those reasons, the Court granted his motion and made him eligible for work-release even though more than 30 days had passed since sentencing.

An Order is attached.

ORDER OF COURT

AND NOW THIS 7th day of August, 2013, Clerk is ordered to file the attached Opinion of record and serve copies upon the Parties.

Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.