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Commonwealth v. Fogelsong

Commonwealth of Pennsylvania v.
Aaron Richard Fogelsong, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch Criminal Action No. 210 of 2013, 226 of 2013, 482 of 2013, 764 of 2013 Charges:
Delivery (F); Bad Checks (M3)

HEADNOTES

Courts: Jurisdiction

1. A court must address whether it has jurisdiction to entertain a motion, even the parties do not contest jurisdiction.

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. A trial court must note on the sentencing order whether the defendant is eligible for motivational boot camp. 61 Pa. C.S. § 3904(b).
3. Because a trial court cannot modify an order more than 30 days after its entry and because it must note boot-camp eligibility at the time of sentencing, the court lacks jurisdiction to make a defendant boot-camp eligible if more than 30 days have passed since sentencing.

Appearances:

Lauren E. Sulcove, Esq., attorney for the Commonwealth

Matthew N. Stewart, Esq., attorney for the Defendant

OPINION

Before Walker, J.

Before the Court is Defendant Aaron Richard Fogelsonger's *Motion to Modify Sentence Nunc Pro Tunc*. The Defendant asks the Court to make him eligible for boot camp. The Commonwealth has filed an answer opposing the motion. Because the motion was filed more than 30 days after the Defendant was sentenced, the Court lacks jurisdiction and must dismiss the motion.

Fogelsonger entered into plea agreement on May 13, 2013, the date scheduled for jury selection in his cases. He agreed to plead guilty to one count of delivery of a controlled substance (heroin), 35 P.S. § 780-113(a) (30), and one count of bad checks graded as a third-degree misdemeanor, 18 Pa. C.S. § 4105(a)(1). In exchange, the Commonwealth agreed to *nol. pros.* the remaining charges. The Parties agreed that Fogelsonger would serve a state-prison sentence of 21 to 42 months concurrent with a 12-month sentence of probation. The written plea colloquy includes no mention of the possibility of boot-camp and boot camp was not discussed on the record during the brief plea hearing. The Court duly informed Fogelsonger of his post-sentence rights on the record.¹

The Court lacks jurisdiction to consider the motion.² The Prisons and Parole Code requires a sentencing court to "note on the sentencing order whether the defendant has been identified as eligible for a motivational boot camp program." 61 Pa. C.S. § 3904(b). That was not done here. And a court cannot modify an order more than 30 days after its entry on the docket. 42 Pa. C.S. § 5505. Nothing in 61 Pa. C.S. § 3904 creates an exception to the general 30-day rule. Cf. 42 Pa. C.S. § 9813(a) (allowing a court to make a defendant sentenced to the county jail eligible for work release "at any time"). The Court therefore lacks jurisdiction to modify Foglesonger's judgment

¹ Fogelsonger timely filed a post-sentence motion to withdraw the guilty pleas, which Judge Van Horn denied.

² Although no party has raised the issue of jurisdiction, the Court must consider whether it has the power to grant the motion. *Commonwealth v. Boerner*, 422 A.2d 583, 589 n.11 (Pa. Super. 1980) ("Jurisdictional questions are non-waivable and not only may be raised by the court sua sponte, but must be.") (internal citation omitted).

of sentence.

Even if the Court had jurisdiction, I would deny the Motion. Fogelsonger entered into a plea agreement. Nothing in the record shows that boot-camp was discussed as a possibility. If Fogelsonger wanted to be eligible for boot-camp, he should have negotiated with Commonwealth on that point. Finally, the Court is suspicious of Fogelsonger's stated intention to use boot camp to "turn his life around." Fogelsonger has multiple prior convictions of crimes of falsehood. And key to making a life change is admitting responsibility for one's actions. Here, Fogelsonger filed a post-sentence motion claiming that he was innocent.

The Motion is dismissed. An order follows.

ORDER OF COURT

AND NOW THIS 17 DAY OF October, 2013, for the reasons in the foregoing Opinion, the Defendant's Motion to Modify Sentence Nunc Pro Tunc is DISMISSED for lack of jurisdiction.

Pursuant to Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.