

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TODD CHANNING LEWIS,	:	
	:	
Appellant	:	No. 906 WDA 2012

Appeal from the Judgment of Sentence Entered April 17, 2012,
In the Court of Common Pleas of Allegheny County,
Criminal Division, at No. CP-02-CR-0010278-2003.

BEFORE: SHOGAN, OTT and STRASSBURGER*, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: April 22, 2013

Appellant, Todd Channing Lewis, appeals from the judgment of sentence entered on April 17, 2012, following the revocation of his probation. We affirm.

The trial court set forth the history of this case as follows:

[Appellant] was initially charged with Involuntary Deviate Sexual Intercourse, Statutory Sexual Assault, Indecent Assault, Unlawful Contact with a Minor and Corruption of Minors. The IDSI charge was amended to a charge of Sexual Assault and on August 17, 2004, [Appellant] pled guilty to all charges and was sentenced to a term of imprisonment of 9 to 23 months, with an additional term of probation of ten (10) years.

Following his release from custody, [Appellant] left the Commonwealth in violation of the terms of his probation. He was later arrested and charged with attempted sexual assault and luring in the State of New Jersey. Following his conviction and incarceration in New Jersey, he was arrested and returned to Pennsylvania for violation of his probation.

*Retired Senior Judge assigned to the Superior Court.

On April 17, 2012, [Appellant] appeared before this Court for a probation violation hearing. At that hearing, this Court revoked his probation and imposed a term of imprisonment of four (4) to ten (10) years. [Appellant] then retained private counsel and this appeal followed.

Trial Court Opinion, 9/11/12, at 1-2. Appellant and the trial court have complied with Pennsylvania Rule of Appellate Procedure (“Pa.R.A.P.”) 1925.

On appeal, Appellant presents six questions for our consideration:

1. Did the probation violation court err by considering evidence without having Defendant and Probation Violation Counsel present?
2. Did the probation violation court err by failing to permit Defendant and Probation Violation Counsel to view and/or challenge all of the evidence presented to and/or considered by the court?
3. Did Probation Violation Counsel err and render ineffective assistance of counsel by failing to lodge an objection or otherwise challenge the use of the video evidence viewed in his absence?
4. Did Probation Violation Counsel render ineffective assistance by failing to offer witnesses, evidence, or a sufficient argument on Defendant’s behalf?
5. Did Probation Violation Counsel render ineffective assistance by failing to adequately prepare for the hearing and sentencing?
6. Did Probation Violation Counsel render ineffective assistance by failing to personally meet with Defendant prior to the hearing and sentencing?

Appellant’s Brief at 4.

Appellant’s first two issues present claims of trial court error. Appellant addresses his first two issues together because they “rely on the

same reasoning and the same constitutional amendment.” Appellant’s Brief at 8. We do likewise.

The only cognizable issues for appeal following the imposition of sentence after probation revocation are the “validity of the revocation proceedings and the legality of the sentence imposed following revocation.” ***Commonwealth v. Ortega***, 995 A.2d 879, 884 (Pa. Super. 2010), *appeal denied*, 610 Pa. 607, 20 A.3d 1211 (2011). Here, Appellant challenges the trial court’s alleged consideration of evidence before the revocation hearing in violation of his constitutional rights to counsel, confrontation, and due process. Appellant’s Brief at 8. Such a claim implicates the validity of Appellant’s revocation proceeding.

Specifically, Appellant claims that the trial court erred by reviewing a video recording of an episode of the Dateline NBC series “To Catch a Predator” before Appellant and his attorney entered the courtroom. Appellant’s Brief at 8. Relying on the Sixth and Fourteenth Amendments to the United States Constitution, Appellant argues that, “since [he] was sentenced after the probation violation court viewed the video, he was prejudiced by his inability to confront the evidence used against him.” Appellant’s Brief at 9. Appellant further argues that “the probation violation court violated [his] right to counsel at a critical state of a criminal proceeding.” ***Id.*** at 10. Additionally, “Appellant submits that, although his

New Jersey conviction constituted a violation under the law, the video may have influenced the length of his sentence.” *Id.* Finally, Appellant claims he has witnesses who “will testify that they observed the probation violation court view the challenged video evidence in Appellant’s absence.” *Id.* at 11.

The trial court rejected Appellant’s arguments as lacking merit:

The transcript of the Probation Violation Hearing transcript [sic] reflects that [Appellant] and his counsel were present at the violation hearing. In fact, [Appellant] addressed this Court prior to the decision. (See Probation Violation Hearing Transcript, p. 4-5). [Appellant] and his counsel were afforded the opportunity to “view and/or challenge” all of the evidence presented at the violation hearing.

To the extent that [Appellant] may be alluding to a video recording of the “To Catch a Predator” series on NBC’s Dateline show, which was the basis of the New Jersey arrest and conviction that gave rise to the violation hearing, these claims are also meritless. As the record reflects, the video was not presented by any party at the violation hearing, nor was a video even referenced at the hearing. If [Appellant] intends to argue that this Court viewed the video prior to the hearing, this Court has no recollection of doing so. If this Court did, in fact, view the video, it made no notes in its file to that effect and there is otherwise nothing in the record that would refresh this Court’s recollection in that regard.

Whether or not the Court did view the video is immaterial, however. Pursuant to 42 Pa.C.S.A. § 9771, probation may be revoked “upon proof of the violation of specified conditions of the probation.” 42 Pa.C.S.A. § 9771(b). When the Defendant has been convicted of another crime, the court may impose “a sentence of total confinement.” 42 Pa.C.S.A. § 9771(c)(1). As noted in the transcript of the violation hearing, the evidence presented to this Court was that [Appellant] had been convicted of the new offenses of attempted Endangering the Welfare of a Child and Luring while he was on probation for sexual offenses relating to a 14-year old girl he met on the [I]nternet. The revocation was valid and the imposition of a term of

imprisonment was authorized by statute and was well within this Court's discretion. The transcript of the revocation hearing demonstrates that [Appellant] was present at all times with his attorney, and that both he and his attorney both heard and had the opportunity to challenge and rebut all of the evidence presented at the revocation hearing. [Appellant's] claims of error are meritless.

Trial Court Opinion, 9/11/12, at 2-3.

Upon review, we discern support in the record for the trial court's findings. Appellant and his counsel were present during the revocation proceeding and provided with the opportunity to challenge the evidence presented therein. N.T., 4/17/12, at 2-6. Although the transcript contains a passing reference to the Dateline NBC "To Catch a Predator" episode, the transcript does not include any reference to a video recording, and the trial court has no recollection of viewing a video recording of the episode. *Id.*¹ Trial Court Opinion, 9/11/12, at 3. Moreover, Appellant's statement that "the alleged video *may have influenced* the length of his sentence" is a suspicion, not a sustainable challenge to the legality of his sentence. As for Appellant's assertion that he has witnesses, he does not provide any names or affidavits in support of his claim that "they observed the probation violation court view the challenged video evidence in Appellant's absence."

Appellant's Brief at 11. Based on the foregoing, we discern no error in the

¹ While updating the trial court on Appellant's status, counsel for Adult Probation, Attorney Lynn, referenced "a sting operation on ... 'To Catch a Predator' where [Appellant] was ... convicted of meeting ... what he thought to be a 14-year old girl, which was really an undercover[.]" N.T., 4/17/12, at 2. No one at the hearing mentioned a video recording of the program.

trial court's legal conclusion that Appellant's challenge to the revocation proceeding lacked merit.

Appellant's remaining four issues present claims of ineffective assistance of counsel. Such claims are restricted to collateral review pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. ***Commonwealth v. Grant***, 572 Pa. 48, 813 A.2d 726 (2002); 42 Pa.C.S.A. § 9543(a)(2)(ii). Therefore, we decline to review these issues without prejudice to Appellant's rights under the PCRA.

Judgment of sentence affirmed. Jurisdiction relinquished.