

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

JULIAN NOBLES

Appellant

No. 257 EDA 2013

Appeal from the Judgment of Sentence December 14, 2010  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No. CP-51-CR-0005588-2007

BEFORE: ALLEN, J., JENKINS, J., and FITZGERALD, J.\*

MEMORANDUM BY JENKINS, J.:

**FILED APRIL 22, 2014**

Appellant Julian Nobles appeals from the judgment of sentence of 1-2 years imprisonment imposed following his violation of parole and probation. We affirm.

On March 14, 2008, Nobles pled guilty to carrying a firearm without a license,<sup>1</sup> which carries a maximum possible sentence of seven years imprisonment. The court sentenced him to five years probation. On December 15, 2008, the court revoked Nobles' probation as a result of violating the conditions of probation and ordered that he undergo a mental health evaluation, which he refused. On February 6, 2009, the court imposed a sentence of 11½ to 23 months imprisonment, followed by a

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. § 6106(a).

three-year term of probation. The court found Nobles was "difficult since day one," his attitude was indicative of someone with no respect for the court system, and he did not complete any programs offered. N.H. 2/6/09 at 8. Further, Nobles became irate with, and head-butted, a probation officer who visited his house. The court found Nobles' anger and lack of cooperation, together with the loaded gun from the initial charge and the physical threats, indicated Nobles had issues he needed to address before he returned to the street. **Id.** at 8-9.

On December 17, 2009, Nobles was paroled. On December 14, 2010, the court conducted another violation hearing. The evidence showed Nobles failed to take three drug tests, including a November 12, 2010 drug test, where Nobles "got up[,] threw the test on the desk[,] said 'I'm not taking this' and walked out of the room." N.H. 12/14/2010 at 10. Further, Nobles did not take advantage of opportunities and had a "very bad attitude." **Id.** at 9. Finally, prior to the hearing, Nobles moved his handcuffs from the back of his body to the front. **Id.** at 11-12.

In sentencing Nobles, the court noted Nobles was "difficult from the get go." N.H. 12/14/2010 at 13. When initially on probation, Nobles was arrested in Delaware and was therefore out of state without permission. After Nobles' probation was transferred to Delaware, he was hostile and had to be escorted out of the probation building. **Id.** When he returned to Philadelphia, he assaulted a probation officer who arrived at his house. **Id.** at 14. He did not complete any gun programs and refused to cooperate with

a mental health evaluation. The last time he was before the court, he refused to be sworn in. **Id.** The court concluded Nobles did not complete the sentence in any meaningful way, because he was so “completely opposed to the conditions” set for him. **Id.** The Court noted that, although it normally would attempt to assist a defendant through programs, it would not do so here because Nobles would be uncooperative. **Id.**

The court terminated parole and revoked probation and it sentenced Nobles to 1 to 2 years imprisonment. N.H. 12/14/2010 at 15. At the revocation hearing, counsel petitioned the court to reconsider the sentence, which the court denied. After failing to file a direct appeal, Nobles filed a petition pursuant to the Post Conviction Relief Act seeking reinstatement of his direct appeal rights. On January 4, 2013, the court granted the petition. This direct appeal followed.

On appeal, Nobles raises the following issue: “Is the appellant entitled to a new sentenc[ing] hearing.” Appellant’s Brief at 2. His Pa.R.A.P.2119(f) statement claims the sentence “was unjust, improper, manifestly unreasonable and an abuse of discretion because the sentence imposed was contrary to the norms which underlie the sentencing process.” Appellant’s Brief at 3. In addition, Nobles maintains the court erred by imposing a sentence of imprisonment where it was not shown he was likely to commit another crime or the sentence was essential to vindicate the court’s authority. **Id.** Nobles also contends the court did not consider the factors

outlined in 42 Pa.C.S. § 9721(b) or his age, family history and rehabilitative needs. **Id.**

“Sentencing is a matter vested within the discretion of the trial court and will not be disturbed absent a manifest abuse of discretion.” **Commonwealth v. Crump**, 995 A.2d 1280, 1282 (Pa.Super.2010) (citing **Commonwealth v. Johnson**, 967 A.2d 1001 (Pa.Super.2009)). “An abuse of discretion requires the trial court to have acted with manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.” **Id.** (citing **Commonwealth v. Walls**, 926 A.2d 957 (Pa.2007)). Following the revocation of probation, “the sentencing court has all of the alternatives available at the time of the initial sentencing.” **Commonwealth v. Mazzetti**, 44 A.3d 58, 61 (Pa.Super.2012) (citing **Commonwealth v. Wallace**, 870 A.2d 838 (Pa.2005)). Further, in an appeal following the revocation of probation, it is within our scope of review to consider challenges to both the legality of the final sentence and the discretionary aspects of an appellant's sentence. **Crump**, 995 A.2d at 1282 (citing **Commonwealth v. Ferguson**, 893 A.2d 735, 737 (Pa.Super.2006)).

“Challenges to the discretionary aspects of sentencing do not entitle a petitioner to review as of right.” **Commonwealth v. Allen**, 24 A.3d 1058, 1064 (Pa.Super.2011) (citing **Commonwealth v. Sierra**, 752 A.2d 910, 912 (Pa.Super.2000)). Before this Court can address a discretionary challenge, an appellant must comply with the following requirements:

An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test: (1) whether appellant has filed a timely notice of appeal, see Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, see Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code.

**Allen**, 24 A.3d at 1064.

Nobles timely appealed, preserved his claim in a post-sentence motion, and complied with Pa.R.A.P. 2119(f). Accordingly, we need only determine whether his claims raise a substantial question for our review.

Nobles claims the court erred because his conduct did not establish he was likely to commit another crime or the sentence was essential to vindicate the court, and, in addition he claims the court failed to consider his rehabilitative needs and other sentencing factors.

Nobles' claim that the court erred when it imposed a sentence of total confinement for a technical violation of probation raises a substantial question for our review. **Crump**, 995 A.2d at 1282 (defendant raises a substantial question where court sentenced him to total confinement following technical parole violation).

The trial court did not abuse its discretion in sentencing Nobles to 1 to 2 years imprisonment following his violation of probation. He failed to complete numerous drug screens and court programs and he exhibited

violent behavior, including assaulting a probation officer. The court noted it had granted Nobles opportunities, which he chose not to pursue. Nobles' conduct, the testimony from the hearing, and the testimony the court heard at prior hearings support finding a sentence of total confinement was necessary to vindicate the court's authority. Further, the record also supports the finding that Nobles was likely to commit another crime, making the sentence of total confinement proper. ***Commonwealth v. Cappellini***, 690 A.2d 1220, 1225 (Pa.Super.1997) (total confinement following probation revocation appropriate because the appellant's "continued drug use, combined with his resistance to treatment and supervision, is enough to make a determination that, unless incarcerated, appellant would in all likelihood commit another crime").

Nobles' claim that the court failed to consider his rehabilitative needs and other sentencing factors does not present a substantial question for review. ***See Commonwealth v. Coolbaugh***, 770 A.2d 788, 793 (Pa.Super.2001) ("Appellant's claim that the court did not consider his personal life situation of having a drug problem does not raise a substantial question"). ***See also Commonwealth v. Urrutia***, 653 A.2d 706, 710 (Pa.Super.1995) ("an allegation that a sentencing court 'failed to consider' or 'did not adequately consider' certain factors does not raise a substantial question that the sentence was inappropriate"); ***Commonwealth v. Lawson***, 650 A.2d 876 (Pa.Super.1995) (claim that trial court ignored rehabilitative needs in imposing sentence does not constitute a substantial

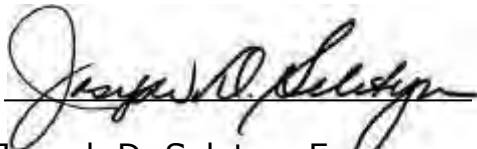
question for review); **Commonwealth v. Bershad**, 693 A.2d 1303 (Pa.Super.1997) (claim that trial court did not give adequate consideration to rehabilitative needs does not present a substantial question).

Moreover, even if he presented a substantial question, his claim fails. "A sentencing court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question, but the record as a whole must reflect the sentencing court's consideration of the facts of the crime and character of the offender." **Crump**, 995 A.2d at 1283 (citing **Commonwealth v. Malovich**, 903 A.2d 1247 (Pa.Super.2006)). The trial court was familiar with the defendant from his guilty plea, initial sentencing, and prior violation of probation hearing. Further, the court heard testimony concerning Nobles' refusal to take the drug tests, including one instance where he threw the test, stated "I'm not taking this," and walked out. The court heard testimony Nobles continued to be oppositional toward his probation officers and that, prior to the hearing, he had moved his handcuffs from the back of his body to the front. The court considered Nobles' history and the information presented at the probation hearing. It considered Nobles' character, his lack of remorse, indifference, and the serious nature of the offense. Accordingly, the court considered the relevant factors when it issued its sentence. **See Malovich**, 903 A.2d at 1253 (sentencing court explained reasons where the court knew the defendant through drug court and the defendant failed to resolve his substance abuse problems in drug court, displayed an attitude problem, had

two prior probation revocations, had failed relationships, blamed others for his problems, and may have had mental health concerns, including anger issues, he had not resolved); **Commonwealth v. Sierra**, 752 A.2d 910, 913-15 (Pa.Super.2000) (revocation of probation and sentence of 5 to 20 years imprisonment proper where defendant's parole was revoked for a technical violation, defendant had a significant criminal record, and she refused to accept responsibility and the help afforded to her).

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/22/2014