

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RYAN HARDING

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 4 MDA 2015

Appeal from the Judgment of Sentence November 5, 2014
In the Court of Common Pleas of Lackawanna County
Criminal Division at No(s): CP-35-CR-0001885-2013

BEFORE: PANELLA, J., LAZARUS, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED FEBRUARY 01, 2016

Appellant Ryan Harding appeals from the November 5, 2014 judgement of sentence following his guilty plea to murder of the third degree and firearms not to be carried without a license.¹ We affirm.

The trial court set forth the following factual history:

On or about May 5, 2013, members of the Scranton Police Department were dispatched by the Lackawanna County Communications Center to the 700 block of Vine Street in the City of Scranton, Lackawanna County, Pennsylvania. The nature of the call was that a male had been shot in this geographic area. Upon their arrival[,], the police found a black male, later determined to be Rashan Crowder ("the victim"), lying in the roadway with a wound to the chest.

Medical personnel were summoned and arrived at the scene. These personnel unsuccessfully initiated life saving measures. They subsequently transferred [the victim] to

¹ 18 Pa.C.S. §§ 2502(c) and 6106(a)(1), respectively.

Geisinger Community Medical Center. The victim . . . was later pronounced dead at Geisinger.

On May 6, 2013[,], an autopsy was performed by a forensic pathologist on the decedent. The results of that autopsy as noted by Lackawanna County Coroner Tim Rowland indicated that . . . [the victim] had sustained two gunshot wounds, one to the chest and one to his right thigh. The cause of death was the gunshot wound to his chest. The manner of death was listed as a homicide. As a result of the initial investigation and the autopsy findings[,], the police began a criminal investigation into this incident.

The police investigation determined that [the victim] was a student at Lackawanna College and lived across Vine Street from the site of his death in the Tobin Hall dormitory of Lackawanna College. Numerous witnesses, not all in concurrence, led police to determine what occurred on or about May 5, 2013.

[The victim] was apparently accompanied on that fateful night by a friend named Shaquille Isbell. Isbell was an eyewitness to the relevant events. Isbell told police that he was a friend of [the victim] and attended Lackawanna College with him.

Earlier that evening Isbell and [the victim] attended a house party in the 500 block of Monroe Avenue in Scranton about two blocks from the area of the shooting. There may have been some words exchanged at the party but Isbell and [the victim] peacefully left that party and walked to other locations in their Hill Section neighborhood and to a mini mart and returned to their dormitory. After the passage of time, Isbell and [the victim] left their dormitory and returned again to the mini mart.

Upon leaving the mini mart to return, for the second time, to their dormitory they happened upon a group of males and females on the corner of Monroe Avenue and Vine Street just up the street from the original party earlier that evening. The two groups [gave] each other "attitude," [engaged in] trash talking[,], and [traded] insults back and forth. The unfortunate result of this exchange was that a male member of the group produced a handgun firing it at [the victim and] striking him in the right thigh. After the shooting, a University of Scranton security car happened to

arrive at the scene thus causing the two groups to separate and walk down the 800 block of Vine Street from Monroe Avenue towards Madison Avenue, the location of the Tobin Hall dormitory. During this one[-]block[-]plus walk, words, trash talk and insults resumed.

The argument continue[d] beyond Madison Avenue on Vine Street to an area in the 700 block of Vine Street near Moir Court. At that point, a second male from the group [began] to goad the male into shooting the [victim] for a second time. Repeatedly, the second male encourage[d] and urge[d] the first male to fire again. When the second shot occur[ed], it [hit] [the victim] in the chest[,] fatally injuring him. At that point, the group of males and females all [fled] the area.

Subsequent interviews and investigation[,] and review of the security video[,] revealed that the shooter was [Appellant]. He was determined to be the man holding the gun. The [c]o-[d]efendant, Marlon Clotter[,] was also identified as the male coaxing, encouraging and goading [Appellant] to fire two shots at the [victim].

[Appellant] was born on May [3], 1995. At the time of this offense on May 5, 2013, [Appellant] had just turned eighteen (18) years of age two days prior to the crime. At the time of sentencing, [Appellant] was nineteen (19) years of age.

Opinion in Support of Affirmance Pursuant to Pa.R.A.P. 1925(a), 4/13/2015 ("1925(a) Opinion"), at 1-3. Appellant fled following the shooting, and was subsequently located and arrested in Syracuse, New York.

On July 28, 2014, Appellant pled guilty to murder of the third degree and firearms not to be carried without a license. On November 5, 2014, the trial court sentenced him to 20 to 40 years' incarceration for the third-degree murder conviction and 3½ to 7 years' incarceration for the firearms not to be carried without a license conviction. On November 14, 2014, Appellant filed a motion for reconsideration of sentence, which the trial court

denied on November 17, 2014. On December 15, 2014, Appellant filed a timely notice of appeal.

Appellant raises the following issue for our review:

Did the trial court err and abuse its discretion by imposing a manifestly excessive sentence individually and in the aggregate, where each sentence was set at the highest end of the standard range of the Pennsylvania Sentencing Guidelines and run consecutive to one another, after failing to consider the relevant sentencing criteria of the Pennsylvania Sentencing Code including, but not limited to, the personal characteristics of [Appellant], the rehabilitative needs of [Appellant] and the actual need for the protection of the public, the presence of mitigating circumstances and, then, failing to state sufficient reasons on the record for the sentence imposed?

Appellant's Brief at 5. Appellant's issue challenges the discretionary aspects of his sentence.

"Challenges to the discretionary aspects of sentencing do not entitle an appellant 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, we must engage in a four-part analysis to determine:

(1) whether the appeal is timely; (2) whether Appellant preserved his issue; (3) whether Appellant's brief includes a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of sentence; and (4) whether the concise statement raises a substantial question that the sentence is appropriate under the sentencing code.

Commonwealth v. Austin, 66 A.3d 798, 808 (Pa.Super.2013) (quoting ***Commonwealth v. Malovich***, 903 A.2d 1247, 1250 (Pa.Super.2006)); **see also *Allen***, 24 A.3d at 1064.

Appellant raised his discretionary aspect of sentence issue in a timely post-sentence motion,² filed a timely notice of appeal, and included a statement of reasons relied upon for allowance of appeal pursuant to Pennsylvania Rule of Appellate Procedure 2119(f) in his brief. We must, therefore, determine whether his issue presents a substantial question and, if so, review the merits.

"The determination of whether a particular issue raises a substantial question is to be evaluated on a case-by-case basis." ***Commonwealth v. Dunphy***, 20 A.3d 1215, 1220 (Pa.Super.2011) (quoting ***Commonwealth v. Fiascki***, 886 A.2d 261, 263 (Pa.Super.2005)). A substantial question exists where a defendant raises a "plausible argument that the sentence violates a provision of the sentencing code or is contrary to the fundamental norms of the sentencing process." ***Commonwealth v. Dodge***, 77 A.3d 1263, 1268

² Although the post-sentence motion does not contain all arguments and details contained in the appellate brief, the motion argues the trial court should reconsider the sentence because the sentence was in the high-end of the standard range, was the maximum allowed pursuant to statute, and was imposed because Appellant "felt it necessary to address the [trial c]ourt on the legality of his sentence." Motion for Reconsideration of Sentence, 11/14/2014.

(Pa.Super.2013) (quoting ***Commonwealth v. Naranjo***, 53 A.3d 66, 72 (Pa.Super.2012)).

Appellant maintains the trial court imposed excessive consecutive sentences. Appellant's Brief at 10. He argues the trial court imposed a minimum sentence at the high end of the standard range of the Pennsylvania Sentencing Guidelines and imposed the statutory maximum sentence for each conviction. ***Id.*** He claims the trial court did not impose a sentence that was consistent with protection of the public, the gravity of the offense, or the rehabilitative needs of Appellant. ***Id.*** He argues the trial court did not "substantively consider" Appellant's "prior criminal record, his age, personal characteristics . . . and his potential for rehabilitation." ***Id.*** Appellant maintains the sentence was too severe because the circumstances did not support the sentence and claims the trial court failed to consider Appellant's age and immaturity, his susceptibility to peer pressure, or his drug addiction and intoxication. ***Id.*** at 11. Further, Appellant maintains the trial court "focus[ed] on [Appellant's] immature and imprudent request that he be advised of the statute under which he was being sentenced." ***Id.***³

³ At sentencing, Appellant repeatedly asked the court to specify the statute that authorized the imposition of the sentence. N.T., 11/5/2014, at 182-190. Appellant believed that this would be a statute other than the criminal statutes for which he was convicted, i.e., the homicide statute and the firearms not to be carried without a license statute. ***Id.*** The trial court explained the sentencing structure in Pennsylvania. ***Id.*** There is no indication in the transcript that the trial court considered this exchange when
(Footnote Continued Next Page)

Appellant's claim that the trial court imposed an excessive sentence, coupled with his claim the trial court failed to consider mitigating circumstances and Appellant's rehabilitative needs raises a substantial question. **See Commonwealth v. Samuel**, 102 A.3d 1001, 1007 (Pa.Super.2014) (appellant raised substantial question when he alleged sentence was excessive and court failed to consider mitigating circumstances). We will, therefore, address the merits of Appellant's claim.

"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)).

"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

(Footnote Continued) _____

it imposed sentence and, in the 1925(a) opinion, the trial court clarifies that this exchange did not impact the sentence. 1925(a) Opinion, at 8.

1247 (Pa.Super.2006)). Further, “[w]here pre-sentence reports exist, we shall . . . presume that the sentencing judge was aware of relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.” ***Commonwealth v. Antidormi***, 84 A.3d 736, 761 (Pa.Super.2014).

The trial court conducted a lengthy sentencing hearing and considered the presentence report. The trial court considered Appellant’s juvenile record, including his adjudication for burglary, his time spent incarcerated at a juvenile detention facility, his time at a rehabilitation center, and Appellant’s violations while incarcerated following his arrest in this matter. 1925(a) Opinion, at 9-10; N.T., 11/5/2014, at 127, 155-61. The trial court heard Appellant’s testimony regarding the events of May 5, 2013 and heard Appellant’s testimony that he had received a high school diploma while incarcerated and had applied to colleges prior to the shooting. N.T., 11/5/2015, at 180-81. The trial court noted Appellant had a supportive home life. 1925(a) Opinion, at 10; N.T., 11/5/2014, at 153-54. The trial court also noted Appellant had many opportunities to retreat on the night of the incident, but decided to not do so. ***Id.***; N.T., 11/5/2014, at 169-76. The court further considered the gravity of the third-degree murder offense, and that Appellant was on juvenile supervision at the time he committed the offense. 1925(a) Opinion at 11; N.T., 11/5/2014, at 179.

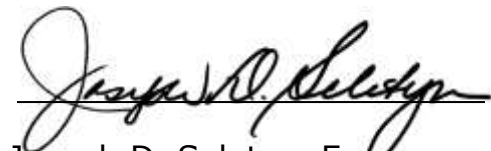
In addition, the trial court heard testimony from numerous family members and friends of the victim. N.T., 11/5/2015, at 6-58. The trial

court also noted Appellant claimed the acts were not intentional and claimed the victim was the aggressor. 1925(a) Opinion at 21-22; N.T., 11/5/2014, at 147-50, 163-77. The trial court found Appellant incredible. It noted that Appellant voluntarily retrieved his weapon, ignored four avenues of retreat, fired his weapon twice, attempted to fire his weapon a third time, and that the police car appeared between the first and second shots, providing Appellant an opportunity to reflect on his actions. 1925(a) Opinion at 22.

Accordingly, the trial court considered, inter alia, the following: the pre-sentence report; the impact of the crime on the victim and the victim's family; the arguments of defense counsel and the Commonwealth; Appellant's statements; Appellant's history, characteristics, and rehabilitative needs; Appellant's drug addiction and previous rehabilitation attempt; and the nature of the crime. The trial court did not abuse its discretion when it sentenced Appellant.

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: 2/1/2016