

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

LATACHA MARIE SOKOL

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1752 MDA 2013

Appeal from the Judgment of Sentence September 5, 2013
In the Court of Common Pleas of Perry County
Criminal Division at No(s): CP-50-CR-0000017-2012

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY PANELLA, J.:

FILED APRIL 11, 2014

Appellant, Latacha Marie Sokol appeals from the judgment of sentence entered on September 5, 2013, following the revocation of her probationary sentence. After careful review, we affirm.

On June 14, 2012, Sokol entered a negotiated guilty plea to three counts of Access Device Fraud, in violation of 18 Pa.C.S.A. § 4106(a)(1), one count graded as a misdemeanor of the first degree and two counts graded as misdemeanors of the second degree. Subsequent thereto, on August 6, 2012, the trial court sentenced Sokol on the misdemeanor of the first degree to a period of three years' probation. Additionally, the trial court imposed a term of 88 days to 23 months' imprisonment on the misdemeanors of the second degree as well as a 23-month probationary period. All sentences were to run consecutively.

The Perry County Probation Department lodged a detainer against Sokol, who was being housed in Cumberland County, after she received new charges of possession of drug paraphernalia (needles for heroin usage) on August 16, 2013. Cumberland County recommended a day treatment program for Sokol and, as a result, Perry County lifted the detainer. **See**, N.T., **Gagnon II** Hearing, 4/18/13, at 2. Sokol “failed out of the day treatment program” and consequently the detainer was again lodged. **Id.**, at 3.

At the time of the probation violation hearing, the Perry County Probation Department presented evidence to establish that Sokol had received new drug possession charges, tested positive for drug use, and failed to complete the drug treatment program. As such, Sokol was found to be in technical and substantial violation of the terms of her probationary sentence. The trial court entered an order on September 5, 2013, revoking Sokol’s probationary sentence and re-sentencing her to a period of 1 to 3 years’ imprisonment on one count of access device fraud, a misdemeanor of the first degree. **See** Order, 9/15/13, at ¶ 2. No further sentence was imposed as to the two counts of access device fraud, graded as misdemeanors of the second degree. The order further provided a credit to Sokol for time served from 8/16/12 to 9/21/12 and from 8/18/13 to the present. **See id.**

Sokol filed a post-sentence motion on September 10, 2013 wherein she argued that “she should receive credit for the 5 months she was in

Cumberland County Prison along with Perry County's detainer from probation" and that, the court should "reconsider it's sentence to a State Correctional Facility for local incarceration." Post Sentencing Motion, 9/10/13, at ¶¶ 6-7. Sokol's post-sentence motion was denied on September 11, 2013. **See** Order, 9/11/13, at 1. This appeal followed.

Sokol raises the following issues for our review:

DID THE TRIAL COURT ERR IN IMPOSING A STATE CORRECTIONAL INSTITUTION SENTENCE AFTER INITIALLY IMPOSING A PROBATIONARY SENTENCE?

DID THE TRIAL COURT ERR IN IMPOSING A STATE CORRECTIONAL SENTENCE WITHOUT ADDRESSING WHETHER THE APPELLATE WAS ABLE TO RECEIVE REHABILITATION AT A LOCAL INCARCERATIVE [SIC] LEVEL?

Appellant's Brief, at 7.

Sokol's claims are both challenges to the discretionary aspects of her sentence. Therefore, before we are able to consider the merits of Sokol's argument, we must conduct a four-part analysis to determine:

(1) whether appellant has filed a timely notice of appeal, Pa.R.A.P. 902, 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f) [whether it contains the concise statement which raises a substantial question]; and (4) whether there is a substantial question that the sentence appeal from is not appropriate under the Sentencing Code, 42 Pa.C.S. § 9781(b).

Commonwealth v. Cook, 941 A.2d 7, 11 (Pa. Super. 2007). If the appellant satisfies each of these four requirements, we will then proceed to

decide the substantive merits of the case. **See Commonwealth v. Malovich**, 903 A.2d 1247, 1250 (Pa. Super. 2006).

Here, Sokol has fulfilled the first two prongs of the foregoing test. Sokol's brief, however, suffers from a "fatal defect"—it does not comply with Pa.R.A.P. 2119(f). Thus, Sokol's challenges to the discretionary aspects of her sentence are waived.

According to Rule 2119(f):

An appellant who challenges the discretionary aspects of a sentence in a criminal matter **shall** set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. The statement **shall** immediately precede the argument on the merits with respect to the discretionary aspects of sentence.

Pa.R.A.P. 2119(f) (emphasis added).

Although the rule is procedural, the consequences for noncompliance are grave. As this Court has stated:

If an appellant fails to comply with Pa.R.A.P. 2119(f) and the Commonwealth does not object, the reviewing Court may overlook the omission if the presence or absence of a substantial question can easily be determined from the appellant's brief. However, if the appellant fails to comply with Pa.R.A.P. 2119(f) and the Commonwealth objects, the issue is waived for purposes of review.

Commonwealth v. Anderson, 830 A.2d 1013, 1017 (Pa. Super. 2003) (internal citations omitted); **see also Commonwealth v. Karns**, 50 A.3d 158 (Pa. Super. 2013), **appeal denied**, --- Pa. ---, 65 A.3d 413 (2013). In **Commonwealth v. Tuladziecki**, 513 Pa. 508, 522 A.2d 17 (1987), our

Supreme Court explicitly held that Rule 2119(f) was not simply promulgated as an aid to the appellate courts:

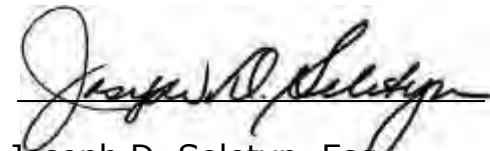
Our insistence on separate presentation of these [discretionary sentencing] issues **is more than mere formalism**; important concerns of **substance** guide this decision. In addition to preserving the respective rights of both parties according to the jurisdictional scheme provided by the legislature, it furthers the purpose evident in the Sentencing Code as a whole of limiting any challenges to the trial court's evaluation of the multitude of factors impinging on the sentencing decision to exceptional cases.

Id., 513 Pa. at 513-514, 522 A.2d at 19-20 (emphasis added).

In this case, Sokol has failed to comply with Rule 2119(f) and the Commonwealth objected to the noncompliance. **See** Commonwealth's Brief, at 2-3. As such, we are constrained to find that Sokol's discretionary aspect of sentencing claims are waived.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014