NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. RONALD JEFFERSON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1588 EDA 2013

Appeal from the Judgment of Sentence entered May 14, 2013,
in the Court of Common Pleas of Philadelphia County,
Criminal Division, at No(s): CP-51-CR-0005786-2011

BEFORE: SHOGAN, ALLEN, and OTT, JJ.

MEMORANDUM BY ALLEN, J.: **FILED APRIL 14, 2014**

Ronald Jefferson ("Appellant") appeals from the judgment of sentence imposed after the trial court found him guilty of robbery and possessing an instrument of crime.[1] We affirm.

The trial court summarized the facts presented at trial as follows:

> The evidence established that late into the night of May 2, 2011, and into the early morning hours of May 3, 2011, the following events took place. The complainant, Kim Carlton, testified that she was at the 7-Eleven to use the ATM to withdraw money. She stated that she withdrew fifty dollars ($50.00). After she withdrew the money she exited the store and came out into the parking lot. Ms. Carlton saw Appellant standing outside a white work van that had a gate behind the driver's seat. (N.T. 15-16).
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> Ms. Carlton testified that she asked Appellant for a ride home. She stated that she wanted a ride home because

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[1] 18 Pa.C.S.A. §§ 3701 and 907.

she had to use the bathroom and she intended to pay Appellant five dollars ($5.00) for the ride home. Ms. Carlton said she got into the van and Appellant told her to sit in the back of the van and that there was a chair back there. Ms. Carlton testified that Appellant asked her for a stem. Ms. Carlton clarified that a stem is a crack pipe. She said she had one and gave it to Appellant. She testified that Appellant locked her in the back of the van and began driving the van. (N.T. Trial Volume 17-18). She said she noticed he was not going towards her home. Ms. Carlton stated that Appellant started driving very fast and was stopping abruptly and she was being tossed around the back of the van hitting the walls. She stated that the chair was not attached to the van and that she was also being hurt by that hitting her. She testified that his driving fast and stopping abruptly continued for about a half hour to an hour and that she could not see where Appellant was going while she was being buffeted about the rear the vehicle. Ms. Carlton stated that she told Appellant to stop driving recklessly because it was hurting her. (N.T. 18-21).

Ms. Carlton further testified that Appellant stopped the van in a dark place where there were garages and Appellant came to the back of the van. Ms. Carlton stated she saw the garages through the gate but did not know where she was. Next, Ms. Carlton stated that Appellant took out a knife about 12 inches long with a blue handle. Ms. Carlton said that Appellant said, "I'm going to kill you." Next Ms. Carlton testified that Appellant dug his hands into her pockets, grabbed her arm and he ripped her sweatshirt. Ms. Carlton said Appellant took the money out of her pocket which she had just gotten from the ATM ($50.00), and he placed that money in the driver's side sun flap. (N.T. 22-28).

Further testimony established that after the money was taken, Ms. Carlton saw a police vehicle near the van and she started screaming for help. Philadelphia Police Officer Brian Williams testified that he observed Appellant exit the vehicle and that he heard his partner yell he just threw something in the lot with tall grass. Officer Williams said at this time he heard screaming coming from the rear of the van. The van was locked. However, the officers located the keys in the lot where they saw Appellant

> throwing something. Officer Williams said he looked in the back of the van and found Ms. Carlton there screaming hysterically. Ms. Carlton told the police that Appellant stole the fifty dollars ($50.00) and she said "this guy is trying to kill me." Appellant was detained and placed into custody. The police officers recovered the fifty dollars ($50.00) from the driver's side sun flap where Ms. Carlton described it had been placed by Appellant. (N.T. 91-105).

Trial Court Opinion, 9/26/13, at 2-4.

Appellant appeared for a waiver trial on February 21, 2013, after which the trial court rendered its guilty verdicts for felony robbery and possessing an instrument of crime. On May 14, 2013, the trial court sentenced Appellant to an aggregate 6½ - 13 years imprisonment. Appellant filed a timely appeal and the trial court and Appellant have complied with Pa.R.A.P. 1925(b).

Appellant presents two issues for our review:

> A. WAS APPELLANT'S CONVICTION AGAINST THE WEIGHT OF THE EVIDENCE?
>
> B. DID THE TRIAL COURT ISSUE A GREATER SENTENCE THAN NECESSARY?

Appellant's Brief at 3.

Regarding Appellant's first issue, we agree with the Commonwealth that Appellant has waived his weight claim. A weight claim must be raised in the first instance with the trial court in a motion for a new trial. Pa.R.Crim.P. 607. The weight claim may be raised either orally or in a written motion, prior to sentencing, or in a post-sentence motion. ***Id***.

Our review of the record, including the February 21, 2013 notes of testimony from the waiver trial, the May 14, 2013 notes of testimony from the sentencing hearing, and the certified docket entries, indicate that Appellant failed to raise his weight claim as prescribed by Pa.R.Crim.P. 607. Thus, the claim is waived. ***See In re C.S.***, 63 A.3d 351, 494 (Pa. Super. 2013) (failure to properly preserve a weight of the evidence claim in a criminal case will result in waiver, even if the trial court addresses the issue in its opinion).

Similarly, we agree with the Commonwealth that Appellant has failed to preserve his second issue regarding the length of his sentence. The trial court sentenced Appellant to 6½ - 13 years imprisonment on the robbery conviction, and a concurrent 2½ - 5 years imprisonment on the possessing an instrument of crime conviction. Appellant challenges the trial court's exercise of discretion in the imposition of sentence. A challenge to the discretionary aspects of a sentence is not appealable as of right. Rather, Appellant must petition for allowance of appeal pursuant to 42 Pa.C.S.A. § 9781. ***Commonwealth v. Hanson***, 856 A.2d 1254, 1257 (Pa. Super. 2004). When an appellant challenges a discretionary aspect of sentencing, we must conduct a four-part analysis before we reach the merits of the appellant's claim. ***Commonwealth v. Martin***, 611 A.2d 731, 735 (Pa. Super. 1992). In this analysis, we must determine: (1) whether the present appeal is timely; (2) whether the issue raised on appeal was properly preserved; (3) whether Appellant has filed a statement pursuant to

Pa.R.A.P. 2119(f); and (4) whether Appellant has raised a substantial question that his sentence is not appropriate under the Sentencing Code. ***Id***.

Although his appeal is timely, Appellant has failed to preserve his sentencing issue where our review of the May 14, 2013 notes of testimony and certified docket entries reveal that Appellant did not raise his sentencing issue with the trial court during sentencing or in a post-sentence motion. ***See, e.g., Commonwealth v. Ahmad***, 961 A.2d 884, 886 (Pa. Super. 2008). Also, Appellant has failed to comply with Pa.R.A.P. 2119(f) in that, although Appellant references Pa.R.A.P. 2119(f), he has not "set forth a concise statement" in his brief that "immediately precedes the argument on the merits." *See* Appellant's Brief at 24, merely reciting Pa.R.A.P. 2119(f), but not complying with it. Furthermore, even if we were to find that Appellant had not waived this issue and had raised a substantial question regarding his sentence, the record reveals no abuse of discretion by the trial court. At sentencing, the trial court addressed Appellant:

> Sir, your sentence was that because of your past history even though the crimes were remote. You don't seem to be able to step out of the patterns of criminality. You're back to crack and you're into serious crimes.
>
> This was an extremely serious crime with a woman locked in the back of your van and your robbing her at knifepoint. I can't forget that. That's something that we don't do in civilized society. Now, when you step out of bounds like that, I have to do something to protect the next woman who comes out of a convenience store and you happen to see and ask to get in your van.

> The second piece is, I hope you can avail yourself of treatment when you are in jail.

N.T., 5/14/13, at 24.

The trial court further explained:

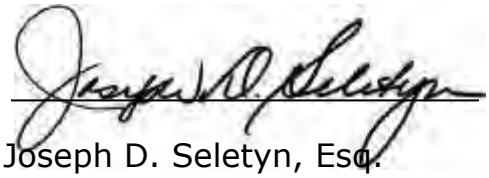
> This Court sentenced Appellant appropriately, taking into consideration the seriousness of this offense as well as his past crimes and likelihood of continued criminal activity. Sentencing was delayed for a Pre-Sentence Investigation. On the charge of Robbery, Appellant had an Offense Gravity Score of 10 and a Prior Record Score of 5. Appellant had been arrested fifteen times in his life and he has eight convictions. This court noted Appellant's extensive criminal history. This Court evaluated all relevant facts and circumstances, including Appellant's history and determine this sentence was necessary.

Trial Court Opinion, 9/26/13, at 6.

Based on the foregoing, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014