

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SHAWN DUANE GRIFFITH II,	:	
	:	
Appellant	:	No. 473 MDA 2015

Appeal from the Judgment of Sentence December 16, 2014
In the Court of Common Pleas of Perry County
Criminal Division No(s): CP-50-CR-0000390-2013

BEFORE: BOWES, WECHT, and FITZGERALD,* JJ.

JUDGMENT ORDER BY FITZGERALD, J.: **FILED JULY 31, 2015**

Appellant, Shawn Duane Griffith, II, appeals from the judgment of sentence entered in the Perry County Court of Common Pleas following expulsion from the state intermediate punishment program and resentencing to thirty-six to seventy-two months' imprisonment. Because his original sentence was for five years' probation, he claims the trial court abused its discretion when resentencing him. We affirm.

The facts are unnecessary for disposition. On December 16, 2014, the trial court sentenced Appellant.¹ Appellant filed a timely post-sentence

* Former Justice specially assigned to the Superior Court.

¹ We note the court did not advise Appellant of his post-sentence rights on the record. **See** Pa.R.Crim.P. 708(D)(3)(a) ("The **judge** shall advise the

motion challenging the court's bases for imposing his sentence, which the court denied on December 19, 2014. Appellant timely appealed and timely filed a court-ordered Pa.R.A.P. 1925(b) statement. Appellant raises the following issue:

Did the trial court abuse its [sic] discretion in re-sentencing [Appellant] to an incarcerative [sic] state correctional institution sentence of thirty six months, , [sic] maximum seventy-two months?

Appellant's Brief at 10. In support of his sole issue, Appellant claims his sentence was "unduly harsh" and the court was excessively influenced by his conviction in Cumberland County.

The standard of review is abuse of discretion. **See Commonwealth v. Cartrette**, 83 A.3d 1030, 1041 (Pa. Super. 2013) (*en banc*). "[A] defendant is required to preserve the issue in a court-ordered Pa.R.A.P.1925(b) concise statement and a Pa.R.A.P. 2119(f) statement." **Id.** at 1042 (citation omitted).

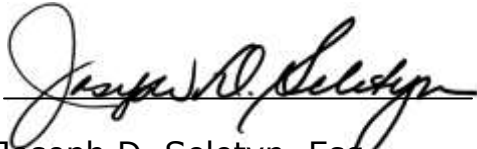
[W]hen the appellant has not included a Rule 2119(f) statement and the appellee has not objected, this Court may ignore the omission and determine if there is a substantial question that the sentence imposed was not appropriate, or enforce the requirements of Pa.R.A.P. 2119(f) *sua sponte*, *i.e.*, deny allowance of appeal. However, this option is lost if the appellee objects to a 2119(f) omission. In such circumstances, this Court is precluded from reviewing the merits of the claim and the appeal must be denied.

defendant **on the record**: (a) of the right to appeal" (emphases added).

Commonwealth v. Kiesel, 854 A.2d 530, 533 (Pa. Super. 2004) (citations omitted). Instantly, Appellant failed to include a Rule 2119(f) statement in his brief, and the Commonwealth objected to its omission. **See** Commonwealth's Brief at 2. Accordingly, "this Court may not review the merits of the claim, and we deny allowance of appeal." **See Kiesel**, 854 A.2d at 533.

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: 7/31/2015