

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

HAKEEM LEE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1389 EDA 2014

Appeal from the Judgment of Sentence April 3, 2014
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0003941-2010

BEFORE: MUNDY, J., OLSON, J., and MUSMANNO, J.

MEMORANDUM BY MUNDY, J.:

FILED AUGUST 03, 2015

Appellant, Hakeem Lee, appeals from the April 3, 2014 aggregate judgment of sentence of three to six years' imprisonment imposed following the revocation of his probation. After careful review, we affirm.

The trial court has set forth the relevant procedural history of this case as follows.

While on ... probation for the crime[s] of [c]orruption of [m]inors and [i]ndecent [a]ssault, [] Appellant was found guilty in Bucks County ... of [i]ndecent [a]ssault upon a person less than sixteen (16) years of age (18 [Pa.C.S.A.] § 3126[(a)(8)]) and unlawful contact with a minor involving sexual offenses (F1) (18 [Pa.C.S.A.] § 6318[(a)(1)]).

Th[e trial] court conducted a violation of probation hearing on April 3, 2014[,] immediately following [A]ppellant's conviction on the new offenses. The [trial] court found [A]ppellant in direct

violation of [his] probation. In view of the fact that [A]ppellant was on probation for a sexual offense when he participated in an additional sexual offense case, th[e trial] court sentenced him to two and one-half (2 1/2) to five (5) years['] incarceration on Count[s] 1 and six (6) to twelve (12) months incarceration on Count 2, consecutive [to each other, and] to any other sentences being served.

Trial Court Opinion, 1/16/15, at 1-2. Specifically, the trial court noted it was imposing the sentence because Appellant was "on probation and ... committed another violent act against a 14 year-old girl." N.T., 4/3/14, at 13.

On April 15, 2014, Appellant filed a motion to reconsider sentence, albeit, untimely.¹ On April 24, 2014, the trial court denied Appellant's motion. Thereafter, on May 1, 2014, Appellant filed a timely notice of appeal.²

On appeal, Appellant raises the following issue for our review.

Did not the lower court violate the tenets of the Sentencing Code, which mandate individualized sentencing, and impose an excessive sentence of three to six years consecutive confinement for a violation of probation?

¹ Appellant was sentenced on April 3, 2014. Therefore, Appellant's motion to modify sentence was due 10 days later, or on April 13, 2014. Pa.R.Crim.P. 708(E). As April 13, 2014 was a Sunday, Appellant had until Monday April 14, 2014 to file said motion. **See generally** 1 Pa.C.S.A. § 1908. Nevertheless, Appellant did not file the motion until Tuesday, April 15, 2014; therefore, it was untimely filed.

² Appellant and the trial court have complied with Pennsylvania Rule of Appellate Procedure 1925.

Appellant's Brief at 3.

This Court recently stated that, "we unequivocally hold that this Court's scope of review in an appeal from a revocation sentencing includes discretionary sentencing challenges." **Commonwealth v. Cartrette**, 83 A.3d 1030, 1034 (Pa. Super. 2013) (*en banc*). Further, our review is guided by the following.

[T]he proper standard of review when considering whether to affirm the sentencing court's determination is an abuse of discretion. [A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will. ... An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.

Commonwealth v. Provenzano, 50 A.3d 148, 154 (Pa. Super. 2012) (citation omitted).

Likewise, we review a sentence imposed following the revocation of probation for an error of law or an abuse of discretion. **Commonwealth v. Ahmad**, 961 A.2d 884, 888 (Pa. Super. 2008).

[W]e must accord the sentencing court great weight as it is in the best position to view the defendant's character, displays of remorse, defiance or indifference, and the overall effect and nature of the crime. ... [A] sentence should not be disturbed where it is evident that the sentencing court was

aware of sentencing considerations and weighed the considerations in a meaningful fashion.

Id. at 887 (citations and quotation marks omitted).

Herein, Appellant does not challenge the legality of his sentence. Rather, Appellant's sole issue raised on appeal pertains to the discretionary aspects of his sentence.

It is well settled that, with regard to the discretionary aspects of sentencing, there is no automatic right to appeal. [Therefore, b]efore we reach the merits of this issue, 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. The third and fourth of these requirements arise because Appellant's attack on his sentence is not an appeal as of right. Rather, he must petition this Court, in his concise statement of reasons, to grant consideration of his appeal on the grounds that there is a substantial question. [I]f the appeal satisfies each of these four requirements, we will then proceed to decide the substantive merits of the case.

Commonwealth v. Edwards, 71 A.3d 323, 329-330 (Pa. Super. 2013) (citations omitted), *appeal denied*, 81 A.3d 75 (Pa. 2013).

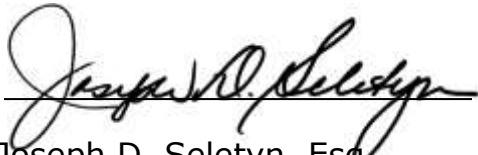
We conclude Appellant has not met the technical requirements necessary for this Court to engage in substantive review of his claim. Instantly, Appellant filed a timely notice of appeal and included a separate Pa.R.A.P. 2119(f) statement within his appellate brief. ***See*** Appellant's Brief

at 9-11. However, Appellant failed to timely file a motion to modify sentence as necessary to preserve his claim. Our review of the record also reveals that Appellant failed to raise his claims at sentencing.

Accordingly, Appellant has not properly petitioned this Court to review the discretionary aspect of his sentence, and we are unable to proceed to a determination of whether such claim would raise a substantial question. ***See Edwards, supra*** at 330. Therefore, we affirm the April 3, 2014 judgment of sentence.

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: 8/3/2015