2013 PA Super 151

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
SHERDINA WILLIAMS,	:	
Appellant	:	No. 2862 EDA 2011

Appeal from the Judgment of Sentence September 30, 2011,
Court of Common Pleas, Philadelphia County,
Criminal Division at Nos. CP-51-CR-0402721-2001,
CP-51-CR-0410971-2001, CP-51-CR-0410991-2001,
CP-51-CR-0801921-2001, CP-51-CR-0801961-2001,
CP-51-CR-0802011-2001, CP-51-CR-0802221-2001
and CP-51-CR-0901011-2002

BEFORE: BENDER, DONOHUE and COLVILLE*, JJ.

CONCURRING STATEMENT BY DONOHUE, J.: **FILED JUNE 24, 2013**

I concur in the result reached by the learned Majority, but I cannot join in its reasoning. I agree wholeheartedly that the sentence imposed in this case, 290 – 580 months of incarceration for probation violations, is clearly excessive. However, because of the significant restraints our Supreme Court has imposed on this Court's review of sentencing claims, ***see, e.g.***, ***Commonwealth v. Perry***, 612 Pa. 557, 564-65, 32 A.3d 232, 236 (2011); ***Commonwealth v. Walls***, 592 Pa. 557, 926 A.2d 957 (2007), I do not think it is within this Court's province to engage in the sort of "proportionality" analysis the Majority has performed in this case. Instead, I would vacate the judgment of sentence because the trial court abused its

*Retired Senior Judge assigned to the Superior Court.

discretion in sentencing Williams, as the certified record on appeal plainly reflects that the excessive sentence here is the result of the trial judge's partiality, prejudice, bias, and ill-will towards Williams throughout the entire sentencing process.

In ***Walls***, the Supreme Court established strict limitations on this Court's ability to reverse the sentencing decisions of trial courts. In particular, in ***Walls*** the Supreme Court made clear that this Court must show a high degree of deference to the trial court's sentencing determinations, in large part because the trial court is "in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it." ***Id.*** at 565, 926 A.2d at 961 (quoting ***Commonwealth v. Ward***, 524 Pa. 48, 52, 568 A.2d 1242, 1243 (1990)). Unlike this Court, which conducts appellate review based upon a "cold transcript," the trial court sentences "flesh-and-blood defendants" and is thus best situated to gauge "the nuances of sentencing decisions." ***Id.***

Moreover, in ***Walls*** the Supreme Court made clear that when addressing a claim that a sentence is unreasonable, this Court's statutory authority is limited to determining whether the trial court failed to consider the factors set forth in either of two provisions in the Sentencing Code, specifically 42 Pa.C.S.A. § 9781(c)(3) and 42 Pa.C.S.A. § 9721(b). ***Id.*** at 567-68, 926 A.2d at 963. With respect to section 9781(c)(3), this Court

must ascertain whether a sentence that exceeds the sentencing guidelines is unreasonable based upon the four factors set forth in section 9781(d). ***Id.*** at 568, 926 A.2d at 963. Sections 9781(c) and (d), however, focus on the proper application of sentencing guidelines, and sentencing guidelines are not utilized in determining the length of sentences imposed following a revocation of probation. ***Commonwealth v. Ferguson***, 893 A.2d 735, 739 (Pa. Super.) (citing ***Commonwealth v. Coolbaugh***, 770 A.2d 788, 792 (Pa. Super. 2001), *appeal denied*, 588 Pa. 788, 906 A.2d 1196 (2006)). Accordingly, section 9781(c)(3) has no application in this case.

Therefore, appellate review of Williams' sentence following the revocation of her probation is guided solely by the provisions of section 9721(b):

> [A] sentence may also be unreasonable if the appellate court finds that the sentence was imposed *without express or implicit consideration* by the sentencing court of the general standards applicable to sentencing found in Section 9721, *i.e.*, the protection of the public; the gravity of the offense in relation to the impact on the victim and the community; and the rehabilitative needs of the defendant. 42 Pa.C.S. § 9721(b).

Walls, 592 Pa. at 565, 926 A.2d at 961. Thus, following the revocation of probation, the trial court must impose an individualized sentence after consideration of: (1) the protection of the public, (2) the gravity of the offense in relation to impact on victim and community, and (3) the rehabilitative needs of the defendant. ***Id.***

My review of the certified record on appeal indicates that the trial court considered each of the general standards in section 9721(b) when sentencing Williams.[1] Based upon Williams' history of recidivism and her repeated failures to take advantage of drug and alcohol programs (both inside and outside of prison), the trial court found that her prospects for rehabilitation are poor. Trial Court Opinion, 2/13/2012, at 15-17. The trial court also determined that Williams is a threat to society, as she has committed numerous acts of violence, including assaulting nuns and security guards in various burglaries, attacking a police officer with scissors, attempting arson, driving while intoxicated (resulting in an accident), and fighting while in prison. ***Id.*** at 13-16. Finally, the trial court determined that Williams' crimes have had considerable negative impacts on her victims and the community in general. ***Id.*** at 16 & n.17. The record on appeal supports these findings of the trial court.

Thus, even though in my view the sentence imposed here is clearly excessive, in a case without more, under the strictures of ***Walls*** our appellate analysis of Williams' sentencing claim would be complete and the result would be an affirmance of the trial court's decision. Pursuant to

---

[1] To this end, the trial court reviewed, *inter alia*, three pre-sentence investigation reports (prepared September 22, 2001, February 5, 2003, and July 11, 2011), two mental health evaluations (dated October 2, 2001 and July 20, 2011), the testimony of two witnesses called by Williams to testify in her behalf, Father Thomas Betz and Dr. Gillian Blair (a licensed psychologist), and the arguments of counsel.

Walls, the trial court did all that was required of it (*i.e.*, consideration of the section 9721(b) factors), and this Court's appellate review confirmed that the trial court had adequately done so and that the record on appeal supported its findings. As such, this Court cannot perform a "proportionality" analysis to evaluate whether the severity of the sentence matches the severity of the crimes.[2] The trial court made the determination of proportionality and this Court is obliged to show it great deference. ***Walls***, 592 Pa. at 564, 926 A.2d at 961.

In this case, however, there is more. A trial court's sentence must be vacated if the sentence imposed is the result of the trial judge's "partiality, prejudice, bias or ill-will" towards the defendant. ***Id.*** Here, the record on appeal demonstrates that the trial judge repeatedly and consistently acted with partiality, prejudice, bias and ill-will towards Williams personally. At a hearing on June 16, 2011, the trial judge claimed that Williams had stopped answering questions at the recent revocation of probation hearing because "I was catching her in so many lies." N.T., 6/16/11, at 5-6. The transcript of the revocation hearing, however, does not reflect that Williams was "caught" telling any lies, and instead shows merely that Williams stopped answering questions after she admitted that she was scared and confused by the trial

[2] Upon sentencing following a revocation of probation, the trial court is limited only by the maximum sentence that it could have imposed originally at the time of the probationary sentence. ***Commonwealth v. McAfee***, 849 A.2d 270, 275 (Pa. Super. 2004).

judge's questions to her about her selection of Catholic institutions to burgle. N.T., 6/1/11, at 19 ("I'm scared to talk to you. I'm confused. I don't even know what is going on….").

Thereafter, apparently based upon these same unsupported accusations of lying at the revocation hearing, the trial judge repeatedly referred to Williams as a "liar" and a "pathological liar." N.T., 6/20/11, at 19; Trial Court Opinion, 2/13/12, at 13 ("Defendant is a pathological liar."). As the Majority correctly notes, the term "pathological liar" suggests that Williams suffers from some mental disease or condition that prevents her from speaking truthfully.[3] The record on appeal, however, contains no evidence that Williams in fact suffers from any such psychological condition – including the evidence received from Dr. Gillian Blair, a licensed psychologist who testified at the sentencing hearing and submitted a written forensic evaluation of Williams' mental condition to the trial court. N.T., 9/30/11, at 24-55. On another occasion, the trial judge described Williams as a "classic sociopath," Trial Court Opinion, 2/13/12, at 10, even though, again, nothing in the record on appeal (including from Dr. Blair or otherwise) implies or suggests that Williams suffers from any sort of anti-social personality disorder.

---

[3] In one recent case, this Court described the use of the phrase "pathological liar," particularly in the absence of any record evidence to support it, as "simply out-of-bounds in any courtroom." ***Commonwealth v. Culver***, 51 A.3d 866, 878 (Pa. Super. 2012).

At the sentencing hearing on September 30, 2011, the trial judge went even further, stating that Williams was "the most violent, thuggish female who has appeared before me in my nine-and-one-half years" on the bench. N.T., 9/30/11, at 93. Referring to Williams as a "thug" and attempting to rank her "thuggish-ness" in relation to other female defendants appearing before him on prior occasions went well beyond permissible commentary and/or argument at a sentencing hearing. Tossing out such outrageous superlatives at a sentencing hearing amounts to mere name-calling, and is no proper part of a trial judge's proper function in that circumstance – namely to evaluate above-discussed section 9721(b) factors to determine an appropriate individualized sentence for the defendant in question.

In this case, the cumulative effect of the trial judge's statements (including those described both herein and in the Majority opinion) was an unfounded personal attack on Williams. A sentencing judge should not reflect mean-spiritedness, and should instead appear as the fountainhead of justice. This Court has vacated judgments of sentence for similar behavior in prior cases. In ***Commonwealth v. Spencer***, 496 A.2d 1156 (Pa. Super. 1985), for example, at sentencing the trial judge called the defendant a "punk" and an "animal," and stated that "[i]f there ever was a case where the death penalty should be imposed, I would gladly pull the switch on you, Chief." ***Id.*** at 1164. This Court concluded that such statements reflected

"the sentencing judge's personal prejudice, bias, and ill-will towards appellant," and vacated the judgment of sentence. ***Id.***

As in ***Spencer***, here the trial judge's incendiary and supercharged language attacking Williams personally demonstrated his partiality, prejudice, bias, and ill-will towards her. I would vacate the judgment of sentence on this basis.[4]

[4] Because Williams' first issue on appeal is dispositive, I would not address her second issue (relating to recusal).