NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DEVIN EDWARD GARCIA-ROGERS	:	
Appellant	:	No. 86 MDA 2026

Appeal from the Judgment of Sentence Entered December 1, 2025
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0005434-2024

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY DUBOW, J.: **FILED: NOVEMBER 4, 2026**

Appellant, Devin Edward Garcia-Rogers, appeals from the December 1, 2025 judgment of sentence entered in the Lancaster County Court of Common Pleas following his open guilty plea to one count each of Possession of Firearm Prohibited, Terroristic Threats, Simple Assault, and Firearms Not to be Carried Without a License.[1] Appellant challenges the discretionary aspects of his sentence. After careful review, we affirm.

The relevant facts and procedural history are, briefly, as follows. On November 23, 2024, police arrested Appellant after he, *inter alia*, brandished a firearm and made threatening statements at a bar in Lancaster. Police later determined that Appellant had prior convictions of Aggravated Assault and

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[1] 18 Pa.C.S. §§ 6105(a)(1), 2706(a)(1), 2701(a)(3), and 6106(a)(1), respectively.

Possession with Intent to Deliver, rendering him a person not to possess a firearm.

On December 1, 2025, Appellant appeared before the trial court to enter an open guilty plea to the charges. Following his guilty plea, Appellant waived his right to a pre-sentence investigation report, and the parties proceeded to sentencing. The Commonwealth requested that the court impose a sentence of 10 to 20 years of incarceration, which would have been a standard range sentence. Appellant's counsel argued that the court should impose a mitigated range sentence because, *inter alia*, changes to the sentencing guidelines since the time of Appellant's 2015 guilty plea to firearms offenses and conspiracy had rendered Appellant's prior record score higher than they would have been had the guidelines not changed. As such, Appellant's counsel urged the court to sentence Appellant as if his current prior record score were calculated under the former guidelines.[2] Counsel also asked the court to consider mitigating factors such as Appellant taking responsibility for his actions, his history of drug and alcohol abuse, and the programs and classes he completed while incarcerated.

Following its consideration of counsels' arguments, Appellant's statement to the court, and letters written to the court on Appellant's behalf,

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[2] Appellant requested that the court sentence him under the 7th edition of the Sentencing Guidelines, notwithstanding that the 8th edition of the Sentencing Guidelines became effective on January 1, 2024, approximately 11½ months before the conduct that gave rise to the charges against Appellant.

the trial court imposed an aggregate sentence of 8 to 20 years of incarceration.[3]

On December 8, 2025, Appellant filed a timely motion to modify sentence contending that the court abused its discretion in failing to consider mitigating factors such as Appellant's acceptance of responsibility, his family support, and his return to his faith, and in refusing to sentence him under the previous version of the sentencing guidelines. The trial court denied Appellant's motion on December 12, 2025.

This timely appeal followed. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant raises the following issue on appeal:

> The trial court abused its discretion in failing to consider mitigation and the prior sentencing guidelines in fashioning a sentence following an open guilty plea.

Appellant's Br. at 6.

Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right, and a challenge in this regard is properly viewed as a petition for allowance of appeal. 42 Pa.C.S. § 9781(b); ***Commonwealth v. Tuladziecki***, 522 A.2d 17, 18 (Pa. 1987). To obtain our review, an appellant must (1) preserve the issue at sentencing or in a post-

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[3] The court sentenced Appellant a term of 8 to 20 years of incarceration for the Possession of Firearms Prohibited conviction and concurrent terms of 1 to 2 years of incarceration and 3 to 6 years of incarceration for the Terroristic Threats and Firearms Not to be Carried Without a License convictions, respectively. The court imposed a sentence of 2 years of probation for the Simple Assault conviction, concurrent with the Terroristic Threats conviction.

sentence motion; (2) file a timely notice of appeal; (3) include a concise statement of the reasons relied on for appeal pursuant to Pa.R.A.P. 2119(f); and (4) raise a "substantial question that the sentence is appropriate under the [S]entencing [C]ode." ***Commonwealth v. Carrillo-Diaz***, 64 A.3d 722, 725 (Pa. Super. 2013) (citation omitted).

Here, Appellant filed a timely notice of appeal, preserved his claim at sentencing, and included a Pa.R.A.P. 2119(f) statement in his brief to this Court. We, thus, proceed to consider whether Appellant has raised a substantial question for our review.

An appellant "presents a substantial question when he sets forth a plausible argument that the sentence violates a provision of the [Sentencing c]ode or is contrary to the fundamental norms of the sentencing process." ***Commonwealth v. Dodge***, 77 A.3d 1263, 1268 (Pa. Super. 2013) (citation and internal quotations marks omitted).

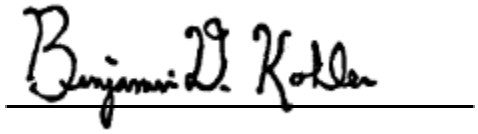
Claims that the sentencing court did not adequately consider mitigating factors generally do not raise a substantial question. ***See Commonwealth v. Disalvo***, 70 A.3d 900, 903 (Pa. Super. 2013) ("This Court has held on numerous occasions that a claim of inadequate consideration of mitigating factors does not raise a substantial question for our review.") (citation omitted); ***Commonwealth v. Zirkle***, 107 A.3d 127, 133 (Pa. Super. 2014) ("[W]e have held that a claim that a court did not weigh the factors as an appellant wishes does not raise a substantial question."). Accordingly,

Appellant's mitigating factors-based claim, without more, fails to raise a substantial question.

With respect to his sentencing guidelines-based claim, Appellant has simply ignored that "[t]he sentencing guidelines shall apply to all offenses committed on or after the effective date of the guidelines." 204 Pa. Code § 303.1(c). Appellant has not set forth any argument that his standard range sentence violates any provision of the **effective** sentencing code or is contrary to the fundamental norms of the sentencing process. This claim likewise fails to raise a substantial question. Because neither of Appellant's claims raise a substantial question Appellant has, thus, failed to invoke our review of his discretionary sentencing claim.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/4/2026