

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
MICHAEL JAMES BREELAND	:	
	:	
Appellant	:	No. 2257 EDA 2022

Appeal from the Judgment of Sentence Entered July 8, 2022
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0002672-2021

BEFORE: BENDER, P.J.E., MURRAY, J., and SULLIVAN, J.

MEMORANDUM BY BENDER, P.J.E.:

FILED JANUARY 22, 2024

Appellant, Michael James Breeland, appeals from the aggregate judgment of sentence of 10 to 25 years' incarceration, plus a concurrent term of 20 years' probation, imposed after he entered a negotiated guilty plea to drug delivery resulting in death (18 Pa.C.S. § 2506(a)), conspiracy to commit drug delivery resulting in death (18 Pa.C.S. § 903), and delivery of a controlled substance (35 P.S. § 780-113(a)(30)). Appellant solely challenges the discretionary aspects of his sentence. After careful review, we affirm.

The trial court summarized the facts and procedural history underlying Appellant's convictions, which we adopt herein. **See** Trial Court Opinion (TCO), 12/12/22, at 3-5. Briefly, Appellant pled guilty to the above-stated offenses based on evidence that he sold narcotics to a female victim who died after consuming them. On July 8, 2022, Appellant was sentenced to the aggregate term set forth *supra*. He filed a timely, post-sentence motion,

which the court denied. Appellant then filed a timely notice of appeal, and he filed a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal on October 12, 2022. On December 12, 2022, the trial court filed its Rule 1925(a) opinion.

Herein, Appellant states one issue for our review: “Did the [t]rial [c]ourt abuse its discretion in sentencing Appellant by imposing manifestly excessive sentences, failing to consider all relevant factors, failing to adequately state the reasons relied upon and relying on improper factors in imposing said sentence, and the coercive nature of the plea?” Appellant’s Brief at 4.

Before we consider the merits of Appellant’s issue, we address the trial court’s conclusion that he has waived it for our review by filing an untimely Rule 1925(b) statement. Specifically, the court ordered that Appellant’s concise statement be filed on or before October 7, 2022, but Appellant did not file his statement until October 12, 2022. **See** TCO at 6. The court’s Rule 1925(b) order specifically notified Appellant that his “failure to include any issues in a timely filed Statement would result in waiver of those issues.” **Id.** at 8; **see also Greater Erie Indus. Development Corp. v. Presque Isle Downs, Inc.**, 88 A.3d 222, 225 (Pa. Super. 2014) (*en banc*) (holding that, “[i]n determining whether an appellant has waived his issues on appeal based on non-compliance with [Rule] 1925, it is the trial court’s order that triggers an appellant’s obligation[;] ... therefore, we look first to the language of that order”) (citations omitted). Therefore, the court concluded that Appellant’s untimely filing of his Rule 1925(b) statement waived his issues on appeal.

See TCO at 8. Nevertheless, the trial court went on to address the merits of the sentencing claim raised in Appellant's late Rule 1925(b) statement. Therefore, we could proceed to the merits of his issue. **See Commonwealth v. Burton**, 973 A.2d 428, 433 (Pa. Super. 2009) (*en banc*) (holding that where an appellant files an untimely Rule 1925(b) statement, "this Court may decide the appeal on the merits if the trial court had adequate opportunity to prepare an opinion addressing the issues being raised on appeal").

However, we must agree with the trial court that Appellant waived his challenge to the discretionary aspects on another basis. Namely, Appellant entered a negotiated guilty plea that called for the same sentence that the court ultimately imposed. This Court has explained:

"Generally, a plea of guilty amounts to a waiver of all defects and defenses except those concerning the jurisdiction of the court, the legality of the sentence, and the validity of the guilty plea." **Commonwealth v. Reichle**, ... 589 A.2d 1140, 1141 ([Pa. Super.] 1991) (citations omitted). It is well settled when

the plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence. If either party to a negotiated plea agreement believed the other side could, at any time following entry of sentence, approach the judge and have the sentence unilaterally altered, neither the Commonwealth nor any defendant would be willing to enter into such an agreement. Permitting a discretionary appeal following the entry of a negotiated plea would undermine the designs and goals of plea bargaining, and would make a sham of the negotiated plea process[.]

Id. (citations, quotation marks, and footnote omitted).

Commonwealth v. Morrison, 173 A.3d 286, 290 (Pa. Super. 2017). In **Morrison**, we found that the appellant's failure to challenge the validity of the plea or move to withdraw it waived his discretionary aspects of sentencing claim. **Id.** (citing **Reichle**, 589 A.2d at 1141).

Here, as the trial court observed,

Appellant negotiated the specific terms of his sentence with the Commonwealth when he decided to enter a negotiated guilty plea. N.T.[,] 07/08/2022, [at] 3-6. After a thorough colloquy of Appellant,⁶ the [c]ourt accepted his knowing, intelligent, and voluntary negotiated guilty plea and sentenced him to the agreed-upon terms of incarceration and probation. **Id.** at ... 6-10, 26-30. Thus, Appellant's challenge to the discretionary aspects of his sentence is deemed waived.

⁶ After Appellant's attorney conducted a colloquy with him, the [c]ourt conducted its own colloquy of Appellant, confirming that he 1) was not under the influence of any medications, alcohol, or controlled substances during the proceeding; 2) fully understood the proceeding; 3) fully understood the English language; 4) had no questions about the written questions on the colloquy; 5) would have the same answers to the written questions on the colloquy if asked each question orally in open court; 6) fully understood that he was giving up his right to a trial by pleading guilty; 7) was pleading guilty voluntarily and of his own free will; 8) did not have any questions about pleading guilty; and 9) had sufficient time and opportunity to discuss the advantages and disadvantages of pleading guilty with his attorney. N.T. ... [at] 8-10. The [c]ourt also confirmed that Appellant's attorney went over the standard range of sentence under the Sentencing Guidelines with Appellant, and confirmed that Appellant understood that the negotiated sentence proposed by the parties was significantly lower than the standard range. **Id.** at ... 23-25. Accordingly, the [c]ourt found that Appellant's negotiated guilty plea was entered knowingly, intelligently, and voluntarily. **Id.** at ... 26.

TCO at 9-10.

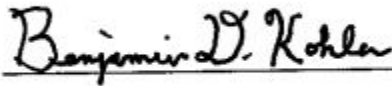
Although on appeal, Appellant argues that his plea was “coerced” because he was “rushed to make a decision on the plea agreement without adequate time to consider the alternatives[,]” Appellant’s Brief at 16, he does not point to anywhere in the record of the plea or sentencing proceeding, or in his post-sentence motion, that he moved to withdraw his plea on this basis. Appellant also does not claim that his guilty plea was not negotiated, or argue that the negotiated sentence did not encompass the attacks on his sentence that he seeks to raise herein. Thus, we agree with the trial court that Appellant has waived his discretionary aspects of sentencing claims for our review. ***See Morrison, supra.***¹

¹ In any event, even if not waived, we would agree with the trial court that Appellant’s sentencing challenge is meritless. Appellant cursorily contends that “the court did not take into consideration [his] age, conduct, character, criminal history, ... rehabilitative needs[,] and the Sentencing Guidelines.” Appellant’s Brief at 17. He also briefly complains that a presentence investigation report was not prepared, and he was not provided an opportunity to present the court with mitigating factors. ***Id.*** In sum, Appellant avers that the court failed “to consider all relevant factors” and imposed a “manifestly excessive” sentence that “constitutes an abuse of discretion.” ***Id.*** at 19.

However, as the trial court observed, “the principal reason the [c]ourt relied upon in imposing the sentence ... was the fact that it was negotiated and agreed to by the parties, which the [c]ourt acknowledged at the [h]earing. No other reason is necessary.” TCO at 10-11 (citing N.T. at 27). Moreover, the court also noted that there is “absolutely no evidence or indication ... in the record suggesting that [it] relied on any improper factors in imposing Appellant’s sentence.” ***Id.*** at 11. The court further stressed that it “considered relevant factors when imposing the negotiated sentence, such as Appellant’s history of drug use, in urging the state to consider him for a therapeutic community....” ***Id.*** at 10 (citing N.T. at 29). Finally, we observe that Appellant faced statutory maximum terms of up to 40 years’ incarceration for his convictions of drug delivery resulting in death and conspiracy, and a
(Footnote Continued Next Page)

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/22/2024

maximum term of 30 years' imprisonment for his drug delivery offense. **See *id.*** Ultimately, the court imposed a term of 10 to 20 years' incarceration for his conviction of drug delivery resulting in death, and concurrent terms of probation for his remaining convictions. Given this record, Appellant's cursory argument on appeal would fail to demonstrate an abuse of the court's discretion in imposing his aggregate sentence, even had Appellant's sentencing claim not been waived. **See *Commonwealth v. Shugars***, 895 A.2d 1270, 1275 (Pa. Super. 2006) ("Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.").