NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SKYE MARIA RODRIGUEZ	:	
Appellant	:	No. 671 MDA 2026

Appeal from the Judgment of Sentence Entered March 10, 2026
In the Court of Common Pleas of Berks County Criminal Division at
No(s): CP-06-CR-0002837-2025

BEFORE: BOWES, J., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY DUBOW, J.: **FILED NOVEMBER 18, 2026**

Appellant, Skye Maria Rodriguez, appeals from the March 10, 2026 judgment of sentence of 4 to 23 months of incarceration entered in the Berks County Court of Common Pleas following his conviction of Simple Assault and Harassment.[1] Appellant challenges the discretionary aspects of his sentence. After careful review, we affirm.

The relevant facts and procedural history are as follows. On July 15, 2023, Appellant was involved in a verbal altercation with his on-again-off-again paramour, Jailene Diaz. The altercation escalated and Appellant headbutted Ms. Diaz, breaking her nose. Two years later, on August 22, 2025, the Commonwealth charged Appellant with the above offenses arising from this incident.

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[1] 18 Pa.C.S. §§ 2701(a)(1) and 2709(a)(1), respectively.

On March 10, 2026, Appellant appeared for a bench trial at which he and Ms. Diaz testified. In addition to testifying regarding the July 15, 2023, incident, Ms. Diaz testified that Appellant had "been physical with" her on other occasions. N.T. Trial, 3/10/26, at 17. Ms. Diaz also testified that, following this incident, she received "five to 10" messages and "50-plus voicemails" from Appellant until she "felt confident enough to be able to finally report" the assault. ***Id.*** at 16-18. On cross-examination, Ms. Diaz testified that Appellant never threatened to hurt her in the messages; he only threatened to hurt himself. ***Id.*** at 45. Ms. Diaz also explained that, "a little less than two years" after this incident, she unsuccessfully sought to obtain a PFA order against Appellant. ***Id.*** at 48-49.

Appellant testified on his own behalf that he unintentionally injured Ms. Diaz on the night of the incident when he attempted to prevent her from driving drunk. ***Id.*** at 58. He testified that they were yelling, Ms. Diaz was "in [his] face," and "the top of her nose hit [his] chin." ***Id.*** Appellant's counsel argued that Ms. Diaz was motivated to falsely report that Appellant had assaulted her after Ms. Diaz's attempt to obtain a PFA order failed.

The trial court, unpersuaded by Appellant's explanation of the incident, convicted Appellant of Simple Assault and Harassment. Appellant waived a pre-sentence investigation and proceeded to sentencing. Both Ms. Diaz and Appellant made statements to the court and, after its consideration of those

statements and counsels' arguments,[2] the court imposed a sentence of 4 to 23 months of incarceration.[3] The court noted that it found the incident "disturbing on many levels . . . because this is a [] very classic domestic violence case where there is manipulation and threats." ***Id.*** at 71. The court noted Appellant's tone of voice on the messages, characterizing it as "out of control" and finding that Appellant had "no control of your emotions. You are trying to possess her." ***Id.*** The court observed a "repeat criminal pattern" and that Appellant showed "absolutely no remorse" and inflicted "extreme cruelty" on Ms. Diaz with his constant text messaging. ***Id.*** at 72. The court explained that any lesser sentence would "depreciate the seriousness of the time" and found that Appellant is "mentally unstable and [] in need of counselling and treatment." ***Id.*** For these reasons, the court did not "believe that the guidelines are reflective of what should be invoked here." ***Id.*** at 73.

Appellant filed a timely post-sentence motion to modify sentence in which claimed that his sentence was "unduly harsh." Motion, 3/19/26, at ¶ 3. He asked the court to sentence him only to electronic monitoring and/or probation in lieu of incarceration because: (1) he is a transgender male

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[2] The Commonwealth informed the court that the standard range sentence with Appellant's prior record score of zero and the offense gravity score of three is restorative sanctions to one month of incarceration plus or minus three months. Both the Commonwealth and Appellant's counsel requested that the court impose a sentence of probation. N.T. at 67, 70.

[3] The court also ordered Appellant to undergo anger management and domestic violence treatment, pay $4,167.91 in restitution, and have no contact with Ms. Diaz.

currently being housed in the female wing of the Berks County jail; (2) before his incarceration, he had been employed as a pharmacy tech for three months; (3) he has been engaged to be married for nine months; (4) he has no prior criminal history; (5) his sentence of 4 to 23 months of incarceration is in the aggravated range; (6) the incident giving rise to his conviction occurred in 2023 and he has not had other criminal charges since; (7) he was 22 years old at the time of the incident; (8) he attends church; (9) he served seven years in the Army National Guard and is a 90% disabled veteran; (10) a hit and run driver recently killed his father; and (11) State Representative Malcom Kenyatta wrote a letter on his behalf. On March 31, 2026, the trial court denied Appellant's motion to modify sentence.

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

Appellant raises the following issue for our review:

> Whether the [s]entencing [c]ourt abused its discretion by imposing a sentence at the top of the standard range without placing sufficient reasons on the record to support an aggravated range sentence while at the same time indicating on the record that Appellant's conviction is a "classic domestic violence" case while at the same time dismissing Appellant's lack of criminal history and more than three (3) years' time between the crime charged and the date of conviction?

Appellant's Br. at 4.

Appellant challenges the discretionary aspects of his sentence. Challenges to the discretionary aspects of sentence "are not appealable as of right." ***Commonwealth v. Leatherby***, 116 A.3d 73, 83 (Pa. Super. 2015).

Instead, an appellant must invoke this Court's jurisdiction by (1) filing a timely notice of appeal; (2) properly preserving the issue at sentencing or in a motion to reconsider and modify the sentence; (3) complying with Pa.R.A.P. 2119(f), which requires a separate section of the brief setting forth a concise statement of the reasons relied upon for allowance of appeal; and (4) presenting "a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S. § 9781(b)." ***Id.*** (citation omitted).

Appellant filed a timely notice of appeal, preserved his claim that the court failed to consider mitigating factors,[4] and included a Rule 2119(f) statement in his brief. We, thus, consider whether Appellant has raised a substantial question for our review.

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[4] To the extent that Appellant asserts numerous reasons in support of his claim that the court abused its discretion when imposing his sentence, we observe that, as set forth above, Appellant claimed in his post-sentence motion only that the court failed to consider mitigating factors. It is well-settled that, in order to preserve a challenge to the discretionary aspects of his sentence, an appellant must preserve the particular legal theory that he makes on appeal either at sentencing or in a post-sentence motion, so that the sentencing court has "the opportunity to reconsider the imposition of the sentence." ***Commonwealth v. Tejada***, 107 A.3d 788, 798 (Pa. Super. 2015); ***see also*** Pa.R.Crim.P. 720(B)(1)(a) (requiring that post-sentence motions state claim for relief "with specificity and particularity"). Thus, an appellant who challenges the discretionary aspects of his sentence in a post-sentence motion may only argue on appeal the specific arguments he included in his post-sentence motion. ***See, e.g.***, ***Commonwealth v. Rivera***, 238 A.3d 482, 499 (Pa. Super. 2020) (finding Appellant waived discretionary aspects of sentence claim because, "while he filed a post-sentence motion raising a discretionary[] claim, that claim differ[ed] from the claim he present[ed] on appeal"). Because Appellant claimed for the first time in his appellate brief that the trial court abused its discretion by not placing sufficient reasons on the record to support imposing an aggravated range sentence or indicating this is a "classic domestic violence" case, he failed to preserve these claims 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).

Here, Appellant avers that the court failed to consider Appellant's "lack of criminal history and lack of subsequent contact with the alleged victim in this admittedly garden-variety domestic violence incident and imposed a sentence that was contrary to the fundamental norms underlying the sentencing process." Appellant's Br. at 8.

Appellant has not identified which provision of the Sentencing Code or fundamental norm underlying the sentencing process his sentence violates or offends. His argument is that the trial court did not properly weigh allegedly mitigating factors. 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, we conclude that Appellant's mitigating factors-based claim, without more, fails to raise a substantial question.

Because Appellant has failed to present a substantial question, this Court has no jurisdiction to review Appellant's challenge to the discretionary aspects of his sentence.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/18/2026