NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
OZZY MICHAEL STRAIT	:	
Appellant	:	No. 535 WDA 2026

Appeal from the Judgment of Sentence Entered May 12, 2025
In the Court of Common Pleas of McKean County Criminal Division at No(s): CP-42-CR-0000593-2024

BEFORE: OLSON, J., NICHOLS, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY NICHOLS, J.: **FILED: November 19, 2026**

Appellant Ozzy Michael Strait appeals from his judgment of sentence following his conviction of strangulation.[1, 2] On appeal, Appellant challenges the sufficiency of the evidence and the discretionary aspects of his sentence. After careful review, we affirm.

On October 7, 2024, Appellant was charged with strangulation and other crimes related to events that occurred in McKean County on August 21, 2024. ***See*** Information, 10/7/24. The matter proceeded to a jury trial on April 24, 2025. At trial, the victim testified that at the time of the incident she was in

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. § 2718(a)(1).

[2] Appellant was also convicted of simple assault and harassment, neither of which are implicated on appeal. ***See*** 18 Pa.C.S. §§ 2701(a)(1), 2709(a)(1), respectively; ***see also*** Appellant's brief at 5.

a relationship with Appellant when, during an argument, Appellant pushed the victim up against a closet. ***See*** N.T. Trial, 4/24/25 at 33-36. She further testified that Appellant "put his hands . . . or his arm on [her] throat where [she] couldn't breathe[.]" ***See id.*** at 36 (some formatting altered). The victim described yelling for help and trying to get out of the bedroom where she and Appellant were located, and that Appellant's hands or forearm against her throat prevented her from breathing or being able to hear. ***See id.*** at 36-37. The victim testified that, while unable to breathe, she had no recollection of whether Appellant said anything to her but recalled that, ultimately, Appellant told her that she "better get out of there before it got [] worse." ***See id.*** at 38 (some formatting altered).

At the conclusion of the trial, the jury convicted Appellant of all charged offenses. ***See*** Verdict Order, 4/25/25. On May 12, 2025, the trial court sentenced Appellant to thirty-two to sixty-four months' incarceration for Appellant's strangulation conviction, which was an aggravated-range sentence. ***See*** Sentencing Order, 5/12/25; ***see also*** N.T. Sentencing Hr'g, 5/12/25, at 25. Appellant filed post-sentence motions which were denied on June 30, 2025. ***See*** Trial Ct. Order, 6/30/25. Appellant did not file a direct appeal in the 30-day period following the entry of judgment of sentence.

Appellant filed a timely *pro se* petition pursuant to the Post Conviction Relief Act[3] (PCRA) on September 22, 2025. The PCRA court appointed counsel to represent Appellant, and Appellant filed a counseled amended PCRA petition on February 13, 2026, wherein he, *inter alia*, sought to have his direct appeal rights reinstated *nunc pro tunc*. ***See*** Amended PCRA Pet., 2/13/26, at ¶ 12. The PCRA court reinstated Appellant's direct appeal rights *nunc pro tunc* on March 12, 2026. ***See*** PCRA Ct. Order, 3/13/26. Appellant filed a timely notice of direct appeal *nunc pro tunc* and both Appellant and the trial court complied with Pa.R.A.P. 1925.[4]

On appeal, Appellant raises the following issues for review:

> 1. Whether the lower court erred in denying Appellant's motion for judgment of acquittal regarding insufficient evidence of Appellant's *mens rea*?
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> 2. Whether the lower court erred in sentencing Appellant in the aggravated range?

Appellant's Brief at 5 (some formatting altered).

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[3] 42 Pa.C.S. §§ 9541-9546.

[4] We note that the trial court's Rule 1925(a) statement consists of two paragraphs and that, therein, its statement of reasons for the sentence imposed is: "[T]he court imposed a legal sentence within the sentencing guidelines, which accounted for the serious nature of the crime, [Appellant]'s lack of remorse, and [Appellant]'s criminal record." Rule 1925(a) Stmt., 6/22/25 (some formatting altered). Rule 1925(a) mandates that the trial court "shall . . . file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found." Pa.R.A.P. 1925(a).

In his first claim, Appellant argues that the Commonwealth failed to establish the *mens rea* element of intent to commit strangulation. ***See id.*** at 13-17. Specifically, while the victim testified that Appellant had either his hands or his arm on her throat during the incident, Appellant notes that the victim failed to testify that "she told Appellant he was restricting her airway" while he was strangling her, even though the victim was "yelling throughout the incident." ***Id.*** at 16. Appellant argues that, because the victim failed to make such a statement during the incident, the jury therefore had insufficient evidence to find the requisite intent element of the statute, specifically that he knowingly or intentionally impeded the breathing of another. ***See id.*** at 14-15. Appellant argues that, at most, the Commonwealth's evidence established that he acted recklessly rather than intentionally, and thus the *mens rea* element of intent was not established beyond a reasonable doubt. ***See id.*** at 17.

A challenge to the sufficiency of the Commonwealth's evidence presents a pure question of law for which our standard of review is *de novo* and our scope of review is plenary. ***See Commonwealth v. Boyer***, 347 A.3d 689, 699 (Pa. Super. 2025). We view the evidence in the light most favorable to the Commonwealth as verdict winner, drawing all reasonable inferences in the Commonwealth's favor, to determine whether the evidence was sufficient to enable the fact-finder to find every element of the offense beyond a reasonable doubt. ***See Commonwealth v. Widmer***, 744 A.2d 745, 751 (Pa. 2000). In reviewing a sufficiency claim, we need only address the elements

of the crime specifically challenged by the appellant. ***See Commonwealth v. Cain***, 906 A.2d 1242, 1244 (Pa. Super. 2006). Further, we may not weigh the evidence and substitute our judgment for the fact-finder. ***See Commonwealth v. Cahill***, 95 A.3d 298, 300 (Pa. Super. 2014).

A person commits the offense of strangulation when "the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by applying pressure to the throat or neck." ***See*** 18 Pa.C.S. § 2718(a)(1).

After our review of the record, we conclude that the Commonwealth presented sufficient evidence to allow the jury to find beyond a reasonable doubt that Appellant was guilty of strangulation. ***See Widmer***, 744 A.2d at 751; 18 Pa.C.S. § 2718(a)(1). The victim's testimony established that Appellant "put his hands . . . or his arm on [the victim's] throat where [she] couldn't breathe." ***See*** N.T. Trial, 4/24/25, at 36 (some formatting altered). The jury, as fact finder, was free to credit the victim's testimony to determine that Appellant's conduct constituted a knowing or intentional act effectuating the strangulation of the victim. ***See Widmer***, 744 A.2d at 751; ***Cahill***, 95 A.3d at 300; 18 Pa.C.S. § 2718(a)(1). Accordingly, Appellant's sufficiency claim challenging the intent element of the offense is without merit. ***See id; see also Cain***, 906 A.2d at 1244.

In his second claim, Appellant raises a challenge to the discretionary aspects of his sentence. ***See*** Appellant's Brief at 17-19. Specifically, Appellant contends that the trial court sentenced him in the aggravated range

for his conviction without providing the required "contemporaneous written statement of the reason or reasons" for the deviation from the sentencing guidelines. ***See id.*** at 17-18. Appellant further argues that the reasons provided by the trial court in its 1925(a) opinion – Appellant's criminal history, lack of remorse, and the severity of the convicted offense – were already taken into consideration in the guidelines and cannot then again be relied on to impose sentence in the aggravated range. ***See id.*** at 18.

Appellant's claim implicates the discretionary aspects of his sentence. ***See Commonwealth v. Antidormi***, 84 A.3d 736, 759 (Pa. Super. 2014). "[C]hallenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right." ***Commonwealth v. Derry***, 150 A.3d 987, 991 (Pa. Super. 2016) (citations omitted). Before reaching the merits of such claims, we must determine:

> (1) whether the appeal is timely; (2) whether Appellant preserved his issues; (3) whether Appellant's brief includes a [Pa.R.A.P. 2119(f)] 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 inappropriate under the sentencing code.

Commonwealth v. Corley, 31 A.3d 293, 296 (Pa. Super. 2011) (citations omitted).

"To preserve an attack on the discretionary aspects of sentence, an appellant must raise his issues at sentencing or in a post-sentence motion. Issues not presented to the sentencing court are waived and cannot be raised

for the first time on appeal." ***Commonwealth v. Malovich***, 903 A.2d 1247, 1251 (Pa. Super. 2006) (citations omitted); ***see also*** Pa.R.A.P. 302(a) (stating that "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal").

Here, are noted above, Appellant filed a timely *nunc pro tunc* notice of direct appeal. ***See*** Not. of Appeal, 4/13/26. Appellant also included a Rule 2119(f) statement in his brief. ***See*** Appellant's Brief at 10-12. Next, we look to determine whether Appellant raises a substantial question. "The determination of what constitutes a substantial question must be evaluated on a case-by-case basis." ***Commonwealth v. Battles***, 169 A.3d 1086, 1090 (Pa. Super. 2017) (citation omitted). "A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Commonwealth v. Grays***, 167 A.3d 793, 816 (Pa. Super. 2017) (citation omitted).

Instantly, Appellant's claim raises a claim that his sentence was excessive and such a claim raises a substantial question regarding the discretionary aspects of his sentence. ***See Commonwealth v. Raven***, 97 A.3d 1244, 1253 (Pa. Super. 2014) (holding that "an excessiveness claim raises a substantial question when [it] sufficiently articulates the manner in which the sentence violates [] a specific provision of the sentencing scheme

set forth in the Sentence Code" (formatting altered) (citing ***Commonwealth v. Mouzon***, 812 A.2d 617, 627 (Pa. 2002)).

Our standard of review of sentencing claims is as follows:

> 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.
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> Additionally, our review of the discretionary aspects of a sentence is confined by the statutory mandates of 42 Pa.C.S. § 9781(c) and (d). Subsection 9781(c) provides:
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> > The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:
> >
> > (1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
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> > (2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
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> > (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.
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> > In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.
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> 42 Pa.C.S. § 9781(c).
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> In reviewing the record, we consider:
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> > (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
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> > (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation [(PSI)].

(3) The findings upon which the sentence was based.

(4) The guidelines promulgated by the commission.

42 Pa.C.S. § 9781(d).

Raven, 97 A.3d at 1253-54 (citation omitted).

"When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S. § 9721(b), . . . [including] the protection of the public, [the] gravity of offense in relation to impact on [the] victim and community, and [the] rehabilitative needs of the defendant." ***Commonwealth v. Fullin***, 892 A.2d 843, 847 (Pa. Super. 2006) (citation omitted and formatting altered). "A sentencing court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question, but the record as a whole must reflect the sentencing court's consideration of the facts of the crime and character of the offender." ***Commonwealth v. Schutzues***, 54 A.3d 86, 99 (Pa. Super. 2012) (citations omitted), *overruled on other grounds by*, ***Commonwealth v. Seals***, 353 A.3d 747 (Pa. Super. 2026). Additionally, the trial court "must consider the sentencing guidelines." ***Fullin***, 892 A.2d at 848 (citation omitted). Further, "where the trial court is informed by a PSI [report], it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that where the court has been so informed, its discretion should not be disturbed." ***Commonwealth v. Edwards***, 194 A.3d 625, 638 (Pa. Super. 2018) (citation omitted and formatting altered).

"A sentencing court may consider any legal factor in determining that a sentence in the aggravated range should be imposed." ***Commonwealth v. Bowen***, 975 A.2d 1120, 1122 (Pa. Super. 2009) (citations omitted). A sentence that falls within the aggravated range is within the guidelines, and this Court reviews such a sentence to determine whether the sentence was "clearly unreasonable," not merely "unreasonable." ***Id.*** at 1124 (citations omitted). In reviewing an aggravated range sentence, ***Bowen*** noted that it is "appropriate for a trial court to consider a defendant's lack of remorse as a factor at sentencing, provided that it is specifically considered in relation to protection of the public, the gravity of the offense, and the defendant's rehabilitative needs." ***Id.*** at 1125 (citation omitted).

The balancing of the sentencing factors is within the sole province of the sentencing court, which had the opportunity to observe the defendant and all witnesses firsthand. ***See Commonwealth v. Kurtz***, 294 A.3d 509, 536 (Pa. Super. 2023), *aff'd*, 348 A.3d 133 (Pa. 2025). In conducting appellate review, this Court "cannot reweigh sentencing factors and impose judgment in place of [the] sentencing court where [the] lower court was fully aware of all mitigating factors." ***Id.*** (citation omitted).

Following our review of the record, we do not find a "clearly unreasonable" sentence illustrating an abuse of discretion by the trial court. ***See Raven***, 97 A.3d at 1253; ***see also Bowen***, 975 A.2d at 1124. The record reflects that the trial court ordered a PSI report, which it reviewed prior to sentencing. ***See*** N.T. Sentencing Hr'g, 5/12/25, at 20, 24-25. Therefore, we

presume that the trial court was fully aware of the mitigating and aggravating factors and considered them when imposing Appellant's sentence. ***See Edwards***, 194 A.3d at 638; ***see also Kurtz***, 294 A.3d at 536. The record also reflects that the trial court considered Appellant's rehabilitative needs, in addition to other aggravating factors, mitigating factors, and public safety needs. ***See*** N.T. Sentencing Hr'g, 5/12/25 at 25; ***Bowen***, 975 A.2d at 1122.

Ultimately, we conclude that the trial court did not impose a "clearly unreasonable" sentence for Appellant's strangulation conviction. ***See id.*** at 25-26; ***Bowen***, 975 A.2d at 1122, 1124-25. Accordingly, we will not re-weigh the trial court's consideration of the relevant sentencing factors on appeal. ***See Kurtz***, 294 A.3d at 536. For these reasons, we conclude that Appellant is not entitled to relief on his sentencing claim.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/19/2026