NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ZACHARY COMERFORD	:	
Appellant	:	No. 3006 EDA 2022

Appeal from the Judgment of Sentence Entered September 23, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0000551-2021

BEFORE: OLSON, J., NICHOLS, J., and COLINS, J.*

MEMORANDUM BY OLSON, J.: **FILED JANUARY 22, 2024**

Appellant, Zachery Comerford, appeals from the judgment of sentence entered September 23, 2022. We affirm.

The facts and procedural history of this case are as follows. On September 23, 2020, Appellant was present at the apartment of his ex-fiancé, the complainant. While there, Appellant and the complainant got into an argument, which resulted in Appellant placing various items in front of the door, preventing the complainant from leaving the apartment. Ultimately, Appellant broke the complainant's phone, punched her in the face, and beat her repeatedly in the torso, thighs, and legs with a 10-inch iron skillet.

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* Retired Senior Judge assigned to the Superior Court.

On January 28, 2022, following a non-jury trial, Appellant was convicted of aggravated assault, simple assault, recklessly endangering another person ("REAP"), possession of an instrument of a crime, and false imprisonment.[1] On September 23, 2022, the trial court sentenced Appellant to an aggregate term of three to six years' incarceration, followed by five years' probation. Appellant filed a post-sentence motion on October 6, 2022. The trial court convened a hearing on Appellant's post-sentence motion on October 21, 2022 and denied Appellant's motion that day. Appellant filed a notice of appeal on November 18, 2022.

On appeal, Appellant raises the following issues for our review:

> 1. [Whether] the evidence [was] insufficient as a matter of law to sustain Appellant's convictions for aggravated assault with a deadly weapon and [REAP], as the act of striking the complainant numerous times on the calves, thighs and torso with an iron skillet frying pan did not create a risk of death or serious bodily injury?
>
> 2. [Whether] the trial court abuse[d] its discretion by sentencing [Appellant] to a sentence that is higher than the aggravated range of the sentencing guidelines[?]

Appellant's Brief at 4.

Before we consider the merits of Appellant's claims, we first consider whether the notice of appeal was timely filed. It is well-settled that this Court lacks jurisdiction over untimely appeals and that we have the obligation to raise such jurisdictional concerns *sua sponte*. ***Commonwealth v. Burks***, 102 A.3d 497, 500 (Pa. Super. 2014). "[A] notice of appeal shall be filed

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[1] 18 Pa.C.S.A. § 2702(a)(4), 2701(a)(1), 2705, 907(a), and 2903(a).

within 30 days after the entry of the order from which the appeal is taken" which, in a criminal case, is the judgment of sentence. Pa.R.A.P. 903(a); ***see Commonwealth v. Borrero***, 692 A.2d 158, 159 (Pa. Super. 1997) (citation omitted). A timely filed post-sentence motion, however, will toll the 30–day appeal period. Pa.R.Crim.P. 720(A)(2)(a)-(c). To be considered timely, a post-sentence motion must be filed within ten days of the imposition of the defendant's sentence. Pa.R.Crim.P. 720(A)(1). If a defendant fails to file a timely post-sentence motion, a defendant may, within 30 days of the judgment of sentence, request the trial court to consider a post-sentence motion *nunc pro tunc*. ***Commonwealth v. Dreves***, 839 A.2d 1122 (Pa. Super. 2003) (*en banc*). To secure treatment of an untimely submission as a timely post-sentence motion which tolls the applicable appeal period, the trial court must "expressly permit the filing of a post-sentence motion *nunc pro tunc*, also within 30 days of the imposition of sentence." ***Commonwealth v. Capaldi***, 112 A.3d 1242, 1244 (Pa. Super. 2015) (internal alteration, quotation marks, and citations omitted).

Herein, Appellant's sentencing hearing occurred on September 23, 2022, but Appellant did not file his post-sentence motion until October 6, 2022, 13 days after the imposition of his sentence. Hence, Appellant's post-sentence motion was untimely. In addition, Appellant failed to satisfy the requirements under ***Dreves***. In Appellant's post-sentence motion, he acknowledged its untimeliness and asked the trial court to "accept[] the motion as timely filed" in "the interest of mercy and efficiency." Appellant's

Post-Sentence Motion, 10/6/22, at *4 (unpaginated). Appellant also included a proposed order which stated:

> AND NOW, this _____ day of October 2022, it is hereby ORDERED that the [m]otion for [r]econsideration [*n*]*unc* [*p*]*ro* [*t*]*unc* . . . is GRANTED with respect to the above[-] captioned case. The post-sentence motion to reconsider sentence *nunc pro tunc* filed on October 6, 2022, is accepted as timely filed. The time to file a notice of appeal is tolled.

Id*.** (emphasis added). The trial court, however, failed to issue an order expressly granting *nunc pro tunc* relief. ***See Capaldi, 112 A.3d at 1245 (explaining that the trial court must issue an order which specifically grants *nunc pro tunc* relief). Thus, Appellant's appeal period was not tolled and he needed to file his appeal within 30 days of the imposition of his sentence, *i.e.*, on or before October 24, 2022. Appellant did not file an appeal until November 18, 2022 and, as such, his notice of appeal appears untimely.

In general, "an appellate court cannot extend the time for filing an appeal." ***Commonwealth v. Patterson***, 940 A.2d 493, 498 (Pa. Super. 2007) (citation omitted). This rule, however, "does not affect the power of the courts to grant relief in the case of fraud or breakdown in the processes of the court." ***Id*.** (citation omitted). A "breakdown" may occur if "the trial court or the clerk of courts depart[s] from the obligations specified in current Rules 704 or 720 of the Pennsylvania Rules of Criminal Procedure." ***Id*.** at 499. Indeed, a breakdown in the judicial system occurs if, in violation of Pa.R.Crim.P. 720, a trial court denies an untimely post-sentence motion but subsequently fails to apprise the defendant that, "due to the late filing of his

post-sentence motion, an appeal [needed to be filed] within [30] days of the imposition of [his] sentence." ***Id*.**

A review of the certified record reveals that this case presents such a breakdown in the judicial system. On October 21, 2022 (within 30 days of the imposition of Appellant's sentence in open court), the trial court convened a hearing on Appellant's untimely post-sentence motion. Ultimately, at the close of the hearing, the trial court denied Appellant's motion, stating:

> [] I think my sentence was appropriate under all circumstances. I mean[,] I wish him luck and I do want him to get the help that he needs.
>
> But his allocution was such that he said I [am] sorry to you but what am I going to do? He had no concern for the complaining witness, I agree.
>
> So, in light of all intensive circumstances I believe it was an appropriate sentence and I [am] sticking to my guns.
>
> I understand your motion but it [is] denied.

N.T. Hearing, 10/21/22, at 11. As the record makes clear, the trial court, neglected to advise Appellant of the time for taking an appeal pursuant to Pa.R.Crim.P. 720(B)(4)(a), given the untimely nature of his post-sentence motion. The trial court's compliance with Rule 720 would have likely obviated Appellant's untimely filing as Appellant had three days remaining in the appeal period after the trial court's denial. Based upon the foregoing, we decline to quash Appellant's appeal as untimely. ***See Patterson***, 940 A.2d at 498-499; ***compare Capaldi***, 112 A.3d at 1245, n.3 (holding that a breakdown in the

judicial system did not occur because the trial court denied the appellant's untimely post-sentence motion after the appeal period expired).

In Appellant's first issue, he challenges the sufficiency of the evidence supporting his convictions for aggravated assault with a deadly weapon and REAP. In particular, Appellant claims that there "was no evidence to support any finding that Appellant created a risk of death or serious bodily injury" which is "a necessary element of REAP" and "necessary to find that Appellant used a deadly weapon." Appellant's Brief at 26. We disagree.

Our standard of review is as follows:

> The standard we apply in reviewing the sufficiency of evidence is whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact[-]finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for that of the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth may not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Lambert, 795 A.2d 1010, 1014–1015 (Pa. Super. 2002) (citations omitted).

"A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury." 18 Pa.C.S.A. § 2705. "The *mens rea* required for this crime is a conscious disregard of a known risk of death or great bodily harm to another person." ***Commonwealth v. Martir***, 712 A.2d 327, 328 (Pa. Super. 1998).

"A person is guilty of aggravated assault if he . . . attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon." 18 Pa.C.S.A. § 2702(a)(4). A "deadly weapon" is

> [a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.

18 Pa.C.S.A. § 2301. "Serious bodily injury" is "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." ***Id.***

Importantly,

> "[a]lthough deadly weapons are commonly items which one would traditionally think of as dangerous (*e.g.*, guns, knives, etc.), there are instances when items which normally are not considered to be weapons can take on deadly status." ***Commonwealth v. Scullin***, 607 A.2d 750, 753 (Pa. Super. 1992) (concluding that "the tire iron used by appellee to strike the victim became a deadly weapon at the moment appellee threw it in the direction of the ultimate victim"). "Items not normally considered deadly weapons can take on such status based upon their use under the circumstances."

> ***Commonwealth v. Rhoades***, 8 A.3d 912, 917 (Pa. Super. 2010) (concluding that "an intact glass bottle constituted a deadly weapon" under the circumstances)[; ***s***]***ee also Commonwealth v. McCullum***, 602 A.2d 313, 323 (Pa. 1992) ("A deadly weapon need not be ... an inherently lethal instrument or device."); ***Commonwealth v. Prenni***, 55 A.2d 532, 533 (Pa. 1947) (stating "[a]n ax, a baseball bat, an iron bar, a heavy cuspidor, and even a bedroom slipper have been held to constitute deadly weapons under varying circumstances").

Commonwealth v. Tukhi, 149 A.3d 881, 887 (Pa. Super. 2016) (parallel citations omitted).

Upon review, we conclude that the Commonwealth presented sufficient evidence to sustain Appellant's convictions for aggravated assault with a deadly weapon and REAP. At trial, the complainant testified that, on the day of the incident, Appellant struck her repeatedly in the torso with a 10-inch iron skillet frying pan. ***See*** N.T. Trial, 1/28/22, at 22 (the victim was asked "how many times [were] you struck with the frying pan?" She responded: "Too many, I do [not] remember specifically. I am sorry but too many."); ***see also id*.** at 26 (the complainant clarifying that Appellant used a frying pan to strike her "cal[ves], [] thighs, and [] torso."). Importantly, the torso is considered a "vital" part of the body. ***See Commonwealth v. Sepulveda***, 855 A.2d 783, 789 (Pa. 2004) (defendant was shot in the abdomen, a vital part of his body); ***Commonwealth v. Drumheller***, 808 A.2d 893, 910-911 (Pa. 2002) (torso may be considered a vital part of the body). Hence, the complainant's testimony demonstrated that the 10-inch iron skillet used by Appellant constituted a deadly weapon because it proved, beyond a reasonable doubt,

that Appellant used it in a way that was likely to cause death or serious bodily injury. ***See Commonwealth v. Sun***, 2021 WL 5121282 *1,*3 (Pa. Super. Nov. 4, 2021) (unpublished memorandum) (holding that the evidence was sufficient to support the appellant's conviction for aggravated assault with a deadly weapon because the Commonwealth demonstrated that he "used [an aluminum baseball] bat to hit his wife in the back – an area of the body in which he could easily have caused serious injury to her spine, kidneys, and other part parts[.]"). The Commonwealth, therefore, presented sufficient evidence to support Appellant's convictions for REAP and aggravated assault with a deadly weapon.

Next, Appellant raises a challenge to the discretionary aspects of his sentence. This Court previously explained:

> It is well-settled that "the right to appeal a discretionary aspect of sentence is not absolute." ***Commonwealth v. Dunphy***, 20 A.3d 1215, 1220 (Pa. Super. 2011). Rather, where an appellant challenges the discretionary aspects of a sentence, we should regard his[, or her,] appeal as a petition for allowance of appeal. ***Commonwealth v. W.H.M.***, 932 A.2d 155, 162 (Pa. Super. 2007). As we stated in ***Commonwealth v. Moury***, 992 A.2d 162 (Pa. Super. 2010):
>
> > An appellant challenging the discretionary aspects of his[, or her,] sentence must invoke this Court's jurisdiction by satisfying a four-part test:
> >
> > > We conduct a four-part analysis to determine: (1) whether appellant [] filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, ***see*** Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, [***see***] Pa.R.A.P. 2119(f); and (4) whether there is a substantial question

> that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).
>
> [***Moury***, 992 A.2d] at 170 [(citation omitted)].

Commonwealth v. Hill, 210 A.3d 1104, 1116 (Pa. Super. 2019) (original brackets omitted).

Herein, we considered Appellant's notice of appeal timely filed. In addition, Appellant preserved his sentencing challenge in his post-sentence motion. Further, Appellant included a Rule 2119(f) concise statement in his appellate brief. ***See*** Appellant's Brief at 12-17. Thus, we turn to whether Appellant raised a substantial question. A substantial question exists when an appellant presents a colorable argument that the sentence imposed is either (1) "inconsistent with a specific provision of the sentencing code" or (2) is "contrary to the fundamental norms which underlie the sentencing process." ***Commonwealth v. Mastromarino***, 2 A.3d 581, 585 (Pa. Super. 2010) (citation omitted), *appeal denied*, 14 A.3d 825 (Pa. 2011). This issue is evaluated on a case-by-case basis. ***Id.*** at 587 (citation omitted). This Court will not look beyond the statement of questions involved and the prefatory Rule 2119(f) statement to determine whether a substantial question exists. ***Commonwealth v. Radecki***, 180 A.3d 441, 468 (Pa. Super. 2018) (citation omitted). Moreover, for purposes of determining what constitutes a substantial question, "we do not accept bald assertions of sentencing errors," but rather require an appellant to "articulat[e] the way in which the court's

actions violated the sentencing code." ***Commonwealth v. Malovich***, 903 A.2d 1247, 1252 (Pa. 2006).

In Appellant's 2119(f) statement, he contends that the trial court abused its discretion by imposing a sentence exceeding the aggravated range for his aggravated assault conviction. In particular, Appellant claims that, in so doing, the trial court relied upon improper factors and failed to consider other, mitigating factors. Both of Appellant's claims raise a substantial question, warranting review. ***See Commonwealth v. Smith***, 206 A.3d 551, 567 (Pa. Super. 2019) (holding that the appellant's claim that the trial court erred by imposing an aggravated range sentence without consideration of mitigating circumstances raised a substantial question warranting appellate review); ***Commonwealth v. Bowen***, 975 A.2d 1120, 1122 (Pa. Super. 2009) (explaining that the appellant's claim that "his aggravated-range sentence was based on an unconstitutional factor" raised a substantial question); ***Commonwealth v. Stewart***, 867 A.2d 589, 592 (Pa. Super. 2005) ("Based on [the a]ppellant's assertion that the sentencing court considered improper factors in placing the sentence in the aggravated range, we conclude that [the a]ppellant presents a substantial question on appeal.").

Herein, Appellant argues that the trial court, in fashioning his sentence, relied upon "improper factors" namely, the nature of the aggravated assault, as well as the fact that Appellant fled the courtroom after the court announced its verdict, but before the court addressed Appellant's bail. Appellant claims that, because "the nature of the offense . . . was already accounted for in the

[offense gravity score]" and because Appellant's "post-verdict conduct . . . was already punished in a finding of contempt and conviction," the trial court abused its discretion by using such "impermissible factors that . . . to enhance Appellant's sentence." Appellant's Brief at 32. In addition, Appellant claims that the trial court failed to consider other mitigating factors, such as his mental health issues and past history of substance abuse, while fashioning his sentence. ***Id.*** at 37.

With respect to our standard of review, we have held that "sentencing is a matter vested in the sound discretion of the sentencing judge, whose judgment will not be disturbed absent an abuse of discretion." ***Commonwealth v. Ritchey***, 779 A.2d 1183, 1185 (Pa. Super. 2001). This Court has held:

> An abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. In more expansive terms, our Court [has explained]: An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.
>
> The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that the sentencing 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.

Moury, 992 A.2d at 169–170 (internal citation and brackets omitted).

We also adhere to 42 Pa.C.S.A. § 9781, which provides, in pertinent part:

> (c) Determination on appeal.--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;
> >
> > (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
> >
> > (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.
>
> In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.
>
> (d) Review of record.--In reviewing the record the appellate court shall have regard for:
>
> > (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
> >
> > (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
> >
> > (3) The findings upon which the sentence was based.
> >
> > (4) The guidelines promulgated by the commission.

42 Pa.C.S.A. § 9781(c) and (d).

The trial court "shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed" considering "the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the

community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. § 9721(b). The trial court "is not required to parrot the words of the Sentencing Code, stating every factor that must be considered under Section 9721(b)[,] [h]owever, the record as a whole must reflect due consideration by the court of the statutory considerations" at the time of sentencing. ***Commonwealth v. Bullock***, 170 A.3d 1109, 1126 (Pa. Super. 2017), *citing* ***Commonwealth v. Coulverson***, 34 A.3d 135, 145 (Pa. Super. 2011). "A sentencing court may consider any legal factor in determining that a sentence in the aggravated range should be imposed." ***Bowen***, 975 A.2d at 1122 (citation omitted). "In addition, the sentencing judge's statement of reasons on the record must reflect this consideration, and the sentencing judge's decision regarding the aggravation of a sentence will not be disturbed absent a manifest abuse of discretion." ***Id.*** (citation omitted).

Furthermore, we have previously determined:

> In deciding whether a trial judge considered only permissible factors in sentencing a defendant, an appellate court must, of necessity, review all of the judge's comments. Moreover, in making this determination it is not necessary that an appellate court be convinced that the trial judge in fact relied upon an erroneous consideration; it is sufficient to render a sentence invalid if it reasonably appears from the record that the trial court relied in whole or in part upon such a factor.

Commonwealth v. Scott, 860 A.2d 1029, 1030 (Pa. Super. 2004) (internal quotations and citations omitted). "[W]here the sentencing judge had the benefit of a [PSI] report, it will be presumed that he or she was aware of the relevant information regarding the defendant's character and weighed those

considerations along with mitigating statutory factors." ***Commonwealth v. Clemat***, 218 A.3d 944, 960 (Pa. Super. 2019).

Herein, at the outset of Appellant's sentencing hearing, the trial court noted that it reviewed Appellant's mental health evaluation and the PSI report. The Commonwealth then read the victim impact statements of the complainant, as well as her father, and provided additional detail about the circumstances of apprehending Appellant after he fled from the courthouse. In particular, the Commonwealth explained:

> At the time of the contempt [Appellant] had been found guilty by Your Honor and we were at the moment of discussing whether I was going to ask to have bail revoked or not. Before I got it out [Appellant] left and I actually decided not to [seek revocation of Appellant's bail]. If he would have just stayed I was [not] going to ask for his bail to be revoked. But, instead he left.
>
> Now, that would perhaps be the middle of the road. But that [is] not the end of the story.
>
> [The complainant] talks about fear that she feels of [Appellant] finding her and that is likely in part due to the fact that while he was on a bench warrant status for contempt from this [c]ourt[,] he was contacting her. I know this because she called me and told me.
>
> And as a result of that officers went out to his grandparents['] house to have him arrested.
>
> There [has] been a stipulation by and between counsel that if called to testify, Police Officer Quinn . . . would testify that on April 23[,] 2020, he did go to 2612 [Lefevre] Street in the City and County of Philadelphia where he attempted to affect an arrest on [Appellant] for an active warrant.
>
> At that time[, Appellant] fled on foot from police officers. When they caught him[,] they attempted to put him in handcuffs but he pulled a black butterfly knife open.

> At that point he was tasered and taken into custody without further issue after he dropped that butterfly knife.

N.T. Sentencing Hearing, 9/23/22, at 16-18.

Appellant then executed his right of allocution, stating:

> I would like to for one apologize for running from the courtroom that day when I got sentenced. I [am] sorry for that.
>
> As far as everything with [the complainant], it was a toxic relationship. It was rough on both ends. I [am] not going to sit here and say that I was right or that I was wrong. I made mistakes.
>
> All I can say is I want to put that in the past and just want to move on – I do [not] want anything to do with her anymore. I . . . [am] not worried about her. I do [not] want to seek revenge. I do [not] want to hurt her. I never did in the first place. I just want to move on with my life and do what I have to do.
>
> Again, I apologize for running from your courtroom. I was scared. I did [not] want to go back to jail. That [is] not where I want to be. I do [not] see myself as a criminal. I do [not] try to do anything – I just try to do what [is] right in society, you know.
>
> That [is] really all I have to say.

Id. at 21-22.

Finally, the trial court addressed Appellant and issued Appellant's sentence.

> Sir, listen, I [have] been doing this for 15 years. That is the first time in my career that someone ran out when we were discussing [bail].
>
> I had [not] decided at that point. I do [not] think I was taking you into custody but you did [not] even give me a chance, no argument. You just took off.

That shows a complete lack of remorse and a complete lack of respect for this [c]ourt.

For that [you] are going to get [two] months and 28 days to [five] months [and] 29 days[' incarceration]. That [is] on the contempt. I want that served first.

On the underlying charge, that was perhaps the worst allocation I ever heard. You did [not] even accept responsibility. I think your exact words were you just want to move on from this.

Well, the complaining witness is trying to move on. I mean it was Socrates who said that true remorse is not fear of consequences, it [is] regret over motive. I [am] not [seeing] that. You are just afraid of what [is] going to happen and rightfully so.

I do [not] even know where to begin with this because that poor woman I can [not] imagine how terrified she was. I understand you need treatment but I think you can get that up state.

I do [not] agree with the Commonwealth as far as the sentence. It [is three] to [six] years. That is going to [be] followed by [five] years of reporting probation.

Now, in doing that, I want the record to accurately reflect all of your needs. I do believe after reviewing the mental health, the prior record and the PSI [] you need help. I think that [is] best served up state. I believe up there you will get the adequate treatment that you need because trust me when I tell you[,] you need it.

I [am] going to make you eligible for the drug program up state. It does [not] mean you [are] going to get into it but I [am] going to recommend it.

Now, I want you to understand that I originally was thinking [five] to 10 [years' incarceration] but having read the mental health report[,] I think that may have been a little too severe.

It was Shakespeare who said nothing [emboldens] sin so much as mercy and anything less I think would simply [embolden] you especially after your statement that you just want to move on with your life. Not a word of remorse nor regret. And you will stay away from her.

> Your probation I wish the state to handle and I wish it to be [domestic violence] conditions which it going to include a stay away order.
>
> If I find any inkling that you have talked to this woman it is not going to go well for you. When I say stay away that means all communications.

***Id*.** at 22-24.

We discern no abuse of discretion on the part of the trial court. First, in contrast to Appellant's claims, it is apparent that the trial court did not focus, solely, upon the nature of the aggravated assault while imposing Appellant's sentence. To the contrary, the trial court indicated its reliance upon the PSI, Appellant's prior record score, Appellant's lack of remorse, and Appellant's mental health evaluation. Second, we disagree with Appellant's contention that the trial court imposed a harsher sentence for Appellant's aggravated assault conviction simply because of his post-verdict conduct. We highlight the fact that, initially, the trial court issued a sentence specific to Appellant's contempt charge: two months and 28 days to five months and 29 days' incarceration. Moreover, the trial court heard evidence that even after his conviction, Appellant attempted to contact the complainant after he fled from the courthouse. The trial court also considered Appellant's failure to express remorse during his allocution. Hence, the trial court determined that a more severe punishment was necessary to protect the public, namely, the complainant, and curb the impact Appellant's actions had on the complainant. ***See*** 42 Pa.C.S.A. § 9721(b). Lastly, a review of the record indicates that the

trial court did, in fact, consider Appellant's history, including his mental health evaluation, as a mitigating factor. Indeed, the trial court specifically stated:

> Now, I want you to understand that I originally was thinking [five] to 10 [years' incarceration] but having read the mental health report[,] I think that may have been a little too severe.

Id. at 24. We therefore conclude that Appellant's claims lack merit, as the trial court did not abuse its discretion in imposing Appellant's sentence.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/22/2024