

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 99-11,489
00-10,073
VS : 00-10,271
WALTER CHAPMAN :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals from the sentence imposed by this Court on June 29, 2000, after he pled guilty to institutional vandalism, desecration of venerated objects and conspiracy under information 99-11,489; burglary and conspiracy under information 00-10,271; and conspiracy under information 00-10,073. For the convictions under information 99-11,489, the Defendant was sentenced to undergo incarceration in a state correctional institution for twenty (20) to forty (40) months, and a consecutive five (5) year period of probation. For the convictions under information 00-10,271, the Defendant was sentenced to incarceration for twenty (20) to forty (40) months and a consecutive five (5) year period of probation, consecutive to the sentence imposed under information 99-11,489. For the conviction under information 00-10,073, the Defendant was sentenced to incarceration for twenty (20) to forty (40) months, consecutive to the sentences imposed on the two previous informations.

On appeal, Defendant asserts that the Court abused its discretion when imposing sentence. Defendant argues that the standard guideline range for the offenses for a Defendant with a prior record score of 3, is 6 to 16 months for each offense. Defendant argues that a sentence in the aggravated range was excessive considering the fact that,

while serious, the offenses were property offenses and no person was physically injured; the fact that the Defendant is only 18 years of age, and has had no disciplinary problems while incarcerated; and the fact that although he has had prior juvenile offenses, this is the Defendant's first adult incarceration. Defendant additionally argues that the public need for protection could have been adequately advanced by allowing his participation in the Boot Camp Program.

The Court first finds that Defendant has failed to raise a substantial question justifying review of his sentence, see [42 Pa.C.S.A. § 9781\(b\)](#)(appellate court may at its discretion grant allowance of appeal where it appears there is a substantial question that the sentence imposed is not appropriate under the Sentencing Code). A substantial question will be found where a defendant advances a colorable argument that the trial judge's actions were inconsistent with a specific provision of the sentencing code, or contrary to the fundamental norms underlying the sentencing process. [Commonwealth v. Losch](#), 369 Pa.Super. 192, 201 n. 7, 535 A.2d 115, 119 n. 7 (1987).

Allegations such as those presented here, that the sentencing court failed to consider or did not adequately consider certain factors, does not raise a substantial question that the sentence imposed was inappropriate. [Commonwealth v. Cruz-Centeno](#), 447 Pa.Super. 98, 668 A.2d 536 (1995), appeal denied, 544 Pa. 653, 676 A.2d 1195 (1996). Additionally, a claim of excessiveness of sentence does not raise a substantial question where the sentence imposed is within the statutory limits. [Id.](#) The sentences imposed in this case were within the statutory limits. See 18 Pa.C.S. § 1103 (maximum sentence for felony of second degree is ten years, maximum for a felony of the third degree is seven years).

Even if a substantial question had been raised, the Court asserts that it abided by the statutory requirements in imposing Defendant's sentence.

42 Pa.C.S. § 9721 provides the standards to apply in determining the appropriate sentence for a defendant. Subsection (a) of the statute provides:

(a) the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with 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. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, the 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.

...

[42 Pa.C.S. § 9721](#)

"The statute requires a trial judge who intends to sentence a defendant outside the guidelines to demonstrate on the record, as a proper starting point, his awareness of the sentencing guidelines. Having done so, the sentencing court may deviate from the guidelines, if necessary, to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community, so long as he also states of record 'the factual basis and specific reasons which compelled [him] to deviate from the guideline range.'" [Commonwealth v. Johnson](#), 446 Pa.Super. 192, 666 A.2d 690 (1995), quoting [Commonwealth v. Canfield](#), 432 Pa.Super. 496, 639 A.2d 46 (1994) (quoting [Commonwealth v. Royer](#), 328 Pa.Super. 60, 476 A.2d 453 (1984)).

In the instant case, the Court considered the sentencing guidelines in determining the appropriate period of incarceration for the Defendant. The standard guideline range of a five-point offense, for a Defendant with a prior record score of 3, is six (6) to sixteen (16) months. The aggravated range is sixteen (16) to nineteen (19) months. In deciding to sentence the Defendant to twenty (20) to forty (40) months for the offenses, the Court considered the fact that although the Defendant showed having been adjudicated only once, the adjudication was for three separate juvenile burglary offenses. While the offenses were not reflected in the Defendant's prior record score, the Court could factor in these offenses when considering the protection of the public, the gravity of the offense as it relates to the impact the community, and the rehabilitative needs of this Defendant. The Court found the sentence imposed in this case to be appropriate, considering the Defendant's history with these types of offenses. The Court articulated the reasoning behind its sentence on the record in compliance with the statute. The Court therefore rejects Defendant's argument.

Dated:

By The Court,

Nancy L. Butts, Judge

xc: Kenneth Osokow, Esquire, DA
Nicole Spring, Esquire, PD
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges