

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 99-11,192

VS :

VERNON CARROL LYNN :

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

Defendant appeals this Court's Order dated May 4, 2000. Pursuant to that Order, the Defendant was sentenced to undergo incarceration for a minimum of ten (10) years and a maximum of twenty (20) years on the charge of aggravated assault, and was given a five (5) year period of probation on the charge of terroristic threats, consecutive to the sentence of incarceration. This sentence was entered after the Defendant was found guilty following the jury trial held February 15, 2000. On April 5, 2001, the Defendant filed a Petition for Post Conviction Collateral Relief, alleging that he had requested that his attorney file an appeal, but he had failed to do so. On November 13, 2001, this Court granted Defendant's Petition in accordance with Commonwealth v. Lantzy, 736 A.2d 570 (1999), and allowed him to file his direct appeal Nunc Pro Tunc. Defendant filed his appeal November 29, 2001.

The following evidence was presented at trial. Officer Mark E. Giza, of the South Williamsport Police Department testified that on July 22, 1999, he was on routine patrol when at approximately 8:00 p.m. he received a call concerning an unfamiliar woman and a dog on the porch of a residence at 459 Main Street. Upon approaching the

woman, Officer Giza immediately noticed that the woman had been beaten. (N.T. 2/15/01, p. 12) He testified that “[s]he had bruises, abrasions, and swelling that was visible on her body that wasn’t covered by clothing. Her eyes were blackened, her lips were cut, there was a fresh bleeding cut on her head, appeared that she had been severely beaten.” (ibid) Officer Giza testified that she was reluctant to talk to them, and appeared very afraid. Eventually, the woman identified herself as Darlene Hoffman and identified the Defendant, her live-in boyfriend, as the person who had attacked her. (Id., p. 13)

Officer Giza and three other officers went to the Defendant’s residence on 418 East Central Avenue that evening to question him about the woman. (Id., p. 17) Upon finding the Defendant, Officer Giza observed blood on the leg and on the seat of his pants. (Id., p. 17) Officer Giza testified that the home was in disarray, and he noticed blood on the kitchen floor and a head-sized hole in the hallway wall. (Id., p. 18)

Susan Hamilton, an RN at Williamsport Hospital Emergency Room testified that she assisted in the treatment of Darlene Hoffman on the evening of July 22, 1999. Ms. Hoffman presented with numerous bruises on her face, ears, arms and legs. Ms. Hamilton testified that Ms. Hoffman’s ears were swollen, deformed, and painful to touch. She also had some painful lacerations to her mouth. (Id., p. 25) An x-ray of Ms. Hoffman’s chest was taken, and it was discovered that she had multiple broken ribs. (Id., p. 29)

Darlene Lynn¹ testified that she met the Defendant while working at the Quality Inn in South Williamsport in October of 1998. They started dating, and she moved in

¹ She and the Defendant were married December 15, 1999, while the Defendant was out on bail pending the trial with regard to incident.

with the Defendant in December of that year. (Id., p. 32) Problems started to develop the following February. She testified that with both of them unemployed, the bills started to accumulate, and the two had frequent arguments. By the end of February, the arguments became physical. Ms. Lynn stated that during the months that these physical altercations occurred they increased in number. She was not permitted to leave her residence or use the telephone.

On July 21, 1999, at approximately 10:30 p.m., the Defendant became angry with her after she made a sexual comment. She testified that he became angry and started smacking her face and pulling her hair². (Id., p. 36) The fight continued into the next morning. She testified that she was kicked by the Defendant approximately 50 times as she lay on the floor. Before he went to bed the Defendant put her in the pantry. She testified that the Defendant would put her in the pantry on occasion “for punishment.” (Id., p. 37) He told her that if she left, he would begin beating her again. She testified that he woke up the following morning at approximately 8:00 a.m.. She testified that “he start[ed] you bitch, you whore, and then because he remember[ed] from the night before and then he start[ed] smacking me and throwing me around.” He also “did some kicks that morning, he took me by the hair and threw me on the floor and then he [took] his knees and then he was jumping up and down on my back.” (Id., p. 40) She explained further that as she lay face down on the floor, the Defendant kneeled on her back, and using his arms as leverage he jumped up and down. (Ibid)

Ms. Lynn testified that after he finished jumping on her he continued to smack her. She testified that he smacked her hard enough in the face that she “had blood

² Ms. Lynn elaborated that the Defendant always struck her with an open hand, not a closed fist. She also stated that on another occasion, the Defendant had cut her hair with scissors. He had stated “you’re ugly I’ll make you ugly so nobody else will want you.” (Id., p. 45)

coming from [her] mouth then he stop[ped] long enough to tell me to go into the bathroom and clean myself up.” (Id., p. 41) She testified that there were some breaks in the physical interaction during the day. She testified that “[t]oward evening in between all this smacking and hitting and stuff he grabbed me by the hair and threw me and my head on the kitchen floor and smacked it into the kitchen floor I told him I was bleeding from the head and he just told me to go clean up.” (Id., p. 42)

After that encounter, the Defendant went to bed. She sat for a few moments, then after checking that the Defendant was asleep, she escaped through the back door of the residence. (Ibid.) She went to find a telephone to call her sister. She testified that she was afraid to call the police, because he had told her that when he got out he would kill her. At the hospital that evening she learned that she had six broken ribs, two fractured ribs, and a partially collapsed lung plus the gash on her head. She was hospitalized for four days. (Id., p. 44) Ms. Lynn stated that she still suffers from nerve damage on her right side as a result of the incidents. (Id., p. 50) Her ears are also permanently damaged. Ms. Lynn testified that despite the incidents that had occurred, she still loves her husband and at the time of the trial, she still conversed with him. (Id., p. 57) She married the Defendant after this event occurred, on December 15, 1999.

The Defendant, Vernon Carroll Lynn, admitted that he slapped his wife on occasion. He stated that with bills getting out of control, he and she became increasingly frustrated. He claimed, however, that the injuries from this incident were accidental. He explained that on several occasions, Ms. Lynn had tried to commit suicide. He claimed that she tried to commit suicide by taking some pills on the date this incident occurred. (Id., p. 66) He stated that he “had to grab her. She was fighting

me and I had to pry them out of her mouth, [she] kept fighting me it was like a hand full I was on top of her with my knees and that's probably how her ribs got broken." (Ibid.) He testified that he was only on top of her to get the pills out of her mouth, and that he had not intended to harm her. (Id., p. 67) The Defendant testified that the deformities to her mouth and ears probably occurred because the two of them "were self abusive or something like that. We both really need help." (Id., p. 70) He said that she occasionally did things to herself, he added that he "was always trying to save her." (Ibid.)

WEIGHT OF THE EVIDENCE

The Defendant first alleges that the verdict was against the weight of the evidence as to the counts of aggravated assault, simple assault, and terroristic threats. The Court does not agree. The test for determining whether the verdict is against the weight of the evidence, is not whether the Court would have decided the case in the same way, but whether the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail. Commonwealth v. Whiteman, 336 Pa.Super. 120, 485 A.2d 459 (1984). Instantly, the evidence showed that the Defendant subjected the victim to repeated beatings, leaving her deformed and disabled. On the night of this incident, he beat her, kicked her, jumped on her, and smashed her head into a wall. These beatings resulted in broken ribs, a collapsed lung, and nerve damage. The Court cannot conclude that the verdict was so contrary to the evidence that the award of a new trial is imperative so that justice may have another opportunity to prevail.

INEFFECTIVENESS OF COUNSEL

Defendant next alleges that his trial counsel was ineffective . In order to make a claim for ineffective assistance of counsel, the Defendant must demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel's performance was unreasonable; *and* (3) counsel's ineffectiveness prejudiced defendant. Commonwealth v. Beasley, 544 Pa. 554, 678 A.2d 773, 778, (1996). Thus, the mere allegation that trial counsel pursued a wrong course of action will not make out a finding of ineffectiveness. Commonwealth v. Savage, 529 Pa. 108, 112, 602 A.2d 309, 311 (1992).

Exculpatory Evidence

Defendant first alleges that his counsel was ineffective for failing to present exculpatory evidence. He also alleges that exculpatory evidence, which was not available at the time of the trial, has become available which could have affected the decision of the jury on all counts. The Court notes that Defendant makes no assertion of what this evidence may be. Instantly, the Court disagrees with Defendant's characterization that his trial counsel failed to present any exculpatory evidence. Defendant's counsel thoroughly and carefully cross-examined all of the Commonwealth's witnesses. Additionally, the Defendant testified on his own behalf that the injuries that resulted were accidental. Without more information, the Court would find this assertion without merit.

Failure to Perform Mental Examination

Initially, the Court finds Defendant's assertion of his trial counsel's ineffectiveness for failing to request a mental examination to determine his competence to stand trial to be without merit. Due process of the law requires that an accused be competent before

he or she stands trial on a criminal charge. [Commonwealth v. Garnett, 336 Pa. Superior Ct. 313, 318, 485 A.2d 821, 824 \(1984\)](#). An accused's competency to stand trial in Pennsylvania is governed by [50 Pa.S.A. § 7402\(a\)](#):

Whenever a person who has been charged with a crime is found to be substantially unable to understand the nature or object of the proceedings against him [or her] or to participate or assist in his [or her] defense, he [or she] shall be deemed incompetent to be tried, convicted or sentenced so long as such capacity continues.

Id.

The procedural mechanism for such a determination requires that the accused, or the court, itself, on its own motion, request a hearing on the accused's competency to stand trial [50 Pa.S.A. § 7402\(d\)](#).

Instantly, there was never a mention that the Defendant was not able to understand the nature of the procedure against him. Further, the Defendant participated in his defense, and, in fact, testified on his own behalf. In his testimony, he competently and coherently answered all questions asked of him. The Court would therefore find, given the fact that this never was an issue at any time of the proceedings, that this issue is without merit, and defense counsel was not ineffective for failing to request a mental examination.

Even if it were found that Defendant's counsel was ineffective, it must then be determined whether Defendant has demonstrated that his counsel's ineffectiveness worked to his or her prejudice. [Commonwealth v. Pierce, 515 Pa. 153, 159, 527 A.2d 973, 976, \(1987\)](#). To determine whether Defendant was prejudiced, the Pennsylvania Supreme Court adopted the test announced by the United States Supreme Court in [Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 \(1984\)](#).

Commonwealth v. Pierce, supra. Under *Strickland*, to prove that counsel's ineffectiveness resulted in prejudice, a Defendant must show that the error was "so serious as to deprive [him or her] of a fair trial, a trial whose result was reliable." [Strickland v. Washington, supra at 686, 104 S.Ct. at 2063-64.](#) Again, the Court fails to see how the Defendant was prejudiced, given the fact that he was able to actively participate in, and testify in his own defense. The Court therefore rejects this argument.

Failure to Present Evidence Pertaining to Mental Health

Defendant next alleges that his counsel was ineffective for failing to present evidence with regard to his mental health at the time of this incident. Even if this claim has arguable merit, this court would find that counsel had a reasonable basis for not presenting such evidence. Defendant's defense in this case was that he had not purposefully injured the victim. He testified that he had only put his knees on her chest in an effort to get pills out of her mouth. He denied any wrongdoing. Presenting evidence of mental issues would have been irrelevant and inconsistent with the Defendant's theory of the case. The Court therefore rejects this issue.

SENTENCE ISSUE

The Defendant next asserts that the Court abused its discretion in sentencing him beyond the aggravated range. The Court disagrees. Court 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 an eleven-point offense, for a Defendant with a prior record score of 3, is fifty-four (54) to seventy-two (72) months. The aggravated range is seventy-two (72) to eighty-four (84) months. (See *N.T. 5/12/00*, p. 12) In deciding to sentence the Defendant to the statutory maximum of ten (10) to twenty (20) years for the offense, the

Court considered the Defendant's violent nature, and the fact that he committed repeated acts of violence and terrorized the victim over an extended period of time. The Court also considered the serious disfigurement suffered by the victim as a result of the repeated assaults, and the fact that the Defendant denied wrongdoing, showed no remorse, and attempted to place the blame on the victim for the injuries suffered.

When considering the impact and gravity of the offense on the victim, and the rehabilitative needs of this Defendant, the Court found the sentence imposed in this case to be appropriate. The Court articulated the reasoning behind its sentence on the record in compliance with the statute. (N.T. 5/4/00, pp. 18-23) The Court therefore rejects Defendant's argument.

Dated:

By The Court,

Nancy L. Butts, Judge

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