IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-543-2004 (04-10,543)**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
CHRISTOPHER FOSTER,	**:**	
Defendant	**:**	**1925(a) Opinion**

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

This opinion is written in support of this Court's judgment of sentence dated December 7, 2005. The relevant facts follow.

Appellant was arrested and charged with kidnapping, unlawful restraint, false imprisonment, rape (by forcible compulsion), rape (by threat of forcible compulsion), sexual assault, indecent assault, possessing instruments of crime, simple assault, terroristic threats, stalking, burglary, criminal trespass, robbery, theft, receiving stolen property, and endangering the welfare of a child. A jury trial was held on or about October 13-14, 2005. The jury found Appellant guilty of criminal trespass, terroristic threats, simple assault and theft.

The Court held a sentencing hearing on December 7, 2005. Appellant's prior record score was 1. The offense gravity scores were as follows: criminal trespass (F3) – 3; terroristic threats (M2) – 3; simple assault (M2) – 3; and theft (M2) -2. The standard minimum guideline range for theft was RS-2. The standard range for the other convictions was RS-6. The Court imposed an aggregate sentence of incarceration in a state correctional

institution of 1 to 5 years. This sentence consisted of 6 months to 2 years for criminal trespass, 2 months to 1 year for terroristic threats, 2 months to 1 year for simple assault, and 2 months to 1 year for theft, with all of the sentences consecutive to one another. The Court did not believe Appellant was amenable to a county sentence because: he had a history of assaultive behavior; he absconded for a period of two years when he was on previously county supervision; and he was hostile with the county probation officer during the preparation of the pre-sentence investigation in this case.

Appellant filed a motion for reconsideration of sentence on December 14, 2005, claiming that his decision to assert his right to trial resulted in a manifestly excessive sentence that is at the top of the standard range for the sentencing guidelines. On December 20, 2005, the Court summarily denied the motion. The Court again commented that Appellant was not amenable to county supervision. While acknowledging that the sentences for criminal trespass and theft were at the top of the standard range, the Court noted that the sentences for terroristic threats and simple assault were toward the low end of the standard range.

On January 3, 2006, Appellant filed a notice of appeal. The sole issue raised on appeal is that the sentence imposed is manifestly excessive in that the sentences on each count were to run consecutive to each other and are at the top of the standard range. The Court cannot agree.

"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. Rosetti, 863 A.2d 1185, 1193 (Pa.Super. 2004). In considering whether a sentence is manifestly excessive, great weight is given to the discretion of the sentencing judge, as he is

in the best position to measure various factors utilized in sentencing. Commonwealth v. DuPont, 730 A.2d 970, 986 (Pa.Super. 1999). Similarly, the sentencing court has the discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. Commonwealth v. Marts, 889 A.2d 608, 612 (Pa. Super. 2005). A challenge to the imposition of consecutive sentences ordinarily does not raise a substantial question. Marts, supra; Commonwealth v. Lloyd, 878 A.2d 867, 873 (Pa. Super. 2005).

Initially, the Court notes that the sentences for terroristic threats and simple assault were not at the top of the standard range. The standard range for these offenses was RS-6. The Court imposed a minimum sentence of 2 months on each of these offenses.

The Court also does not believe it abused its discretion or imposed an excessive sentence. The Court listened to the arguments of both parties and considered the pre-sentence investigation. Appellant had a prior record score of 1, which consisted of a felony three stalking and simple assault case from Lycoming County in 1998 and a misdemeanor assault case from New York involving a seven year old victim. N.T., at 6. Appellant also violated a PFA by grabbing the victim by her throat. Appellant absconded from his county parole supervision for approximately two years. Appellant was not cooperative with the county probation officer when he was preparing the pre-sentence investigation (PSI). The probation officer attempted to accommodate Appellant by conducting the interview for the PSI by telephone so Appellant would not have to travel from Philadelphia to Williamsport; Appellant's response was to swear at the probation officer and to be argumentative with him. N.T., at 7-8. The Court also summarized the facts and gave its reaction to the case as follows:

> I'm going to try to state the facts limiting the facts to what he had been convicted of, but those facts, even as limited to me tell a story of a very serious nature. The Defendant entered the home of the victim uninvited in the night time. After entering the home of the victim he picked up a knife, threatened the victim with a knife, threatened to kill her, he did put the knife down, then the Defendant got into a vehicle with the victim whereupon he demanded that she give him the pin number so he could steal the money from her bank account. Those facts are all consistent, I think, with the verdict and discounting the other facts that he was acquitted of. Just accepting those facts to me tell a serious story of conduct that night. The other question that has been argued is whether the Court should go county or state and I'm convinced that we shouldn't try to work with Mr. Foster in the county. We had him under supervision, he absconded for two years, that certainly indicates to me that he's not amenable to county supervision and he certainly didn't help his case when he's contacted by the Adult Probation Officer reacting the way he did. Certainly indicates to me he's not a good candidate for county supervision. So I'm going to impose a state sentence. I will stay within the standard range of the guidelines. I will impose consecutive sentences for the different offenses.

N.T., at 23-24. Based on all the factors in this case, the Court felt an aggregate state sentence of 1 to 5 years was appropriate for this case.

DATE: _____ By The Court,

_____
Kenneth D. Brown, P. J.

cc: Henry Mitchell, Esquire (ADA)
Joel McDermott, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)