

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 588-2006
 :
 TAURANCE JOHNSON, :
 :
 Defendant : 1925(a) OPINION

Date: July 30, 2007

**OPINION IN SUPPORT OF THE ORDER OF MAY 1, 2007 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Taurance Johnson has appealed his May 1, 2007 sentence. Johnson asserts that the court erred in sentencing him by incorrectly utilizing a Prior Record Score of 5. The Prior Record Score of 5 was correct and properly used by this court in sentencing Johnson. As such, his appeal should be denied and the May 1, 2007 sentence order affirmed.

I. Background

A. Procedural History

On March 21, 2007, a jury entered a verdict against Johnson. The jury found Johnson guilty as to Count 1 Criminal Use of a Communication Facility, 18 Pa.C.S.A. § 7512, Count 2 Possession with the Intent to Deliver a Controlled Substance (cocaine), 35 P.S. § 780-113(a)(30), Count 3 Delivery of a Controlled Substance (cocaine), 35 P.S. § 780-113(a)(30), Count 4 Possession of a Controlled Substance (cocaine), 35 P.S. § 780-113(a)(16), Count 5 Possession of Drug Paraphernalia, 35 P.S. § 780-113(a)(32). On May 1, 2007, this court sentenced Johnson as to those charges.

On May 30, 2007, Johnson filed a notice of appeal. On June 1, 2007, we issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Johnson to file a concise statement of matters complained of on appeal within fourteen days of the order. On June 12, 2007, Johnson filed his statement of matters.

B. April 9, 2007 Sentencing Hearing

On April 9, 2007, this court held a sentencing hearing in Johnson's case. At that hearing, the Court, as well as counsel for Johnson and the Commonwealth, reviewed the pre-sentence investigation report prepared by the Lycoming County Adult Probation Office. The report indicated that Johnson had a Prior Record Score ("PRS") of "REFEL." The report based the PRS upon: an August 16, 1995 Florida juvenile adjudication for a first degree felony grade burglary offense; an April 25, 1996 Florida juvenile adjudication for a first degree felony grade burglary offense; a September 11, 1999 Pennsylvania conviction for a second degree grade robbery offense; a September 11, 1999 Pennsylvania conviction for a misdemeanor grade recklessly endangering the welfare of another person offense; and a September 11, 1999 Pennsylvania conviction for a misdemeanor grade retail theft offense.

Johnson challenged the accuracy of the PRS at the sentencing hearing. Johnson argued that the Florida burglary juvenile adjudications could not be included in the PRS calculation. Notes of Testimony, 7 (4/9/07). In order to be included in the PRS calculation, Johnson argued that the Commonwealth bore the burden of establishing that Johnson was fourteen years of age at the time of the burglaries. Ibid. Johnson contended that the Commonwealth failed to do this because it failed to produce a certified record from Florida indicating Johnson's age at the time of the burglaries. Ibid.

The Commonwealth informed that court that it did not have a certified record from Florida regarding Johnson's Florida juvenile offenses, but it had been attempting to obtain such a record since January 2007. N.T., 10 (4/9/07). The Commonwealth also informed the court that the information it had regarding Johnson's Florida charges only indicated the date of the adjudication and not the date of the offense. Id. at 12. Consequently, the Commonwealth requested a continuation of the sentencing hearing so that it could obtain the date of offense for the Florida burglaries. Ibid. The court granted that request.

C. May 1, 2007 Sentencing Hearing

On May 1, 2007, the sentencing hearing resumed. The Commonwealth presented a document entitled "Youth Face Sheet" from the Florida Department of Juvenile Justice prepared by Colisha Thomas. Ms. Thomas is a secretary specialist with the Florida Department of Juvenile Justice. N.T., 3 (5/1/07). The Youth Face Sheet listed all of Johnson's Florida Juvenile offenses and their dispositions. As to the two burglary offenses, it listed the date of offense for the April 25, 1996 adjudication as June 12, 1996 and August 21, 1995 as the date of offense for the September 20, 1995 adjudication. Based upon this information, the Commonwealth argued that the two Florida burglary juvenile adjudications should be included in Johnson's PRS calculation. Ibid. Using these two adjudications and his Lycoming County adult convictions, the Commonwealth stipulated to a PRS of 5 for Johnson. Id. at 4.

Johnson countered by arguing again that the Florida burglary juvenile adjudications could not be included in the PRS calculation. Johnson argued that the Commonwealth still failed to establish that he was fourteen at the time of the burglary offenses. Johnson presented evidence in the form of a letter from the Office of General Counsel of the Florida Department

of Juvenile Justice, which indicated that, while Ms. Thomas was authorized to gather the information she provided the Commonwealth from the Department of Juvenile Justice's computer data base, there was no way to certify that the information in the data base was accurate. N.T., 7 (5/1/07). Because of this, Johnson argued that the Youth Face Sheet could not be used to establish that he was fourteen years of age at the time of the Florida burglaries. Consequently, Johnson argued that the Florida burglary juvenile adjudications could not be used in the PRS calculation. In light of this, he asserted that based upon his adult convictions his PRS was a 3. *Id.* at 7-8.

We disagreed with Johnson and determined that his PRS was a 5. Using a PRS of 5, we proceeded to sentence Johnson. As to Count 1, we sentenced Johnson to confinement at a state correctional institution for a minimum of eighteen months and a maximum of thirty-six months. As to Count 3, we sentenced Johnson to confinement at a state correctional institution for a minimum of thirty months and a maximum term of sixty months to be followed by five years of probation supervision. Johnson was also ordered to pay a fine of \$5,000 under this count. As to Count 5, we entered an adjudication of guilt without further penalty. The sentences under Counts 1 and 3 were to be served concurrent to each other and consecutive to any other sentence Johnson was serving. As to Counts 2 and 4, we determined that they merged with Count 3 for purposes of sentencing.

II. ISSUE

In his Statement of Matters, Johnson asserts one issue. It is:

Did the court err in utilizing a PRS of 5 when sentencing Johnson when the Commonwealth failed to present a certified record establishing that he was fourteen years of age at the time the Florida burglaries were committed?

III. DISCUSSION

The court did not err in utilizing a PRS of 5 when sentencing Johnson. Johnson's two Florida juvenile burglary adjudications were properly included in the PRS calculation as the Commonwealth presented sufficient evidence that Johnson was fourteen years of age at the time of the burglaries and Johnson failed to rebut this evidence. The combination of the Florida juvenile adjudications and Johnson's adult convictions resulted in a PRS of 5.

A. PRS Challenge General Rules and Principles

A defendant has the burden of raising a challenge to the accuracy of a prior convictions record. *Commonwealth v. Meo*, 524 A.2d 902, 903 (Pa. Super. 1987); *Commonwealth v. Maleno*, 502 A.2d 617, 618 (Pa. Super. 1985). If the challenge appears to have merit, a court should inquire into the circumstances surrounding the prior convictions and hold a hearing. *Commonwealth v. Whisnant*, 568 A.2d 259, 261 (Pa. Super. 1990); *Meo*, 524 A.2d at 903. At this hearing, the Commonwealth bears the burden of production and must produce evidence showing the validity of the prior convictions. *Meo*, 524 A.2d at 903; *Maleno*, 502 A.2d at 618. Even though the Commonwealth bears the burden of production, a defendant bears the burden of persuasion and must prove that the record of prior convictions is inaccurate. *Meo*, 524 A.2d at 903; *Maleno*, 502 A.2d at 618. In light of this, information concerning prior convictions

contained in a pre-sentence report is presumed to be valid, but this presumption may be rebutted by the defense. *Maleno*, 502 A.2d at 618-19.

B. Inclusion of the Florida Burglary Juvenile Adjudications

Johnson's first degree felony grade Florida burglary juvenile adjudications were properly included in the PRS calculation. A prior juvenile adjudication is counted in a defendant's PRS if:

- (1) the juvenile offense occurred on or after the offender's 14th birthday, and
- (2) there was an express finding by the juvenile court that the adjudication was for a felony or one of the misdemeanor 1 offenses listed in 204 Pa. Code § 303.7(a)(4).

204 Pa. Code § 303.6(a). Johnson does not contend that the burglary adjudications do not satisfy the second criteria, but instead contends that the Commonwealth has failed to prove that he was fourteen years old at the time of the burglaries.

The Youth Face Sheet lists the date of offense for the June 12, 1996 burglary adjudication as April 25, 1996. It lists the date of offense for the September 20, 1995 burglary adjudication as August 21, 1995. Johnson's date of birth is June 2, 1981. Johnson would have turned fourteen on June 2, 1995. Johnson committed both Florida burglaries after June 2, 1995. As such, he was fourteen years of age at the time the burglaries were committed and they meet the criteria for including a juvenile adjudication in the PRS calculation.

Contrary to Johnson's argument, the fact that the Youth Face Sheet was not a certified record does not mean we could not consider it in order to determine his PRS. "[A] proceeding to determine sentence is not a trial, and the court is not bound by the restrictive rules of evidence properly applicable to trials." *Commonwealth v. Medley*, 725 A.2d 1225, 1229 (Pa.

Super. 1999), *app. denied*, 749 A.2d 468 (Pa. 2000). As such, “the court may receive any relevant information for the purpose of determining the proper penalty.” *Ibid*. We found the information on the face sheet to be sufficiently reliable. The letter from the Office of General Counsel of the Florida Department of Juvenile Justice submitted by Johnson stated that while the information contained on the Youth Face Sheet could not be certified as accurate, the Department of Juvenile Justice employs data integrity officers to help ensure the accuracy of the information contained in the data bases from which the information is culled to produce the Youth Face Sheet. Thus, there was evidence that steps had been taken to ensure the information relied upon by the Commonwealth and the court was accurate.

Johnson presented no evidence to rebut the presumption that it was accurate and that he was not fourteen years old at the time of the Florida burglar offenses. As such, Johnson failed to carry his burden of persuasion.

The court believes that it is appropriate for a defendant in Johnson’s to be required to rebut the presumption of accuracy. We recognize that despite the efforts at record keeping, particularly when dealing with records that are not recent and which involve out of state information gathering, it does become difficult for the Commonwealth to obtain information timely, as well as, the court and its probation offices. Such a matter, as to the defendant’s age at the time of the specific four burglary offenses, is something that would be particularly within the defendant’s knowledge and/or that of some family member or other person familiar with the defendant. It is a matter that would take very little effort upon his part to produce any evidence that might exist that he was not fourteen years of age at the time of the specific date he committed the Florida burglaries.

Accordingly, the first degree felony grade Florida burglary juvenile adjudications were properly included in the PRS calculation.

C. PRS Calculation

The combination of Johnson's Florida burglary juvenile adjudications and his adult convictions results in a PRS of 5. Each of the Florida first degree felony burglary juvenile adjudications receives a prior record point score of 3 in the PRS calculation. *See*, 204 Pa. Code § 303.7(a)(2). The Pennsylvania adult robbery conviction receives a prior record point score of 2 *See*, 204 Pa. Code § 303.7(a)(3). The Pennsylvania adult misdemeanor offenses receive a cumulative prior record point score of 1. *See*, 204 Pa. Code § 303.7(a)(5). Adding them all together, Johnson has a PRS of 9. However, the maximum sum of a defendant's prior record points may only be 5. *See*, 204 Pa. Code § 303.4(a)(3). Accordingly, Johnson has a PRS of 5. Therefore, the court properly utilized a PRS of 5 when sentencing Johnson.

IV. CONCLUSION

Accordingly, Johnson's appeal should be denied and the order of May 1, 2007 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Paul Petcavage, Esquire
DA
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)