

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**SEAN FORD,
Defendant**

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No.: 1714-2006; 753-2007; 1131-2007

OPINION AND ORDER

Before this Honorable Court is Defendant's Post Sentence Motion filed on June 6, 2008. Argument on Defendant's Motion was held on July 10, 2008. Defendant raises three issues in his motion: (1) that the Court violated the terms of his plea agreement by imposing an additional five (5) year term of supervision under CR-1714-2006; (2) there was insufficient evidence to sustain the jury's verdict as to the Criminal Trespass charge; and (3) that the jury's verdict was against the weight of the evidence. Defendant requests the charges be dismissed against him, a new trial be granted, and in the alternative that the Court impose a sentence consistent with his plea agreements.

Background

On March 31, 2008, under information 1714-2006 a jury trial was held before this Court, at which time Defendant was convicted of one count of Criminal Trespass at 18 Pa.C.S. § 3503(a)(1)(ii) and acquitted of one count of Criminal Mischief at 18 Pa.C.S. 3304(a)(5). The jury found the Defendant entered the residence of a former girlfriend in a highly intoxicated state without permission, removed most of his clothing and fell asleep in one of the beds in the residence.

On May 1, 2008, after his jury trial, the Defendant pled under information 753-2007 to the charges of Possession of Drug Paraphernalia, at 35 Pa. C.S. Section 780-113(a)(32), and the summary offense of Driving under Suspension-DUI related, a violation of Section 1543(b)(1) of the Motor Vehicle Code. At the time the plea was taken, the plea agreement was that any sentence the court would impose on this set of charges would run entirely concurrent to the sentence imposed under 1714-2006. Finally, on May 30, 2008, under information 1132-2007, and on the date scheduled for sentencing in the above two cases, Defendant entered a plea to a violation of Section 3929 of the Crimes Code, Retail Theft, a felony of the third degree. The plea agreement listed on the colloquy was that the Defendant would receive a sentence which would also run concurrently to 1714-2006. At sentencing, this Court as to information 1714-2006, sentenced the Defendant to a period of state imprisonment of 16 months to 5 years with a consecutive period of 5 years probation under the supervision of the Pennsylvania Board of Probation and Parole. Under 753-2007, he received the mandatory 90 days of incarceration entirely concurrent to 1714-2006 with a finding of guilt without further penalty on the Paraphernalia charge. On the felony Retail Theft offense under information 1131-2007, the Defendant received an entirely concurrent sentence of 6 to 24 months incarceration in a state correctional institution.

Discussion

There was not sufficient evidence to sustain the jury's verdict

Defendant alleges that the Commonwealth failed to present sufficient evidence for the jury to find the Defendant committed the offense of Criminal Trespass. The

Court notes that Defendant fails to identify any element of the crime for which he was convicted that was not established by sufficient evidence.

The Commonwealth presented several witnesses at trial. The victim, Carl Altenderfer, testified that he was dating the Defendant's ex-girlfriend, Lorraine Thomas, but has never met the Defendant himself. The victim further testified that on the night of September 26, 2006 he stopped by his house in the Village of Linden and as he pulled up he observed all of his sons toys off of the front porch and into the front yard. He went inside the house and observed that his dining room window was kicked in. With a flashlight, he went upstairs to find the Defendant lying in his bed sleeping, reeking of alcohol. He had not given him permission to enter the house. At that time he and Ms. Thomas had broken up so she would not have been living there to give Defendant permission to enter the residence. Troopers Holtz and Doane of the Pennsylvania State police also testified regarding the scene. One of the troopers who had grown up with the Defendant (Doane) recognized Defendant passed out in the victim's bed. The troopers were able to rouse the Defendant, picked up the clothes identified by Defendant which were randomly strewn about on the way into the house and took him into custody.

The test used to determine the sufficiency of the evidence in a criminal matter is "whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to the Commonwealth, as verdict-winner, were sufficient to establish all the elements of the offense beyond a reasonable doubt." Commonwealth v. Maloney, 876 A.2d 1002, 1007 (Pa. Super. Ct. 2005) citing Commonwealth v. Lawson, 759 A.2d 1 (Pa. Super. Ct. 2000). In applying the sufficiency of the evidence

test, the Court “may not weigh the evidence and substitute [it’s own] judgment for that of the fact-finder.” Commonwealth v. Lambert, 795 A.2d 1010, 1014 (Pa. Super. Ct. 2002). When applying “the above test, the entire record must be evaluated and all evidence actually received must be considered.” Id. at 1015.

The elements of a felony 2 charge of Criminal Trespass are set forth at Section 3503 of the Crimes Code:

(a) BUILDINGS AND OCCUPIED STRUCTURES. --

(1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he:

(ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.

The uncontradicted evidence presented was that the Defendant entered the victim’s house without permission and remained there until removed by the State Police. Viewed in the light most favorable to the Commonwealth, the Court finds there was sufficient evidence for the jury to find the Defendant guilty of Criminal trespass.

The jury’s verdict was against the weight of the evidence

“The question of weight of the evidence is one reserved exclusively for the trier of fact who is free to believe all, part, or none of the evidence and free to determine the credibility of witnesses.” Commonwealth v. Solano, 906 A.2d 1180, 1186 (Pa. 2006) (citing Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003)). The test to determine whether the jury’s verdict was against the weight of the evidence is not whether the trial judge, based on the same facts, would have arrived at the same conclusion. Commonwealth v. Edwards, 903 A.2d 1139, 1148 (Pa. 2006) (and cases

cited therein). Rather the test is “whether the jury’s verdict is so contrary to the evidence so as to shock one’s sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.” Id.

The basic facts presented were that the Defendant passed out in the bedroom of the Altenderfer’s house. Altenderfer stated that he had never met the Defendant and had not given him permission to be inside the residence. Clearly the jury believed Altenderfer and the jury’s verdict does not shock the Court’s sense of justice. Therefore, the Court suggests the Defendant’s contention that the jury’s verdict of guilty was against the weight of the evidence is not justified.

The Court violated the terms of Defendant’s plea agreement

Defendant claims that this Court failed to comply with the plea agreement when imposing its sentences in these cases. Defendant’s Post Sentence Motion sets forth the claim that this court violated the plea agreement on 1714-2006. Defendant is challenging the discretionary aspects of the sentence he received on May 30, 2008. However, there is no absolute right to appeal the discretionary aspects of a sentence imposed. Rather, the Defendant must show that there is a substantial question that the sentence imposed is not appropriate under the sentencing code. 42 Pa.C.S.A. § 9781(b). "A bald claim of excessiveness of sentence does not raise substantial question so as to permit review where the sentence is within the statutory limits." Commonwealth v. Petaccio, 764 A.2d 582, 587 (Pa. Super. Ct. 2000). "In order to establish a substantial question, the appellant must show actions by the sentencing court inconsistent with the Sentencing Code or contrary to the fundamental norms underlying the sentencing

process." Commonwealth v. Fiascki, 886 A.2d 261, 263 (Pa. Super. Ct. 2005). The trial court's sentence will stand unless there is a manifest abuse of discretion. To demonstrate an abuse of discretion, "the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias, or ill will, or arrived at a manifestly unreasonable decision." Commonwealth v. Perry, 883 A.2d 599, 602 (Pa. Super. Ct. 2005).

In 1714 of 2006 Defendant was convicted by a jury of the offense of Criminal Trespass. The statutory maximum for that offense is 10 years; Defendant's sentence under 1714 did not exceed 10 years. The sentences in the other two cases ran entirely concurrent with the defendant's sentence under 1714. Defendant has a significant prior record. Since the Defendant sets forth no specific claim as to how the Court has abused its discretion, his claim has no merit.

ORDER

AND NOW, this 6th day of October 2008, based on the foregoing Opinion, it is hereby ORDERED AND DIRECTED that Defendant's Post Sentence Motion is DENIED.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), the Defendant is hereby notified of that he has the right to appeal this Order within thirty days (30) of the date of this Order to the Pennsylvania Superior Court. Furthermore, he has the right to assistance of counsel in the preparation of the appeal. Since the defendant has been represented by court appointed counsel, his attorney will continue to represent him throughout the remainder of the appeal. He also has the qualified right to bail under Rule 521(B).

By The Court,

Nancy L. Butts, Judge

cc: PD (RC)
DA (MK)
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary Weber, Esq. (LLA)