

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 691-2007, 693-2007, 1234-
 : 2007
 :
 MIKE JONES, :
 :
 :
 Defendant : 1925(a) OPINION

Date: **February 19, 2008**

OPINION IN SUPPORT OF THE ORDER OF NOVEMBER 30, 2007 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant Mike Jones, (hereafter “Jones”), has appealed this court’s sentencing order of November 30, 2007, arguing that the court abused its discretion by imposing a sentence of a minimum period of incarceration of 51 months to a maximum period of 240 months. Jones’s appeal should be denied and the sentencing order affirmed.

I. BACKGROUND

On September 25, 2007, Jones pleaded guilty to the following charges in case 691-2007: Count 1, Possession with Intent to Deliver a Controlled Substance, Heroin, under 35 P.S. § 780-113(a)(30); Count 2, Delivery of a Controlled Substance under 35 P.S. § 780-113(a)(30); Count 3, Possession of a Controlled Substance under 35 P.S. § 780-113(a)(16); Count 4, Possession of Drug Paraphernalia under 35 P.S. § 780-113(a)(32); Count 5, Criminal Use of Communication Facility under 18 Pa. C.S.A. § 7512. Jones pleaded guilty to the following charge under case 693-2007: Count 1, Simple Assault under 18 § Pa.C.S.A. § 2701(a)(1). Jones also pleaded guilty to charges under case 1234-2007, consisting of Count 1, Delivery of a

Controlled Substance, Heroin, under 35 P.S. § 780-113(a); and Count 2, Possession with Intent to Deliver, Cocaine, under 35 P.S. § 780-113(a)(30). Within the guilty plea findings and order, the court ordered a presentence investigation, (“PSI”), be completed by the Adult Probation Office prior to sentencing.

On November 30, 2007, this court sentenced Jones under case 691-2007 on charges 1, 2, 3, 4 and 5. Under count 1, possession with intent to deliver heroin, the court ordered Jones to a term of confinement at a state correctional institute for a minimum of 15 months and a maximum of 120 months. The court found counts 2 and 3, delivery and possession of a controlled substance, merged with count 1 for sentencing purposes. For counts 4 and 5, possession of drug paraphernalia and criminal use of a communication facility, the court made a finding of guilt but imposed no further penalty. For case 693-2007, count 1, simple assault, the court ordered confinement at a state correctional institution for a minimum term of one month and a maximum term of 24 months concurrent to case 691-2007. Under case 1234-2007, count 1, delivery of heroin and concurrently under count 2, the court ordered confinement at a state correctional institution for a minimum term of 36 months and a maximum term of 120 months for count 2, possession with intent to deliver cocaine. The total effective state sentence was a minimum of 51 months and a maximum of 240 months.

The court ordered Jones was to be given credit for time served from July 12, 2007 to the sentencing date of November 30, 2007. Fines were also imposed under the above charges in the following amounts: case 691-2007, a \$2,000 fine, and case 1234-2007 a \$500 fine under count 1 and a \$500 fine under count 2.

On December 6, 2007, Jones filed a Motion for Reconsideration of Sentence and request for a hearing on the matter. Within that motion Jones argued that the court should have

considered during his sentencing the following factors: Jones's age, the absence of victims to his crimes, and the period of incarceration which would have been necessary to simultaneously punish and rehabilitate him. Jones expressed concern that he would be incarcerated for a term longer than the minimum sentence ordered by the court. Jones also comments in his motion that as he is now 30 years old, and he would not be released until he is 35 years old, he runs the risk of becoming "institutionalized" which would preclude him from developing into a contributing member of society. Jones argues that he struggles with addiction to controlled substances and that his sentence does nothing to address these issues or prepare him to become a contributing member of society. Finally, Jones argues the sentence is excessive as it does not perform the duties sentences are designed to accomplish; that is simultaneous rehabilitation and punishment. On December 5, 2007 this court denied Jones' Post-Sentence Motion without scheduling, noting on the scheduling order that the reasons for denial were set forth at sentencing hearing and the factors identified in Jones' paragraph #12 were considered. The discussion section of this opinion cite to places in the record the factors were considered.

On January 3, 2008, Jones's Notice of Appeal to the Superior Court was filed. On January 4, 2008 this court filed an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Jones to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the order. On January 11, 2007, Jones filed by and through his attorney, Robert Cronin, a Concise Statement of Matters Complained of on Appeal.

In the Concise Statement of Matters, Jones asserts the following issue on appeal:

- (1) The court abused its discretion in imposing a sentence on November 30, 2007 to an aggregate sentence of a minimum period of incarceration of 51 months (4 years, 3 months) to a maximum period of incarceration of 240 months (20 years).

II. DISCUSSION

Contrary to Jones's assertions, the court did not abuse its discretion by imposing its sentence on November 30, 2007 because: (1) the sentence is within the standard sentencing guidelines and mandatory minimums for Jones's offenses; (2) the court considered the PSI and Jones's own testimony and found he had intentionally failed to take advantage of state offered job programming and had no legitimate work history from the time he left high school to his present age of 30; (3) the court abided by the plea bargain in imposing its sentence; (4) the court considered Jones's age, status as a drug-dependent individual and need for rehabilitation.

Sentencing is a matter vested in the discretion of the trial court and it will not be disturbed absent an abuse of that discretion. *Commonwealth v. Miller*, 2003 PA Super 395, 835 A.2d 377, 380 (Pa. Super. 2003). An abuse of discretion is not merely an error in judgment, but occurs when the record discloses that the sentencing court misapplies or overrides the law, exhibits partiality, bias or ill will, or reaches a conclusion that is manifestly unreasonable. *Commonwealth v. Smith*, 543 Pa. 566, 673 A.2d 893 (1996). “[A] sentencing court must state on the record its reasons for imposing sentence.” *Id.*; 42 Pa.C.S.A. § 9721(b). “Nevertheless, a lengthy discourse on the trial court’s sentencing philosophy is not required.” *Commonwealth v. McAfee*, 2004 PA Super 143, 849 A.2d 270, 275 (Pa. Super. 2004). Rather, the record as a whole must reflect the court’s reasons and its meaningful consideration of the facts of the crime and the character of the offender. *Commonwealth v. Anderson*, 2003 PA Super 290, 830 A.2d 1013, 1018, 1019 (Pa. Super. 2003).

The court stated on the record its rationale for imposing the 51 to 240 months sentence upon Jones, and this rationale is not an abuse of discretion. Appellate review of the trial court’s determination of sentence is only permitted when the defendant establishes to the appellate

court's satisfaction that a "substantial question" exists as to whether the sentence "violates a particular provision of the Sentencing Code or is contrary to the fundamental norms underlying the sentencing process." *Commonwealth v. Johnson*, 2005 PA Super. 108, 873 A.2d 704, 708 (Pa. Super. 2005), 42 Pa.C.S.A. § 9781(b). "Only where the appellant has provided a plausible argument that the sentence is contrary to the Sentencing Code or fundamental norms underlying the sentencing process does a substantial question exist." *Commonwealth v. Simpson*, 2003 PA Super. 260, 829 A.2d 334, 336 (Pa. Super. 2003). "When a sentence falls within the standard range of sentences prescribed by the Pennsylvania Commission for Sentencing Guidelines, a challenge to that sentence will not normally establish the existence of a 'substantial question' for appellate purposes." *Commonwealth v. Kimbrough*, 2005 PA Super 140, 872 A.2d 1244, 1263-1264 (Pa. Super. 2005).

The sentences imposed in this case are within the standard range of the sentencing guidelines. The District Attorney determined Jones's prior record score for case 691-2007 to be a four for all charges in that case. Notes of Testimony, 11/30/2007, pg. 4. For count 1, possession with intent to deliver heroin, the only charge on which a sentence was fashioned under that case, the offense gravity score was found to be a six. *Id.* Accordingly, the court imposed a sentence of 15 months minimum to 21 months maximum, which is the standard range for that offense, given Jones's prior record score of four. *Id.* The charge under case 693-2007, simple assault, received a prior record score of four and an offense gravity score of three. *Id.* The sentence imposed for that charge was a one month minimum term of incarceration to a maximum of 24 months, which provides a minimum sentence below the standard range of three to fourteen months. Furthermore, this sentence was allowed to run concurrently with the sentence in 691-2007. N.T., pg. 13.

Under case 1234-2007, the prior record score for both counts 1 and 2 is a four. N.T., pg. 4. The offense gravity score for count 1, delivery of heroin, is a six and count 2, possession with intent to deliver cocaine, is seven. *Id.* The court noted that case 1234-2007 carried with it a mandatory minimum sentence of three years under 18 Pa.C.S. § 7508(a)(7), which the court imposed. *Id.*, 15. Both count 1 and 2 received the same mandatory minimum sentence of 36 months and maximum sentence of 120 months. N.T., pg. 13-14. However, the court ordered the two sentences within case 1234-2007 to run concurrently to one another. N.T., pg. 14. Having the sentences under 691-2007 and 1234-2007 run consecutively to one another was a consideration within the court's discretion, and given Jones's history of drug sales and dependence and the seriousness of his offenses, this sentence is not an abuse of discretion. N.T., pg., 12.

After these calculations, the court considered Jones's PSI along with statements Jones himself made to the court. The Supreme Court has stated that "[w]here pre-sentence reports exist, we shall continue to presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors....Having been fully informed by the pre-sentence report, the sentencing court's discretion should not be disturbed." *Commonwealth v. Devers*, 519 Pa. 88, 101-02, 546 A.2d 12, 18 (1988).

After listening to Jones's own testimony and reading his PSI, the court found he had intentionally failed to take advantage of state offered job programming after his release from a previously served sentence of state incarceration. N.T., pg. 6, 12. The court determined that any weight his age, his role as a parent, or his issues with drug addiction may have on the fashioning of an appropriate sentence were discounted by his lack of effort in obtaining legal

employment during his adult lifetime. N.T., pg. 12. After his previous release from state prison, Jones was unable to secure employment and remained in a half-way house for approximately 12 months. N.T. pg., 7. The court noted that this was a period twice as long as the average individual would stay. *Id.* The court also commented that Jones had no work history from the time he left high school to his present age of 30 other than the sale of drugs, an occupation which had supported himself and his family for his entire adult lifetime. N.T., pg. 8-9, 12. Finally, the court abided by the terms of the plea agreement in the imposition of the sentence. N.T., pg. 13.

In consideration of Jones's age and status as a drug-dependent individual, the court ordered as part of his sentencing that he receive appropriate guidance and treatment to allow him to remain drug free upon his release from incarceration. N.T., pg. 15. Furthermore, the court directed that the department of corrections set a goal to supply Jones with appropriate vocational training and motivation so that he may become a productive, law-abiding citizen upon his release from prison. *Id.* The court also expected that upon good behavior, Jones could be released from state incarceration upon reaching his cumulative minimum sentence of 51 months. *Id.*

Ultimately, the court was unconvinced that a lesser sentence would achieve the dual goals of rehabilitation and punishment after hearing Jones's unpersuasive explanation of his failure to obtain a job combined with his extensive history of dealing drugs. The court was considerate of his plea for help with his drug addiction problems and provided for rehabilitation within his sentence while abiding by the standard sentencing ranges and mandatory minimums for the crimes committed.

For the foregoing reasons, the court's sentencing order of November 30, 2007 should be affirmed and Jones's appeal dismissed.

BY THE COURT,

William S. Kieser, Judge

cc: Robert Cronin, Esquire
DA
Judges
Rebecca Penn, Esquire (Law Clerk)
Gary L. Weber, Esquire (Lycoming Reporter)