

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-2243-2006
 : CR-2099-2006
vs. :
 :
 :
 :
MARKEL RICHARDSON, :
 Appellant : 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 imposed on October 22, 2007. The relevant facts follow.

CR-2099-2006

On August 31, 2006, Appellant was at the Bethune Douglas center in the City of Williamsport. Some other boys were trash talking to Appellant. Appellant pulled out a 17-shot, 9 millimeter Smith and Wesson handgun and fired about six shots. N.T., August 23, 2007, at p. 20-21. Fortunately, no one was injured. Appellant was arrested and charged with possessing a firearm without a license, person not to possess a firearm, possession of a weapon, recklessly endangering another person, and two counts of aggravated assault.

On August 23, 2007, Appellant entered a negotiated plea agreement to the person not to possess a firearm charge in exchange for a standard range sentence that would be served concurrent to his sentence in case 2243-2006.

On October 22, 2006, the Court sentenced Appellant in accordance with the

plea agreement to 3 to 6 years incarceration concurrent to the sentence in case 2243-2006.¹

CR-2243-2006

On August 22, 2006, Appellant was in the 1200 block of Park Avenue in the City of Williamsport. He approached a woman holding a small child, pointed a gun at her and told her to give him money, which she did. N.T., August 23, 2007, at pp. 10-12.

On August 24, 2006, Appellant was on West Fourth Street in the City of Williamsport. He observed a woman sitting in her car. He approached, pointed a gun at her and told her to give him what she had. Appellant took her cigarette case and some money. Id. at pp. 12-13. When Appellant was in the area of Thomas and Park Avenue, he saw a man delivering newspapers. He approached the man, pointed a gun at him and told him to give him his money. The man did comply fast enough, so Appellant hit the man and took his money. Id. at pp. 13-14.

On August 28, 2006, Appellant was in the 600 block of Poplar Street. He observed a woman getting her child out of a vehicle. Appellant approached the woman and asked her what time it was. The woman answered and Appellant began to walk away. He turned around and demanded her money. The woman gave him some money. Id. at pp. 15-16. Later in the day, Appellant was in the 2200 block of Johnson Place. He approached an older man who was sitting on his front porch and asked to use his cell phone. The man allowed Appellant to use his phone. Appellant gave the phone back and asked for some money. The man refused or had no money, so Appellant grabbed the cell phone and ran. Id. at pp. 16-17.

¹ The standard minimum guideline range for this offense was 36-48 months. The offense gravity score was a 10 since the weapon was loaded, and Appellant's prior record score was a 2.

On September 2, 2006, Appellant was in the 1000 block of West Fourth Street. He saw a female walking down the street. He struck her in the back of the head and stole her purse. Id. at pp. 18-19.

Appellant was arrested and charged with numerous counts of robbery, simple assault, theft, receiving stolen property, person not to possess a firearm, and possessing a firearm without a license.

On August 23, 2007, the Court accepted Appellant's guilty plea to three first degree felony robberies (counts 1, 9, and 17), three third degree felony robberies (counts 25, 29, and 33), and three counts of person not to possess a firearm (counts 7, 15 and 23). Appellant agreed to plead guilty to these charges in exchange for a sentence of 8 to 16 years incarceration in a state correctional institution.

On October 22, 2006, the Court sentenced Appellant to an aggregate sentence of 8 to 16 years incarceration, consisting of: 3 to 6 years for robbery, a first degree (count 1); a consecutive 3 to 6 years for robbery, a first degree felony (count 17); and a consecutive 2 to 4 years for a person not to possess a firearm, a second degree felony (count 23).²

Appellant filed a motion for reconsideration of sentence, which the Court summarily denied.

Appellant filed a timely notice of appeal. In his statement of matters on appeal, Appellant raises two issues: (1) the trial court abused its discretion by imposing a manifestly unreasonable sentence of 8 to 16 years incarceration in a state correctional institution for multiple counts of robbery and person not to possess a firearm; and (2) the

² The court imposed a concurrent 2 to 4 year sentence on each of the remaining counts, except count 9, which was a concurrent 3 to 6 year sentence.

sentence is manifestly unreasonable because the Court did not consider any mitigating factors.

The issues raised relate to the discretionary aspects of Appellant's sentence. In Commonwealth v. Reichle, 404 Pa.Super. 1, 589 A.2d 1190 (Pa.Super. 1991), the defendant claimed the sentence was excessive and the trial court erred by failing to consider all the information regarding the defendant. The Superior Court rejected the defendant's claims, found the appeal was frivolous and directed the trial court to impose counsel fees and costs against the defendant for filing a frivolous appeal. In so finding, the Superior Court stated:

Where the plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence. 'If either party to a negotiated plea agreement believed the other side could, at any time following entry of sentence, approach the judge and have the sentence unilaterally altered, neither the Commonwealth nor any defendant would be willing to enter into such an agreement.' Permitting a discretionary appeal following the entry of a negotiated plea would undermine the designs and goals of plea bargaining, and 'would make a sham of the negotiated plea process.'

404 Pa.Super. at 4-5. 589 A.2d at 1141 (citations and footnote omitted). Similarly, this appeal is frivolous. Appellant entered a plea agreement with a negotiated sentence. The Court sentenced Appellant in accordance with the agreement. Appellant received exactly what he was promised under the agreement. As in Reichle, Appellant's appeal should be dismissed and fees and costs should be imposed against him.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: District Attorney
William J. Miele, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)