

The police also interviewed the Defendant's wife, who did not know where the Defendant was that evening. The Young's vehicle was recovered the next day in the 700 block of Park Ave and Ronald Richardson was in the possession of the vehicle and the keys. Richardson informed the police that he borrowed the vehicle from a male named Bud who drove the vehicle there at six or seven the night before. Richardson explained that he had given the individual \$100 to buy drugs in exchange for use of the vehicle. The individual made statements to Richardson that he needed a ride, so William Blackwell and Richardson dropped the individual off in the 500 block of Southern Avenue in South Williamsport. Richardson described the individual as a white male, chipped front tooth, and well built. Richardson later picked the Defendant's picture out of a photo array. Other evidence presented revealed that the Defendant and his wife lived within a mile of the victim's residence.

The Defendant presented an Alibi defense at trial. However, at the completion, the Commonwealth objected to the Court's consideration of such defense as the Defense had not put the Commonwealth on notice until the time the defense was presented. As such, the Court did not consider the Defendant's defense.

Based upon the evidence presented, the Defendant was found guilty under information 569-2008 of two counts of Burglary, two counts of Criminal Trespass, one count of Theft by Unlawful Taking, and one count of Receiving Stolen Property.

On October 3, 2008, the Defendant pled guilty to the following under information 1818-2007: two counts of Theft by Unlawful Taking; under information 1918-2007: one count of Forgery, one count of Access Device Fraud, two counts of Theft by Deception, one count of Identify Theft, and two counts of Receiving Stolen property; under information 2012-2007: two counts of Forgery, eleven counts of Access Device Fraud, one count of Theft by Deception, and

three counts of Theft by Unlawful Taking; under information 2031-2007: one count of Forgery, one count of Access Device Fraud, one count of Identify Theft, one count of Criminal Attempt Theft by Deception, one count of Theft by Deception, and one count of Receiving Stolen Property; under information 1003-2007: three counts of Access Device Fraud, one count of Theft from a Motor Vehicle, and one count of Criminal mischief; under information 1004-2007: three counts of Access Device Fraud, three counts of Receiving Stolen Property, and Theft from a Motor Vehicle, and under information 629-2008: one count of Retail Theft. The Plea Agreement was open as to the length of the sentence. Defendant was sentenced before this Court on March 13, 2009 at which time he received an aggregate sentence of eleven and a half (11 ½) months to twenty-three (23) months in the Lycoming County Prison with work release eligibility, followed by forty (40) years of consecutive Probation. Defendant filed a timely Petition for Modification of Sentence which was denied by this Court on March 26, 2009.

Discussion

The Court's aggregate sentence was unreasonable

Defendant contends in his Statement of Matters Complained of on Appeal that although each sentence was within the guidelines, the Court's aggregate sentence was unreasonable.

When a Defendant is challenging the discretionary aspects of his sentence, there is no absolute right to appeal the sentence imposed. 42 Pa.C.S.A. § 9781(b). The Defendant is required to show there is a substantial question that the sentence imposed is not appropriate under the sentencing code. *Id.* "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). See also Commonwealth

v. Jones, 613 A.2d 587, 593 (Pa. Super. 1992) (en banc). “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 Commonwealth v. Dodge, the Defendant received an aggregative sentence of fifty-two and a half (52 ½) years to one hundred and eleven (111) years incarceration for thirty-seven counts of Receiving Stolen Property, Burglary, and similar offenses. 957 A.2d 198, 1999 (Pa. Super. Ct. 2008). The Pennsylvania Superior Court noted that none of the offenses, “including burglary involved violence against a person.” Id. The Court found that although the Defendant was sentenced within the guidelines for each offense, “the sentencing court's exercise of discretion in imposing a life sentence was irrational, not guided by sound judgment, and therefore clearly unreasonable . . .” Id. at 1202.

While the instant case is similar to Dodge in that none of the Defendant's offenses involved violence against a person, the sentence imposed in this case was clearly distinguishable from that of the sentence given in Dodge. Here, the Defendant received an aggregate term of incarceration of eleven and a half (11 ½) months to twenty-three (23) months for the two Burglary offenses. On all of the fifty-one other counts in which Defendant was either found guilty or pled guilty, he received consecutive probation for a total of forty (40) years. The Court

also noted at the time of sentencing that the Defendant had an addiction to drugs and alcohol. In fact, testimony at the sentencing hearing reveals the Defendant tested positive for drugs while on supervised bail. The Court imposed such a lengthy period of supervision as the Court felt the Defendant would be best served in that way to deal with his addiction issues. Furthermore, although there was an agreement as to a county sentence, the plea was open as to the length of incarceration. Therefore, the Court believes the Defendant's allegations do not raise a substantial question that his sentence was unreasonable and as such should be affirmed.

The guilty verdict was based upon insufficient evidence

The Defendant also asserts that the guilty verdict in the bench trial was based upon insufficient evidence.

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). When applying “the above test, the entire record must be evaluated and all evidence actually received must be considered.” Commonwealth v. Lambert, 795 A.2d 1010, 1015 (Pa. Super. Ct. 2002). “[T]he trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence.” Commonwealth v. Griscavage, 517 A.2d 1256, 1257 (1986). An appellate court should not interfere with the trial court's findings in a non-jury trial unless “the evidence is so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined

circumstances.” Commonwealth v. George, 878 A.2d 881, 886 (Pa. Super. Ct. 2005) (quoting Commonwealth v. Wright, 722 A.2d 157, 161 (Pa. Super. 1998)).

A person violates 18 Pa.C.S. § 3502(a) and “is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless . . . the actor is licensed or privileged to enter.” A person is guilty of Criminal Trespass and violates 18 Pa.C.S. § 3503(a)(1) when “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.” A person violates 18 Pa.C.S. § 3921(a) and “is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. A person is guilty of Receiving Stolen Property and violates 18 Pa.C.S. § 3925(a), “if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.”

The uncontradicted evidence presented at trial, shows that on the evening of March 20, 2008, the Defendant entered the Young’s residence by smashing in the window to the rear door and removed their vehicle. The evidence also shows that the Defendant drove the vehicle to Richardson whereupon he traded the vehicle for \$100 so he could buy drugs.

The Court finds the evidence was sufficient to show the Defendant committed the offenses of Burglary, Criminal Trespass, Theft by Unlawful Taking, and Receiving Stolen Property. Viewed in the light most favorable to the Commonwealth, the Court finds there was sufficient evidence for it to find the Defendant guilty of Disorderly Conduct.

Conclusion

As none of the Defendant's contentions appear to have merit, it is respectfully suggested that the Defendant's conviction and sentence be affirmed.

By the Court,

Dated: _____

Nancy L. Butts, Judge

xc: DA (MK)
Matthew J. Zeigler, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)