

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	No.: 1662-2007
	:	CRIMINAL DIVISION
LEE A. PARKER,	:	APPEAL
Defendant	:	

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

The Defendant appeals this Court’s Sentencing Order dated October 20, 2008. The Court notes a Notice of Appeal was timely filed on November 19, 2008 and that the Defendant’s Concise Statement of Matters Complained of on Appeal was then filed on December 18, 2008. Defendant raises two issues on appeal; the Court will address each issue *seriatim*.

The sentence imposed by the Court was excessive and an abuse of discretion

Defendant contends in his Statement of Matters Complained of on Appeal that the sentence imposed by this Court was excessive and an abuse of discretion.

When a Defendant is challenging the discretionary aspects 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).

The Court did not abuse its discretion and the sentence was not excessive. The Defendant pled guilty on February 27, 2008, to one count of felony one Burglary. The statutory maximum for that offense is 20 years. In fact, the Defendant received a split sentence of 15 months to 30 months in state prison and five years consecutive probation, which does not exceed 10 years. Further, the Defendant has a prior record. As the Defendant sets forth no specific claim as to how the Court has abused its discretion, his claim has no merit.

The Court did not consider the Defendant’s cooperation and mental health issues when determining his sentence

Defendant also asserts that this Court did not consider his cooperation and mental health issues when determining his sentence.

“[A]n allegation that a sentencing court failed to consider or did not adequately consider certain factors does not raise a substantial question that the sentence was inappropriate. Such a challenge goes to the weight accorded the evidence and will not be considered absent extraordinary circumstances.” Petaccio, 764 A.2d at 587 (quoting Commonwealth v. Urrutia, 653 A.2d 706, 710 (Pa. Super. 1995).

The Court believes the Defendant's allegations do not raise a substantial question that his sentence was inappropriate. Further, based upon a review of the transcript, the Court believes Defendant's assertion without merit. At the time of sentencing, the Court was made aware of Defendant's long-standing history of mental illness, including periods in which he was institutionalized. Further, the Court was informed and acknowledged Defendant's recent axis one diagnosis major depressive disorder and psychosis NOS with paranoia. The Court stated in its Sentencing Order, that the Defendant was not a violent individual and requested consideration "for placement in a State [C]orrectional Facility that deals with individuals of his mental health situation." The Court was also informed of Defendant's cooperation. The Court's decision was based upon all of the information received by the Court, including the Defendant's need for a high level of supervision, his mental health issues, and prior contacts with the system. Therefore, the Court did not fail to consider the Defendant's cooperation and mental health issues.

Conclusion

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

By the Court,

Dated: _____

Nancy L. Butts, Judge

xc: DA (MK)
PD (SL)
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)