

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	Nos. 1856-2009
	:	CRIMINAL DIVISION
BRYAN GIACOMI,	:	APPEAL
Defendant	:	

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

The Defendant appeals the Sentencing Order of the Honorable Nancy L. Butts dated March 4, 2010. The Court notes a Notice of Appeal was timely filed on March 25, 2010 and that the Defendant's Concise Statement of Matters Complained of on Appeal was filed on April 1, 2010. The Defendant asserts one issue on appeal: (1) that the sentencing court abused its discretion by the imposition of an excessive sentence.

Background

On December 21, 2009, the Defendant pled guilty to Burglary, a felony of the first degree. A Sentencing Hearing was held before the Honorable Nancy L. Butts on March 4, 2010, to address the Defendant's guilty plea and a parole violation. Transcripts of the Sentencing Hearing reveal that the Defendant's prior record score was a four (4) and that the Defendant was not eligible for Recidivism Risk Reduction Incentive as he previously committed the Chapter 27 offense of Terroristic Threats. Victim impact statements taken from the victims of the Defendant's Burglary count were read into the record at the Sentencing Hearing. The victim impact statements revealed that the Defendant broke into the victim's home on two occasions

prior to the Burglary incident up for sentencing. The statutory maximum on the Burglary incident was twenty (20) years. The Court sentenced the Defendant to eighteen (18) to thirty-six (36) months in jail with consecutive seventeen (17) years probation under the supervision of the Pennsylvania Board of Probation and Parole.

Discussion

The sentencing court abused its discretion by the imposition of an excessive sentence

The Defendant claims that the sentencing court abused its discretion by the imposition of an excessive sentence. 42 Pa. C. S. A. § 9781(b) provides

The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this chapter.

A Defendant has no absolute right to challenge the discretionary aspects of his sentence.

Commonwealth v. Petaccio, 764 A.2d 582, 586 (Pa. Super. 2000) (See Commonwealth v. Hoag, 665 A.2d 1212 (Pa. Super. 1995). "A [bald] claim of excessiveness of sentence does not raise a substantial question so as to permit appellate review where the sentence is within the statutory limits." Petaccio at 587. "Citing Commonwealth v. Jones, 613 A.2d 587, 593 (Pa. Super. 1992) (*en banc*). Furthermore, it is well settled that sentencing is a matter vested in the sound discretion of the sentencing judge. Cook at 11. (Citing Commonwealth v. Paul, 925 A.2d 825 (Pa. Super. 1997). The decision of the sentencing court will be reversed only if the sentencing court abused its discretion or committed an error of law. Cook at 11. (See Paul).

...In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, 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.

Cook at 12. (Citing Commonwealth v. Littlehales, 915 A.2d 662, 665 (Pa. Super. 2007)).

In this case, the sentencing court did not abuse its discretion and the sentence was not excessive. The Defendant pled guilty on December 21, 2009 to Burglary, a felony of the first degree. The Court considered a number of factors in formulating the Defendant's sentence. The Court took into account the fact that the Defendant had a prior record score of four (4), that he was previously removed from the Drug Court Program for technical violations, that he was on probation at the time he committed the recent Burglary, the emotional trauma and property damage he inflicted upon the victims of the Burglary as reflected in the victim impact statements, the fact that he broke into the same victim's home on two prior occasions, and his apparent lack of remorse for his actions or concern for his victims. The statutory maximum for felony one Burglary is twenty (20) years. The Defendant was sentenced to incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be eighteen (18) months and the maximum of which shall be thirty-six (36) months with consecutive seventeen (17) years probation under the supervision of the Pennsylvania Board of Probation and Parole. This sentence does not exceed the statutory maximum of twenty (20) years. As the Defendant fails to set forth a valid claim as to how the Court abused its discretion, his claim has no merit.

Conclusion

As the Defendant's argument is without merit, it is respectfully suggested that this Court's Sentencing Order of March 4, 2010 be affirmed.

By the Court,

Dated: _____

Nancy L. Butts, President Judge

xc: DA
Jeana A. Longo, Esq.
Hon. Nancy L. Butts
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)