IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CP-41-CR-2184-2009**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
FABIAN MALIK PETERKIN,	**:**	
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 dated October 22, 2009 and its order dated December 9, 2009, which denied Appellant's motion to reconsider sentence. The relevant facts follow.

Appellant, his girlfriend Cassandra Guzman, and her two young sons, Marquise, age 20 months and Michael, age 2 ½, were residing at 635 Hepburn Street, Apartment 10 in the city of Williamsport. On April 12, 2008, Appellant was watching the children while Ms. Guzman was out of town. Emergency responders were dispatched to the residence. When the emergency personnel arrived, they found Marquise in cardiac arrest. They tried to resuscitate the child, but were unable to do so, and he was pronounced dead at 11:19 a.m. at the Williamsport Hospital.

Appellant was interviewed at the hospital. He claimed he put the child in a bathtub full of water and left the child unattended for about 30 minutes while doing other things. He was outside talking to a neighbor when he heard a loud noise coming from the bathroom. He did not immediately investigate the cause of the noise, because he assumed

the child had done something with one of his bath toys. When he returned to the bathroom, he found the child unresponsive. He then got the neighbor to call 911. An investigation of the scene and an interview with the neighbor, however, did not support Appellant's version of the incident. There were only a few drops of water in the bathtub, the toys were dry and the neighbor denied having a conversation with Appellant.

An autopsy was conducted at the Lehigh Valley Medical Center. The autopsy showed the manner of death was a homicide caused by blunt force injuries to the torso. These injuries included contusions to the chest, buttocks, lungs, thymus, pancreas, adrenal glands and mesentery, posterior and lateral fractions of the right rib, and lacerations to the heart.

During the investigation, Ms. Guzman's family members were interviewed. These individuals described a pattern of abuse by Appellant. Appellant would strike, slap and hit the children with his fists. He also would pick the children up and throw them across the room. Ms. Guzman's family members indicated Appellant had anger issues; the smallest things would set him off. They also observed Ms. Guzman with a black eye.

Ms. Guzman also was interviewed. She stated Appellant hit her, struck her, choked her and threatened to kill her. Appellant also hit both children, more often "behind closed doors." She further stated that Appellant had a bad temper and anger issues; he would "just flip out."

In June and July, 2008, the police attempted to make contact with Appellant, but could not locate him. A representative of the housing complex told the police he believed Appellant left town.

On or about July 19, 2008, Appellant was involved in an incident in

Philadelphia that resulted in robbery, aggravated assault and related charges being filed against him. Appellant ultimately pleaded guilty to the robbery and aggravated assault in September 2009.

On July 25, 2008, the police charged Appellant with murder of the third degree, voluntary manslaughter, involuntary manslaughter, several counts of endangering the welfare of children, aggravated assault, recklessly endangering another person, multiple counts of simple assault, and terroristic threats.

On August 3, 2009, Appellant pleaded guilty to murder of the third degree, a felony of the first degree; endangering the welfare of a child, a felony of the third degree; two counts of simple assault of a child by an adult, misdemeanors of the first degree; and simple assault, a misdemeanor of the second degree. There was no agreement regarding the length of Appellant's sentence for the charges to which he pleaded guilty.

A sentencing hearing was held on October 22, 2009. At that hearing, the Court reviewed the facts of the case, two pre-sentence investigation reports, and the sentencing guidelines. Although Appellant had several contacts with the criminal justice system as a juvenile, his prior record score was zero. The standard minimum guideline ranges that applied to the convictions in this case were as follows: third degree murder – 72 to 240 months; endangering the welfare of children – 3 to 12 months; simple assault of a child by an adult – restorative sanctions to 3 months; and simple assault – restorative sanctions to 1 month.

Appellant was 19 years old at the time of the child's death and 21 years old at the time of sentencing. He was interviewed as part of the pre-sentence investigation. Although he did not wish to talk about the incident, he indicated he was very hurt over the

events that took place and was sorry for what occurred. He also hoped the victim's family would view him as a person and not like an animal. He denied being the victim of physical, sexual or emotional abuse, but admitted he had been using illegal drugs since the age of 13. He had been in several inpatient drug and alcohol treatment facilities. He also had a limited work history.

Ms. Guzman and her family members, through victim impact statements, letters to the court, and testimony, described how the death of Marquise impacted their lives and their frustration and confusion over why this child died at Appellant's hands. They suffer from depression and anxiety, sleep disorders, and weight loss. The surviving child is traumatized, because he was present when his brother died.

When Appellant was being transported back to Williamsport from Philadelphia, he told Captain Kontz of the Williamsport police that on the morning of the incident, the children were running around, so he yelled at them to chill out, which meant go lie down. The victim did not listen, so Appellant punched him with a closed fist in the chest. The victim continued running so Appellant punched him in the chest a second time. The victim was breathing funny and went in and lied down. When Appellant went to check on the victim 15 to 20 minutes later, the child was not breathing. Appellant also told Captain Kontz it was common for him to strike the children and he didn't think anything of it because he did it several other times without incident. He had become accustomed to acting that way towards the children and didn't see it as being wrong.

The defense presented a report and testimony from Robert Meachum, a licensed psychologist. Mr. Meachum asked Appellant why he didn't initially tell the truth about the incident. Appellant stated he lied because he was 19 years old and scared to death.

A few weeks after the incident, Appellant obtained a tattoo on his left cheek that reads: "RIP QUISE." Appellant told Mr. Meachum he got the tattoo because he never wanted to forget what he did or the type of person he was at the time he did it, and he hoped it would help him be different in the future. Appellant did not attempt to blame anyone else and, according to Mr. Meachum, Appellant was sincere in his admission of responsibility and guilt for his actions.

Appellant also indicated to Mr. Meachum that he had a difficult and abusive childhood, because his birth mother was a crack addict and his adoptive mother would routinely beat him with plunger handles, extension cords and sticks. By the time he was 13 years old, he couldn't take it anymore. He dropped out of school, began using drugs, and lived in the streets and in an attic of an abandoned building.

After considering all the information presented at the sentencing hearing and the arguments of counsel, the Court imposed an aggregate sentence of 17 years 8 months to 52 years, which consisted of 17 to 40 years for third degree murder, a consecutive 3 months to 5 years for simple assault of Marquise, a consecutive 3 months to 5 years for simple assault of Michael, and a consecutive 2 months to 2 years for simple assault of Cassandra Guzman. The simple assault convictions related to Appellant's pattern of physical abuse of Ms. Guzman and the children prior to the incident resulting in Marquise's death.

Appellant, through counsel, filed a motion to reconsider sentence, which the court denied on December 9, 2009.

On December 23, 2009, Appellant filed a notice of appeal.

The sole issue raised by Appellant in this appeal is that the sentence imposed by the court was excessive and an abuse of discretion. The Court cannot agree. The Court

considered Appellant's age, his acceptance of responsibility by pleading guilty and his professed remorse, but found that these factors were vastly outweighed by the nature and circumstances of the crime, and the danger Appellant presents to the public due to his inability to control his anger. It was clear from the description of the child's injuries in the autopsy that Appellant struck the child more than twice and with a considerable amount of force, as the child sustained contusions of many of his internal organs and lacerations of his heart. The child was particularly helpless and vulnerable, because he lacked the verbal skills to tell anyone about his injuries or Appellant's course of abusive conduct against him. Despite the tragic death of this child and Appellant having 'RIP QUISE' tattooed on his face as a daily reminder, Appellant committed an aggravated assault during the course of a robbery approximately three months after this incident. Since the child's death and Appellant's tattoo apparently had little or no effect on Appellant's violent behavior, the Court felt that a lengthy period of incarceration was the only way to truly protect the public.

The Court considered all the relevant factors before imposing sentence in this case, including Appellant's age, his acceptance of responsibility and his remorse. The Court simply disagreed with defense counsel regarding the weight of those factors as compared to the nature and circumstances of the crime and the need to protect the public. Therefore, the Court believes the sentence imposed in this case was appropriate and not an abuse of discretion.

DATE: _____ By The Court,

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Kenneth D. Brown, Senior Judge

cc: Eric Linhardt, Esquire (DA)
William Miele, Esquire (PD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)