

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-798-2013**
:
v. :
: **CRIMINAL DIVISION**
KENNETH JEROME JOHNSON, :
Defendant : **1925(a) Opinion**

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

I. Background

On January 28, 2014, a jury found the Defendant guilty of one count of Rape (unconscious victim),¹ one count of Sexual Assault,² and one count of Indecent Assault.³ On June 19, 2014, the Court sentenced the Defendant on the Rape count to “incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be eighty-one (81) months, and the maximum of which shall be fourteen (14) years, with a consecutive three (3) years of probation to be supervised by the Pennsylvania Board of Probation and Parole.” On June 19, 2014, the Defendant filed a Notice of Appeal. On July 22, 2014, the Court directed the Defendant to file a Statement of Matters Complained of on Appeal. On July 25, 2014, the Defendant filed a Statement of Matters Complained of on Appeal. On appeal, the Defendant argues that the sentenced imposed by the Court was excessive and unreasonable.

II. Discussion

Rape (unconscious victim) is a felony of the first degree. 18 Pa.C.S. § 3121(a). Twenty years is the maximum lawful period of imprisonment for a felony of the first degree. 18 Pa.C.S. § 1103(1). The Defendant’s maximum imprisonment of 14 years is less than the lawful maximum.

¹ 18 Pa.C.S. § 3121(a)(3).

² 18 Pa.C.S. § 3124.1. Sexual assault is a felony of the second degree. *Id.*

³ 18 Pa.C.S. § 3126(a)(4). In this case, Indecent Assault is a misdemeanor of the first degree. *Id.* § 3126(b)(2).

“The court shall consider the sentencing guidelines in determining the appropriate sentence for offenders. . . .” 204 Pa. Code § 303.1(a). The Defendant’s prior record score was four. N.T., June 19, 2014, at 5 and 11. The offensive gravity score for Rape (unconscious victim) is twelve. 204 Pa. Code § 303.15. Therefore, the standard range is 72-90 months minimum confinement. 204 Pa. Code § 303.16(a). The defendant’s sentence of 81 months minimum confinement is within the standard range. The Court said, “I don’t believe that this is a bottom end of the standard range sentence. I believe . . . it falls somewhere in the middle. There’s nothing in the facts . . . that puts you in the mitigated range, and there’s really honestly nothing in the facts that say anything about the aggravated range either.” N.T., June 19, 2014, at 22.

When sentencing a defendant, “the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.” 42 Pa.C.S. § 9721(b). “At least two factors are crucial to such determination – the particular circumstances of the offense and the character of the defendant.” Commonwealth v. Martin, 351 A.2d 650, 658 (Pa. 1976). A trial court must “state, on the record, the reasons for the sentence imposed.” Commonwealth v. Riggins, 377 A.2d 140, 149 (Pa. 1977); 42 Pa.C.S. § 9721(b); 204 Pa. Code § 303.1(d);

Regarding protection of the public, the Court considered the probability that the Defendant would commit a sexual offense in the future. It was presented with the argument that the Defendant’s lifetime registration with the Pennsylvania State Police reduces the chance that he would commit a similar offense in the future. *See* N.T., June 19, 2014, at 12. The Court noted that it was impressed with the character of the Defendant as he got a job after his conviction. *See id.* at 20. The Court said, “[T]hat shows me you have some honor about you,

and some sense of responsibility. And some measure of the ability to understand the difference between right and wrong, and to make intelligent, mature choices.” Id. Therefore, the Court considered the character of the Defendant when it considered the probability that he would commit another sexual offense.

The Court considered the gravity of the offense as it relates to the impact on the life of the victim and the community. Regarding the impact of the victim, the Court was aware that the victim was upset, hurt, and angry. *See id.* at 16 and 19. The Court also discussed the particular circumstances of the offense. It said, “[O]ne who is in a condition where they don’t know, or don’t understand what’s happening [referring to condition of the victim] is an even more, reprehensible is a strong word, but a situation where it’s . . . frowned upon. More looked down upon to take advantage of somebody who’s in a position where they don’t have the ability to understand what’s going on. . . .” Id. at 21. Regarding the impact of the community, the Court was aware of that the Defendant has children and had been working. *See id.* at 9 and 20.

The Court considered the rehabilitative needs of the Defendant. The Court was aware that the Defendant had ten prior convictions. *See id.* at 5. The Court stated that it wanted the Defendant’s sentence to be “a massive wake up call.” Id. at 20.

Finally, the Court stated its reasons for the Defendant’s sentence. The Court said, “I think a sentence of any less depreciates the seriousness of what happened here, but I . . . don’t hear aggravating range, . . . I don’t hear that at all, and even if I did I would mitigate that aggravation just by the things that you’ve done in the interim, because I think that says something about you.” Id. at 23.

III. Conclusion

The sentence imposed on the Defendant was not excessive and unreasonable because the Court considered the sentencing guidelines, considered the sentencing standards, and stated its reason for the sentence. Therefore, the Court respectfully submits that the judgment of sentence be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge