

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

vs.

ALLENA L. MARSHALL,

Defendant.

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DOCKET NO. CR-1499-2013

1689 MDA 2014

CRIMINAL APPEAL

OPINION AND ORDER

Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Opinion and Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a). This is an appeal from an Order imposing sentence upon on.¹ On June 18, 2014, a jury found Ms. Marshall guilty of two felony counts of delivery of a controlled substance (heroin), two felony counts of possession with intent to deliver, two felony 3 counts of criminal use of a communication facility, two misdemeanor counts of possession of a controlled substance (heroin), and two misdemeanor counts of possession of drug paraphernalia.² In her concise statement of matters complained of on appeal, Defendant raises the following issues.

- a. The Defendant avers the Trial Court abused its discretion by imposing an excessive sentence because it was against the fundamental norms of the sentencing process as the court failed to address several factors at sentencing.
- b. The Defendant avers that the state sentence was excessive and unduly harsh.

On September 2, 2014, this Court sentenced Defendant within the standard range of the recommended guidelines. Specifically, this Court sentenced Defendant to serve a period of incarceration, the minimum of which shall be twelve months, the maximum of which shall be twenty-four months, in the State Correctional Institute on each of the delivery counts to run

¹ The Order was filed September 10, 2014.

² 35 P.S. §780-113 (a)(30); 18 Pa. C.S.A. § 7512; 35 P.S. §780-113 (a)(16); 35 P.S. §780-113 (a)(32); 35 P.S. §780-113 (a)(30); The verdict was not guilty for count 1, delivery of a controlled substance, count 4, possession with intent to deliver, count 7 criminal use of a communication facility, count 10, possession of a controlled substance, count 13, possession of drug paraphernalia.

consecutively, followed by one year probation for each count of criminal use of a communication facility and possession of drug paraphernalia, to run concurrent. Defendant was made boot camp eligible; she was not RRRI eligible because she has a prior misdemeanor conviction for terroristic threats. *See*, Notes from Transcript of Proceedings (Sentencing), September 2, 2014, "N.T." at 8.

In support of the sentence, this Court respectfully relies upon its Order imposing sentence dated September 2, 2014 and its Order denying the motion to reconsider the sentence, dated September 15, 2014.³ In addition, this Court respectfully submits the following opinion.

As there is no absolute right to appeal, a defendant appealing the discretionary aspects of a sentence must raise a substantial question that the sentence is inappropriate. 42 Pa. C.S. § 9781(b). The appellate court initially determines whether a substantial question to the appropriateness of the sentence has been raised to warrant review a sentence. *See Commonwealth v. Mouzon*, 812 A.2d 617, 627 (Pa. 2002), *citing*, *Commonwealth v. Cappellini*, 456 Pa. Super. 498, 690 A.2d 1220, 1227 (Pa. Super. 1997).⁴ A sentence that is against fundamental norms of the sentencing process can raise a substantial question that the sentence should be reviewed as inappropriate even when the sentence is within the sentencing guidelines. *Commonwealth v. Mouzon*, 812 A.2d 617 (Pa. 2002). However, bald allegations of

³ The Orders were filed September 10, 2014 and September 23, 2014, respectively.

⁴ "To demonstrate that a substantial question exists, "a party must articulate reasons why a particular sentence raises doubts that the trial court did not properly consider [the] general guidelines provided by the legislature." *Commonwealth v. Koehler*, 558 Pa. 334, 737 A.2d 225, 244 (Pa. 1999) (quoting *Commonwealth v. Saranchak*, 544 Pa. 158, 675 A.2d 268, 277 (Pa. 1996)); see *Commonwealth v. Goggins*, 2000 PA Super 69, 748 A.2d 721, 727 (Pa. Super. 2000), *allocatur denied*, 759 A.2d 920 (Pa. 2000) (appellant is required only to make a plausible argument that his sentence is either inconsistent with a particular provision of the Sentencing Code or contrary to the fundamental norms underlying the sentencing process)." *Commonwealth v. Mouzon*, 812 A.2d 617, 662 (Pa. 2002)

excessiveness are insufficient to raise a substantial question unless the manner in which “the sentence violates either a specific provision of the sentencing scheme set forth in the Sentencing Code or a particular fundamental norm underlying the sentencing process” is articulated. *See, e.g., Mouzon, supra*, 812 A.2d at 627-628, *citing, Koehler*, 737 A.2d at 244; *Saranchak*, 675 A.2d at 277 n. and *Goggins*, 748 A.2d at 727.

In the present case, the Defendant’s concise statement of matters complained of on appeal provides a bald assertion that norms were violated by broadly claiming that the court failed to address factors at sentencing. However, Defendant does not specify what factors were not addressed. Defendant does not explain why the sentence, which is within the guidelines, should be considered excessively harsh in this particular case. Defendant does not assert that this “case involves circumstances where the application of the guidelines would be clearly unreasonable” pursuant to 42 Pa.C.S. § 9781(c)(2). Therefore, this Court does not believe that Defendant presented a substantial question that the sentence was inappropriate

However, even if Defendant sufficiently raised a colorable claim of a substantial question, this Court believes that the sentence is appropriate. Sentencing is within the discretion of the sentencing judge and will not be disturbed absent an abuse of discretion. *See Commonwealth v. Rodda*, 723 A.2d 212, 214 (Pa. Super. 1999)(en banc) Additionally, in *Commonwealth v. Fullin*, 892 A.2d 843 (Pa. Super. 2006), our Superior Court held that:

[w]hen imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S.A. § 9721(b), that is, the protection of the public, gravity of offense in relation to impact on victim and community, and rehabilitative needs of the defendant.... And, of course, the court must consider the sentencing guidelines. *Id.* at 847-48 (citations omitted).

In the present case, the sentence was within the sentencing guidelines. The Defendant does not argue that the sentence was outside of the sentencing guidelines. Instead, the defendant

asserts that the court failed to consider factors when sentencing which she asserts violated the norms of sentencing. Defendant does not identify the factors which she believes were not considered.

The Court considered the appropriate factors when sentencing the Defendant and specifically addressed the protection of the public, the gravity of offense in relation to impact on the community, the rehabilitative needs of the defendant and the sentencing guidelines as required by 42 Pa.C.S.A. § 9721(b). As noted in its Order, the Court considered the PSI and all the testimony in court. *See*, Order dated September 2, 2014, at 2. The Court considered Defendant's argument at sentencing. Defense Counsel argued that, despite being a high risk to reoffend, the young age of the defendant, her education, her work history, her upbringing, her addiction to Percocet and her statement that she was sorry weighed in favor of a lower sentence. N.T. at 4-7. The Commonwealth persuasively argued that the defendant needed a wake-up call to spur the possibility of long term rehabilitation. To help address the rehabilitative needs of the Defendant, she was made eligible for boot camp. N.T. 9-10.

In addition, the court considered the gravity of the offense and impact on the community and specifically noted the sophistication of the Defendant's drug dealing and the threat to the public. The court had the opportunity to observe the Defendant throughout the trial, at the time of sentencing and to consider the evidence presented at trial. The Defendant did not appear to appreciate the seriousness of the crimes she committed or the impact on others or the community. At trial, the Commonwealth presented an audio recording of Defendant making arrangements for the sale of drugs to a confidential informant. On those recordings, Defendant verbalized concerns about police detection. The sophistication of the drug dealing was evident. Defendant changed the location of a drug sale. Defendant arranged for the drug sales to occur at

public places which placed the community at risk. One of the drug sales took place at a parking lot at Lowe's during normal store hours during daylight. In the video, the parking lot appeared relatively full of vehicles and people were coming in and out of the store. The Defendant's disregard for the individuals purchasing heroin from the Defendant was also evident. Defendant was convicted of selling heroin on two occasions to a confidential informant who was addicted to heroin. That confidential informant had been recruited by police after police found him in a car at a Weis Market's parking lot, after injecting himself with heroin.

For these reasons, and those provided on the record and in this Court's previous Orders dated September 2, 2014 and September 15, 2014,⁵ this Court respectfully requests that the sentence be affirmed.

BY THE COURT,

December 5, 2014
Date

Richard A. Gray, J.

cc: District Attorney's Office (NI)
Public Defender's Office (JL)
(Superior & 1)

⁵ The Orders were filed September 10, 2014 and September 23, 2014, respectively.