IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-1155-2014**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
AQUILLA LAURY,	:	
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 July 9, 2015. The relevant facts follow.

On July 1, 2014, police with the Lycoming County Narcotics Enforcement Unit were conducting surveillance in and around the 600 block of Second Street for illegal distribution and sales of narcotics. They observed a white male pull up in a white Dodge truck and park in the 700 block of Second Street. A few minutes later, they observed the appellant, Aquilla Laury, talking on a cell phone and walking from the 600 block of Second Street towards the truck parked in the 700 block. Laury walked up to the white truck and entered the front passenger seat. The truck pulled out onto the roadway and it traveled westbound.

The police checked the registration on the truck and realized that it lacked insurance. They followed it until it stopped and parked on Cottage Avenue in Old Lycoming Township. They made contact with the occupants. During the encounter, Laury stepped behind a neighboring parked vehicle and initially was not cooperative with the officers

request for Laury to raise or show his hands to them. When the police checked where Laury had been standing behind the neighboring vehicle, they discovered an unweathered clear distribution bag containing 78 bags of heroin and a clear knotted baggie containing 16 zip-lock bags of crack cocaine.

Laury was arrested and charged with possession with intent to deliver heroin (PWID-heroin), possession with intent to deliver cocaine (PWID-cocaine), two counts of possession of drug paraphernalia, possession of heroin, and possession of cocaine.

Following a jury trial, Laury was convicted of all the charges.

On July 9, 2015, the court imposed an aggregate sentence of 5 ½ to 17 years of incarceration in a state correctional institution, consisting of 3 to 10 years for PWID-heroin, 1½ to 5 years for PWID-cocaine, and 6 months to 1 year for each conviction of possession of drug paraphernalia all of which were consecutive to each other.[1]

On July 14, 2015, Laury filed a motion for reconsideration of sentence in which he asserted that this sentence was unduly excessive and the court's reasoning for aggravating his sentence based on the fact he was "in the business of killing people" was improper. Accordingly, he requested a reduction of the minimum portion of his sentence. On July 20, 2015, the court summarily denied Laury's reconsideration motion.

Laury filed a timely notice of appeal. The sole issue he asserts on appeal is that the court abused its discretion when it sentenced him to an unduly harsh sentence based upon the court's speculation that he was engaged in the calculated business of killing people and the court's refusal to recognize his acceptance of responsibility.

[1] The simple possession charges merged with the PWID charges for sentencing purposes.

"Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." ***Commonwealth v. Bricker***, 41 A.3d 872, 875 (Pa. Super. 2012), *quoting* ***Commonwealth v. Cunningham***, 805 A.2d 566, 575 (Pa. Super. 2002). "[A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless 'the record discloses that the judgment exercised was manifestly unreasonable or the result of partiality, prejudice, bias or ill-will.'" ***Commonwealth v. Walls***, 592 Pa. 557, 926 A.2d 957, 961 (2007), quoting ***Commonwealth v. Smith***, 543 Pa 566, 673 A.2d 893, 895 (1996).

When imposing a sentence, the court must consider "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.A. §9721(b); ***Commonwealth v. Baker***, 72 A.3d 652, 663 (Pa. Super. 2013). The court considered each of these factors, as well as a Pre-Sentence Investigation (PSI) report before imposing the aggregate sentence of 5 ½ to 17 years of incarceration in this case.

According to the PSI, Laury was a 39 year old who dropped out of school in the twelfth grade "to run the streets." He had a normal upbringing, and he did not have any mental health issues or problems with drugs, alcohol, or assaultive behavior. What he did was the result of his choices and not anything else.

Laury had a significant criminal record. He had eight arrests and six convictions. His prior record score was capped at a five, and included the following:

- a conviction for robbery, a felony of the first degree, for which he was sentenced to a term of 4 to 10 years of incarceration in a state

correctional institution on February 4, 1997 (see CP-59-CR-1004801-1996);

- a conviction for possession of a controlled substance, an ungraded misdemeanor, for which he was sentenced to one year of probation on July 18, 1997 (see CP-46-CR-0004369-1996);
- a conviction for manufacturing, delivering or possessing with the intent to deliver controlled substances, an ungraded felony, for which he was sentenced to 4 years of probation on November 30, 2010 (see CP-51-CR-0012808-2010); and
- another conviction for manufacturing, delivering or possessing with intent to deliver controlled substances, an ungraded felony, for which he was sentenced to 18 to 36 months of incarceration in a state correctional institution on February 4, 2011 (see CP-49-CR-0001024-2009).

There was not much time over the past twenty years where Laury was not either incarcerated or under probation or parole supervision. In fact, when he committed the current offenses, he was on probation supervision in Philadelphia County for one of his prior felony drug convictions. Clearly, he had several prior opportunities for rehabilitation and yet he continued to commit felony drug offenses. At the time of his sentencing in this case, Laury was to be sentenced not only on this case, but also another case in which he tendered a guilty plea. The court, however, was unwilling to abide by the terms of the parties' plea agreement.

Due to his prior drug trafficking convictions, the maximum penalties for PWID-heroin and PWID-cocaine were 30 years/$500,000 fine and 20 years/$200,000 fine, respectively. 35 P.S. §780-113(f); 35 P.S. §780-115. The court imposed maximum sentences that were one-third and one-fourth of the highest amount of incarceration that could have been imposed.

The sentencing guideline ranges for Laury's convictions were as set forth in the following table.

Offense	Mitigated Range	Standard Range	Aggravated Range
PWID–heroin	18-24	24-30	30-36
PWID-cocaine	9-12	12-18	18-22
Possession of paraphernalia	~	RS-6	6-9

Pursuant to ***Commonwealth v. Warren***, 84 A.3d 1092 (Pa. Super. 2014), the court had the discretion to double the sentencing guidelines provided it stated reasons for such a sentence on the record, but it did not exercise that discretion.

The minimum sentence imposed for PWID-heroin was at the top of the aggravated range; the other sentences were at the bottom of the aggravated range. The circumstances of this case which justified a sentence in the aggravated range were the fact that Laury was on probation for a drug trafficking offense at the time he committed these offenses, he was engaged in the calculated business of selling controlled substances, his lack

of remorse or acceptance of responsibility, his previous opportunities for rehabilitation, and the criminal penalties that were imposed that failed to have any impact on Laury's repeated and continuous criminal conduct.

Laury contends that his sentence was unduly harsh because it was based on the court's speculation that he was in the business of killing people. The court's statements that Laury was in the "business of killing people" were not based on speculation, but Laury's prior criminal history and the known dangers of drugs such as heroin.

Laury has had multiple drug trafficking convictions over the last several years. Undoubtedly, he is in the business of selling or distributing controlled substances.

It is common knowledge that a natural and foreseeable consequence of Laury's conduct is the risk of death to his customers. As the Superior Court aptly noted:

> [I]t is certain that frequently harm will occur to the buyer if one sells heroin. Not only is it criminalized because of the great risk of harm, but in this day and age, everyone realizes the dangers of heroin use. It cannot be said that [an unauthorized heroin provider] should have been surprised when [a buyer] suffered an overdose and died. While not every sale of heroin results in an overdose and death, many do.

Commonwealth v. Kakhankham, 2015 Pa. Super. LEXIS 710, *18-19 (Pa. Super. 10/28/2015)(quoting ***Minn. Fire and Cas. Co. v. Greenfield***, 805 A.2d 622, 624 (Pa. Super. 2002), *aff'd*, 855 A.2d 854 (Pa. 2004)).

The court made these "business of killing people" comments with some oratorical flair to impress upon Laury the gravity of his offenses. There are people who are dying in our community from the way in which Laury is making a living.

Furthermore, contrary to Laury's assertions, he did not accept responsibility for his conduct or show any remorse. He also did not preserve this issue in his motion for

reconsideration.

Although defense counsel made a statement that Laury was accepting the jury's verdict, such is not the same as Laury accepting responsibility for his conduct or expressing remorse. While he may be resigned to the fact that it would be very difficult to overturn his conviction and any sentence he receives is a cost of doing business, such does not instill in the court any confidence that Laury understands the gravity of his crimes or that he will cease to commit them in the future.

The court did not impose a lengthy sentence out of bias, prejudice or ill-will against Laury. It imposed such a sentence because nothing else keeps Laury from trafficking in controlled substances. Such activity presents a clear and present danger to our community. Thus, the only way to adequately protect the public was to impose a sentence that would keep Laury out of the community for a significant period of time.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Joshua Bower, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)