

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-600-2014
	:	
v.	:	
	:	CRIMINAL DIVISION
ZAKARY JAMES WALLS,	:	
Defendant	:	1925(a) Opinion

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

I. Background

On May 14, 2015, the Court sentenced the Defendant to two and a half years to 10 years of incarceration for Aggravated Assault (attempt/cause bodily injury to law enforcement officer), three months to 24 months of incarceration for Resisting Arrest, one month to 24 months of incarceration for Delivery of Marijuana, and one month to 24 months of incarceration for another count of Delivery of Marijuana. The Resisting Arrest sentence is concurrent with the Aggravated Assault sentence. The Delivery of Marijuana sentences are concurrent with one another and concurrent with the Aggravated Assault sentence. The Court sentenced the Defendant to 30 months of probation for Criminal Use of a Communication Facility and 30 months of probation for another count of Criminal Use of a Communication Facility. The Criminal Use sentences were consecutive to each other and consecutive to the Aggravated Assault sentence.

II. Discussion

Aggravated Assault (attempt/cause bodily injury to law enforcement officer) is a felony of the second degree. 18 Pa.C.S. § 2702(b). The maximum term of imprisonment for a felony of the second degree is 10 years. 18 Pa.C.S. § 106(b)(3). Therefore, the Defendant's sentence of incarceration for a maximum of 10 years is within the statutory limit.

“Issues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion or by presenting the claim to the trial court during the sentencing proceedings. Absent such efforts, an objection to a discretionary aspect of a sentence is waived.”

Commonwealth v. Tirado, 870 A.2d 362, 365 (Pa. Super. 2005). Here, the Defendant did not raise the issue during the sentencing proceeding or in a timely post-sentence motion. Therefore, the Defendant’s challenge is waived.

“Where an excessive sentence claim is based on deviation from the sentencing guidelines, [the Superior Court] look[s] for an indication that the sentencing court understood the suggested sentencing range. When there is [an indication that the sentencing court understood the suggested range], the sentencing court may deviate from the sentencing guidelines to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offenses as it relates to the impact on the life of the victim and the community, so long as the court also states of record the factual basis and specific reasons which compelled him to deviate from the guideline range.” Tirado, 870 A.2d at 366 (citations omitted).

“Where the court imposes a sentence for a felony or misdemeanor, the court shall make part of the record, and disclose in open court during sentencing, a statement of the reasons for the sentence imposed. At the same time, the court is not required to parrot the words of the sentencing code, stating every factor relevant under 42 Pa.C.S.A. § 9721(b). Instead, the record as a whole must reflect due consideration by the court of the offense and the character of the offender.” Commonwealth v. Kalichak, 943 A.2d 285, 290 (Pa. Super. 2008) (citations omitted). “[T]he trial court [cannot choose] the maximum sentence based on seriousness of the crime alone. . . . The trial court must consider each crime and each defendant in light of the total

circumstances and fashion an appropriate sentence.” Commonwealth v. Mola, 838 A.2d 791, 794 (Pa. Super. 2003) (citations omitted).

The Defendant had a prior record score of zero. In this case, the Deliveries of Marijuana have an offense gravity score of three, which makes the standard range restorative sanctions to a minimum of one month of confinement. Thus, the sentences of one month to 24 months of incarceration for the Deliveries are within the standard range. Criminal Use of a Communication Facility has an offense gravity score of five, which makes the standard range restorative sanctions to a minimum of nine months of confinement. Thus, the sentences of probation for 30 months for the Criminal Uses are within the standard range. Resisting Arrest has an offense gravity score of two, which makes the standard range restorative sanctions. If a person is convicted of Resisting Arrest and has a prior record score of zero, a court can sentence that person to up to three months minimum confinement and still be within the aggravated range of the guidelines. Thus, the sentence for Resisting Arrest is in the aggravated range. In this case, the Aggravated Assault has an offense gravity score of six, which makes the standard range three months minimum confinement to 12 months minimum confinement. If a person has a prior record score of zero and is convicted of an offense with a gravity score of six, a court can sentence that person to up to 18 months of minimum confinement and still be within the aggravated range of the guidelines. The Defendant’s sentence of two and a half years to 10 years for Aggravated Assault is above the aggravated range.

The Court reviewed the Defendant’s pre-sentence investigation report and stated the standard ranges for the offenses. N.T., 5/14/15, at 2-5. The Court also stated that the sentence was outside of the aggravated range. Id. at 25-26. The Court considered the Defendant’s character and his rehabilitative needs. The Court believes that if the Defendant had truly accepted responsibility for the crimes, he would not have waited as long as he did to seek

treatment for drug abuse. Id. at 22-23. The Court found that the Defendant's post-conviction use of marijuana showed that he was not remorseful. Id. at 24. In addition, the Court found the Defendant to be arrogant and unashamed of the offenses that he committed. Id. at 24, 28. A lesser sentence would not "send a message that [the Defendant] need[s] to change. . . ." Id. at 26.

The Court also considered the circumstances and impact of the offenses. The Court believes that the Defendant was trying to send a message to other drug dealers. Id. at 23. The Court found it significant that law enforcement was the victim and that the Defendant showed "disrespect to law enforcement." Id. at 25, 28. The Court believes that "a sentence of any less depreciates the seriousness of what [the Defendant] did that day and the effect that it has on the law enforcement community. . . ." Id. at 28.

III. Conclusion

The Court gave due consideration to the character of the Defendant, the circumstances of the offenses, and the impact of the offenses. Therefore, the Court did not abuse its discretion in fashioning the Defendant's sentence. The Court respectfully requests that the Order of May 14, 2015 be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge