

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 : No. CR-17-2013
 vs. : CR-35-2013
 : CR-63-2013
 REUBEN McDOWELL, : CR-1382-2013
 Defendant :

OPINION AND ORDER

This matter came before the court on the post sentence motions and supplemental post sentence motions filed by Defendant Reuben McDowell (hereinafter “McDowell”). The relevant facts follow.

In CR-17-2013, Trooper Matthew Sweet filed a criminal complaint against McDowell on December 20, 2012, charging McDowell with assault, burglary, robbery, criminal trespass, stalking, theft, receiving stolen property, simple assault, recklessly endangering another person and harassment. The crimes arose from an incident on December 12, 2012, in which a black male forced his way into the residence of an 85 year old female and stole her purse after she returned home from banking and shopping at the Giant Plaza. Through the use of a photo lineup or array on December 20, 2012, the victim identified McDowell as the individual who robbed her.

In CR-35-2013, Trooper Sweet filed a criminal complaint against McDowell on December 21, 2012, charging McDowell with forgery, identity theft, theft from a motor vehicle, access device fraud, and theft by unlawful taking. The crimes arose out of an incident on December 12, 2012, in which a black male stole a purse from an 86 year old woman in the Aldi’s grocery store parking lot. The woman’s bank card was used by the

perpetrator at the Sunoco gas station on River Avenue and at the Weis grocery store on Lycoming Creek Road. Video surveillance at the Weis store showed the perpetrator using the victim's bank card.

In CR-62-2013, Agent Raymond Kontz, III, of the Williamsport Bureau of Police, filed a criminal complaint against McDowell on December 31, 2012, charging him with robbery, theft by unlawful taking, receiving stolen property, recklessly endangering another person, simple assault, and theft from a motor vehicle. The crimes arose out of an incident on December 7, 2012. The victim, an 82 year old female, stopped at the Cinema Center to check movie times after shopping at Wegman's grocery store. After she returned to her vehicle and placed her purse on the passenger's seat, she was attacked from behind as she was getting into the driver's seat. The victim struggled, but the perpetrator gained control over her, grabbed her purse off the passenger seat, and fled. On December 22, 2012, the victim identified McDowell as the perpetrator from a photo array.

In CR-1382-2013, the police filed a criminal complaint against McDowell on February 13, 2013, charging him with robbery, stalking, theft by unlawful taking, receiving stolen property, harassment, burglary, criminal trespass, access device fraud and theft from a motor vehicle. The crimes were alleged to have occurred between December 9, 2012 and December 16, 2012. During that span of time, four more women in their eighties had their purses stolen from their person or their residence after shopping at either the Wegman's, Aldi's or Giant grocery stores.

A jury trial was held March 14-18, 2016.

Under information 17-2013, the jury found McDowell guilty of burglary, robbery, criminal trespass, stalking, theft by unlawful taking, receiving stolen property, simple assault and recklessly endangering another person.

Under information 35-2013, the jury found McDowell guilty of forgery, identity theft, theft from a motor vehicle, access device fraud, and theft by unlawful taking.

Under information 63-2013, the jury found McDowell guilty of two counts of robbery, three counts of theft by unlawful taking, three counts of receiving stolen property, one count of burglary, one count of criminal trespass, one count of access device fraud, and one count of theft from a motor vehicle.

Under information 1382-2013, the jury found McDowell guilty of one count of robbery, three counts of theft by unlawful taking, three counts of receiving stolen property, one count of burglary, one count of criminal trespass, one count of access device fraud, and one count of theft from a motor vehicle.

On July 6, 2016, the court sentenced McDowell to an aggregate period of incarceration in a state correctional institution, the minimum of which was 26 years and the maximum of which was 64 years.

McDowell filed post sentence motions in which he challenged the discretionary aspects of sentencing and sought reconsideration of his sentence. He also filed supplemental post sentence motions in which he averred the court erred in granting the Commonwealth's motion to consolidate and in denying his omnibus pretrial motion and motions to dismiss pursuant to Rule 600 for the following reasons: (a) the officers lacked

sufficient probable cause to arrest him on December 20, 2012 since he never left his vehicle; (b) the officers lacked a proper arrest warrant to justify his arrest and detention; (c) law enforcement violated Rule 519 by unnecessarily delaying his appearance before a Magisterial District Judge which led to the impounding of his vehicle and his admissions; (d) law enforcement lacked probable cause to seize and search his vehicle; (e) Agent Kontz violated the Municipal Police Jurisdiction Act when Agent Kontz arrested him without the proper filing of a police complaint and obtaining an arrest warrant; (f) the lack of a properly filed complaint and lack of a valid arrest warrant violated his rights such that his confession to Agent Kontz should have been suppressed; (g) the photographic identification process used by law enforcement was done in an unduly suggestive manner; (h) the consolidation unduly prejudiced him as the sheer number of charges would lead the jury to conclude he had a propensity to commit crimes; and (i) the court erroneously found that the period of delay between February 19, 2013 and August 27, 2013 was excludable time since he never consented to his counsel's requests for continuances.

McDowell asserts that his sentence was unduly harsh and manifestly excessive given the nature of the crimes for which he was convicted and his age. He also alleges that the court abused its discretion when it stated that he had no rehabilitative qualities. McDowell notes that the average life expectancy for a black male is 71.8 years and he would not be eligible for parole until he was 86 years old. He claims that the risk for recidivism falls as one begins to age and argues that by the time he is 70 his risk for recidivism will be quite low and he will no longer pose a danger to the public. He also

contends that his sentence is a de facto death sentence, as he will not be eligible for parole until 15 years past his average life expectancy.

The nature of the crimes justified a minimum sentence of more than the 10 years that McDowell sought. McDowell committed multiple serious crimes such as burglary and robbery, in addition to thefts and access device fraud. There were six separate victims, all of whom were octogenarians. Other than small children, the court can think of no members of our society who are more vulnerable than women in their 80s who are out alone grocery shopping. Food is one of life's necessities. These women could not simply avoid the danger McDowell presented by not going to the grocery store. Furthermore, for at least three of the victims, the crimes were significantly more than just thefts. McDowell did not simply snatch a few purses. McDowell followed two of the victims to their residence and invaded the sanctity of their homes, and he had a physical altercation with a third victim at her vehicle. The court can only imagine the terror that these women felt at the time of the crime, and the anxiety and the concern about their personal safety that they must have felt thereafter. Unfortunately, by the time McDowell was convicted and sentenced for these crimes, two of his victims had passed away. In fact, given McDowell's admissions to the police, the court ultimately came to believe that McDowell intentionally delayed the proceedings hoping that the victims would not be able to testify against him.

This also was not McDowell's "first rodeo" so to speak. McDowell had a history of committing robberies and thefts that spanned decades. His prior record score was a five. He had been in and out of prison most of his adult life. Nothing was effective in

keeping McDowell from resorting back to a life of crime, not even his job in the hydrofracking industry which brought him to Lycoming County.

McDowell contends that the court erred in finding that he had no rehabilitation qualities. The court disagrees. Given McDowell's history of crimes, incarceration and parole revocations, it was apparent to the court that McDowell had numerous opportunities to rehabilitate himself in the past, which either were squandered or failed miserably. There was nothing to indicate that this time would be any different. In fact, his conduct while incarcerated pending trial indicated that his behavior had not improved.

In essence, McDowell is seeking a volume discount for his crimes due to his age. He is not entitled to a volume discount. *Commonwealth v. Petterson*, 49 A.3d 903, 912 (Pa. Super. 2012). Furthermore, he is only 59 years old. His victims were in their 80s. They didn't receive better treatment due to their age. In fact, according to McDowell's statement in the pre-sentence investigation, it appears that he chose them as victims due to their age and the likelihood that they would not fight back. Under the facts and circumstances of this case, McDowell does not deserve any special consideration due to his age.¹

The other issues McDowell has asserted in his post sentence motions were addressed previously by the court.

McDowell's claims that the police lacked probable cause to arrest him and

¹ Although the court did not consider this at the time of sentencing, there is some "poetic justice" in the fact that McDowell will not be eligible for parole until he is 86 years old. Maybe by the time that McDowell reaches the age of his victims he will have a better understanding and appreciation of their vulnerabilities and the impact of his crimes on the victims and the community.

that his arrest was invalid due to the lack of an arrest warrant were addressed on pages 7 through 18 of the Opinion and Order entered on November 2, 2015.

The court previously addressed McDowell's claim that Rule 519 was violated because the police unnecessarily delayed bringing him before a Magisterial District Judge on pages 18 through 19 of the Opinion and Order entered on November 2, 2015.

McDowell's allegations that the police lacked probable cause to seize and search his vehicle were addressed on pages 19 through 21 of the Opinion and Order entered on November 2, 2015.

The court dealt with McDowell's assertion that Agent Kontz violated the Municipal Police Jurisdiction Act on page 22 of the Opinion and Order entered on November 2, 2015. Furthermore, Agent Kontz went to the State Police barracks after he received a phone call from the State Police. The State Police were aware that Agent Kontz and the Williamsport police were also looking for a middle-aged African American male for a similar crime that occurred in their jurisdiction. Therefore, Agent Kontz did not venture outside of his primary jurisdiction on his own to arrest McDowell, but rather he was invited by law enforcement that had jurisdiction. See 42 Pa.C.S. §8953(a)(3) and (4).

McDowell's claims relating to the lack of a properly filed criminal complaint were addressed on page 22 of the Opinion and Order entered on November 2, 2015.

The court addressed McDowell's averments that the photo identification was unduly suggestive on pages 22 through 24 of the Opinion and Order entered on November 2, 2015.

The court rejected McDowell's objection to consolidation in its Opinion and Order entered on January 8, 2014.

McDowell's motion to dismiss the charges based on a violation of Rule 600 was addressed in the Opinion and Order entered on March 14, 2016. Furthermore, the appellate courts have consistently held that continuance requests by defense counsel are properly attributable to the defendant, even if defense counsel has not obtained the defendant's permission or consent. In addition to the cases cited in the previous opinion and order, the court would rely on *Commonwealth v. Watson*, 140 A.3d 696, 699 (Pa. Super. 2016).

ORDER

AND NOW, this 12th day of December 2016, for the reasons set forth above, the court DENIES Defendant's post sentence motions and supplemental post sentence motions.

The court also gives notice to McDowell as follows:

1. He has a right to appeal. An appeal is taken by filing a notice of appeal with the Lycoming County Clerk of Courts within 30 days after entry of this order. See Pa.R.App. P. 902; Pa.R.App.P. 903; Pa.R.App.P. 904.
2. He has the right to assistance of counsel in the preparation of the appeal.
3. He has the right, if he is indigent, to appeal *in forma pauperis* (without the payment of costs and fees) and to proceed with assigned counsel as provided in Rule 122

of the Pennsylvania Rules of Criminal Procedure.

4. He has a qualified right to bail under Rule 521(B) of the Pennsylvania Rules of Criminal Procedure. When the sentence imposed includes imprisonment of less than 2 years, the defendant has the same right to bail as before verdict unless the judge modified the bail order. When the sentence imposed includes imprisonment of 2 years or more, the defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge. In either scenario, the defendant's release on bail is conditioned on the defendant filing an appeal within 30 days after the entry of this order.

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Joshua Bower, Esquire (APD)
Reuben McDowell, #MP 7284
SCI Forest, PO Box 945, 286 Woodland Drive, Marienville PA 16239
Work File