IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	CR-110-2015
	:	
v.	:	
	:	32 MDA 2016
RONALD GLENN RUMMINGS,	:	
Defendant/Appellant	:	CRIMINAL APPEAL

O P I N I O N A N D O R D E R
Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Opinion and Order pursuant to P. R.A.P. 1925(a). This is an appeal from an Order imposing sentence upon Appellant, Ronald Glenn Rummings, on November 30, 2015 and docketed on December 7, 2015. Following a trial held on September 8, 2015, a jury found Rummings guilty on all counts, specifically, count 1, theft by unlawful taking or disposition, and count 2, receiving stolen property, both graded as a misdemeanor of the second degree.[1] On December 18, 2015, Rummings filed a motion for reconsideration of sentence, contending that his sentence was too harsh because Rummings also faced a significant sanction for being convicted while supervised by the Pennsylvania State Board for Probation and Parole. That motion was denied on December 21, 2015. On January 6, 2016, Rummings filed a notice of appeal. On February 25, 2016 Rummings filed a concise statement of matters complained of on appeal nunc pro tunc. In his concise statement, Rummings broadly asserted that the evidence was insufficient to support the convictions and that the convictions were against the weight of the evidence.

The Superior Court docket indicates that this appeal may be quashed as untimely or withdrawn by Rummings. The notice of appeal may be untimely because it was filed more than 30 days after the Order imposing sentence was docketed (December 7, 2015) and the motion for reconsideration of sentence was filed on December 18, 2015, 11 days after the sentence was

[1] 18 Pa. C.S. § 3921 (a); 18 Pa. C.S. § 3925 (a).

entered. The Court further notes that the concise statement of matters on appeal was filed nunc pro tunc on February 25, 2016, more than 21 days after the Order dated January 7, 2016 directing it be filed, and is too vague to preserve issues for appellate review.[2]

BRIEF FACTUAL BACKGROUND

On November 21, 2014 police charged Rummings with theft by unlawful taking or disposition and receiving stolen property after the owner of Penton Automotive discovered on July 18, 2014 that about 2,000 pounds of rotors and manifolds were missing from his property. Rummings admitted that he and another individual took scrap from Penton Automotive on July 17, 2014 shortly after 10:00 p.m. while it was dark Penton Automotive was closed. Notes of Transcript of Proceedings of the jury trial held September 8, 2015 ("N.T.") at 134. Rummings further admitted that he and another individual (JH) went to Staiman's Recycling where the scrap was sold to Staiman's Recycling for $135 and change. Rummings contends that JH told him he had permission to take the scrap. The owner of Penton Automotive did not give anyone permission to take the recycling from his property. N.T. 12:12-14. The owner would periodically sell the recycling materials to Staiman's and use the money for Christmas and holidays for the family. N.T. 11: 16-20. JH testified essentially that he had nothing to do with this and denied Rummings' claims. N.T. 56-57; 158-160.

SUFFICIENCY AND WEIGHT OF THE EVIDENCE

The scope of review on appeal for sufficiency of the evidence "is limited to considering the evidence of record, and all reasonable inferences arising therefrom, viewed in the light most

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[2] "[I]ssues not included in a Pa. R.A.P. 1925(b) statement are deemed waived on appeal." Commonwealth v. Lemon, 804 A.2d 34, 36 (Pa. Super. 2012), citing, Commonwealth v. Lord, 553 Pa. 415, 719 A.2d 306 (1998). "Issues raised in an overly broad and vague concise statement are waived as being the "functional equivalent" of not being raised at all. See, e.g., Hess v. Fox Rothschild, LLP, 2007 PA Super 133, 925 A.2d 798 (Pa. Super. 2007)(citations omitted). In Lemon, the Superior Court concluded that the defendant's sufficiency claim was too vague to preserve the issue for appellate review. Lemon, supra, 804 A.2d at 37.

favorable to the Commonwealth as the verdict winner." Commonwealth v. Rushing, 99 A.3d 416, 420-421 (Pa. 2014), *citing*, Commonwealth v. Diamond, 83 A.3d 119, 126 (Pa. 2013); Commonwealth v. Robinson, 581 Pa. 154, 864 A.2d 460, 478 (Pa. 2004); Commonwealth v. Solano, 906 A.2d 1180, 1186 (Pa. 2006); Commonwealth v. Chapney, 832 A.2d 403, 408 (Pa. 2003). The standard of review for sufficiency is well settled and provided in case-law as follows.

> The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. Commonwealth v. Velez, 51 A.3d 260, 263 (Pa. Super. 2012), *quoting*, Commonwealth v. Mobley, 14 A.3d 887, 889-890 (Pa. Super. 2011).

"A weight of the evidence claim concedes that the evidence is sufficient to sustain the verdict, but seeks a new trial on the ground that the evidence was so one-sided or so weighted in favor of acquittal that a guilty verdict shocks one's sense of justice." Commonwealth v. Lyons, 622 Pa. 91; 79 A.3d 1053, 1067 (Pa. 2013*), citing*, Commonwealth v. Widmer, 560 Pa. 308, 318-20, 744 A.2d 745, 751-52 (2000); Commonwealth v. Champney, 574 Pa. 435, 443-44, 832 A.2d 403, 408-09 (2003). "Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence." Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 751-52 (Pa. 2000) (footnote and citations omitted).

In the present case, the evidence is more than sufficient to support the jury verdict and the weight of the evidence fully comported with the verdict. The jury convicted Rummings of theft

by unlawful taking or disposition of movable property and receiving stolen property. A person is guilty of theft of movable property "if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." 18 Pa.C.S. § 3921(a). "A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." 18 Pa.C.S. § 3925. Receiving "means acquiring possession, control or title, or lending on the security of the property."

The undisputed evidence is that on July 17, 2014 Rummings and another individual took scrap from Penton Automotive after hours in the dark of night. N.T. 134. The next day, Rummings and another individual went to Staiman's Recycling. N.T. 136. The scrap was sold to Staiman's Recycling for $135 and change. N.T. 136. Mr. Rummings drove to Staiman's and presented his own Pennsylvania identification for the transaction. N.T. 82:22. While Rummings testified that the other individual (JH) told him they had permission to take the scrap metal, JH denied this and denied being with him. The owner denied anyone had permission. The jury was free to believe JH and the Commonwealth's version of events. Both Rummings and his other witness had extensive crimin falsie convictions. N.T. 107; 120. JH does not appear to match the height of the individual caught on the security cameras and the jury was free to disbelieve Rummings explanation. And, even if the jury believed that JH was somehow involved, the jury was still free to believe that Rummings knew that he did not have permission to take the materials after hours in the dark of night from Penton Automotive and sell them to Staiman's Recycling.

SENTENCE

This Court respectfully submits that Mr. Rummings has failed to raise a substantial question as to the appropriateness of his sentence as required pursuant to 42 Pa. C.S.§ 9781(b) by simply alleging that the sentence was unduly harsh.[3] "An allegation that the sentencing court failed to consider certain mitigating factors generally does not necessarily raise a substantial question." Commonwealth v. Moury, 992 A.2d 162 (Pa. Super. 2010) at 171. (citations omitted) *But see*, Commonwealth v. Perry, 883 A.2d 599, 602 (Pa. Super. 2005)(A substantial question was raised where Defendant set forth a plausible argument that sentence violated fundamental norms.) Even if the appellate Court determines that a substantial question was raised warranting a review, this Court submits that it properly considered the appropriate factors when fashioning an appropriate sentence. 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, on November 20, 2015, following a sentencing hearing, the Court sentenced Rummings within the sentencing guidelines. On Count 1, theft by unlawful taking, the Court sentenced Rummings to serve a period of incarceration in the State Correctional Institution, the minimum of which is 12 less one day and the maximum of which is twenty-four

[3] This Court further submits that any issue as to the appropriateness of the sentence was waived since it was not raised in the concise statement filed nunc pro tunc.

months. The sentence was at the top end of the standard range. The offense gravity score (OGS) for theft by unlawful taking, graded as a misdemeanor of the second degree, is 2. The prior record score was "RFEL" – repeat felony 1 and felony 2 offender category. Count 2, receiving stolen property, merged for sentencing purposes. Commonwealth sought a sentence in the aggravated range because the defendant was on with the board of probation and parole at the time of the offenses and subsequently absconded. In the Court's Order imposing sentence, this Court noted the following.

> The Court has considered the presentence investigation, the life of crime and supervision history in making this sentence. The Court notes that this gentleman is 53 years [of] age and has been involved with the criminal system for a very long period of time. Opinion, 11/30/15 at 1 (unnumbered).

As evidence by the Court's Order, in addition to the sentencing guidelines, the Court properly considered 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 when fashioning its sentence as well as the PSI. As such, the Court respectfully submits that the sentence was appropriate.

For these reasons, this Court respectfully requests that the jury verdict and sentence be affirmed.

BY THE COURT,

April 4, 2016
Date

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Richard A. Gray, J.

cc: District Attorney's Office (KO/NI)
Public Defender's Office (RM)
(Superior & 1)
Prothonotary – (Lenora G. Georges)