

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1913-2015  
vs. :  
: CRIMINAL DIVISION  
: AARON WEAVER,  
: 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 April 28, 2016. The relevant facts follow.

A juvenile petition was filed against Appellant Aaron Weaver (“Weaver”) asserting that he committed delinquent acts constituting seven counts of theft by unlawful taking, three counts of theft by deception, six counts of receiving stolen property, and six counts of criminal use of a communication facility. By agreement of the parties, these charges were transferred to adult court.

On January 5, 2016, Weaver entered an open guilty plea to a consolidated count of theft by unlawful taking and one count of criminal use of a communication facility, both of which were graded as felonies of the third degree.

On April 28, 2016, the court ordered Weaver to serve an aggregate sentence of 2 ½ to 6 years of incarceration in a state correctional institution, consisting of 18 months to 3 years for theft by unlawful taking and 1 to 3 years for criminal use of a communication facility. The court also directed that this sentence run consecutive to any and all sentences

that Weaver presently was serving.<sup>1</sup>

On May 5, 2016, Weaver filed a motion for reconsideration of sentence. In his motion Weaver averred that the sentence was unduly harsh and excessive in light of the fact that the judge sentenced him in the aggravated range of the sentencing guidelines and the sentence was excessive to perform the duties that sentences are designed to perform. On May 9, 2016, the court summarily denied Weaver's reconsideration motion.

Weaver filed a notice of appeal on June 2, 2016. The court did not direct Weaver to file a concise statement of errors complained of on appeal, because it seemed apparent to the court that Weaver wished to challenge his sentence.

“Imposition of a sentence is vested in the discretion of the sentencing court and will not be disturbed absent a manifest abuse of discretion.” *Commonwealth v. Smith*, 543 Pa. 566, 673 A.2d 893, 895 (1996). An abuse of discretion is more than a mere error in judgment; it will only be found when the record discloses that the judgment exercised by the trial court was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. Id.

In imposing a sentence, a court shall follow “the general principle that the sentence imposed should call for confinement that is consistent with 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). The court also has the discretion to impose concurrent or consecutive sentences. 42 Pa.C.S.A. §9721(a); Commonwealth v. Prisk, 13 A.3d 526, 533 (Pa. Super. 2011).

The court considered all of the relevant factors before imposing sentence in

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<sup>1</sup> Weaver was serving a sentence of 2 ½ to 5 years' incarceration for robbery.

this case. The offense gravity score (OGS) was a 5. Weaver's prior record score (PRS) was a 3, based on a juvenile adjudication in 2012 for conspiracy to commit robbery, graded as a felony of the first degree. Therefore, the standard guideline range was 6-16 months, the aggravated range was 16-19 months, and the mitigated range was 3-6 months.

The prior record score, however, did not fully represent Weaver's prior contacts with the juvenile or criminal justice systems. Weaver had juvenile adjudications for theft from a motor vehicle and theft by deception in October 2010 and June 2011, respectively, that did not count in his prior record score, because they were misdemeanor offenses not listed in §303.7(a)(4). See 204 Pa. Code §303.6(a). Weaver also had convictions for robbery by force however slight, carrying a firearm without a license, and delivery of a controlled substance (marijuana) that did not count in his prior record score because he entered his guilty plea to those offenses after he committed the offenses in this case.<sup>2</sup> See 204 Pa.Code §303.8(a) ("In order for an offense to be considered in the Prior Record Score, both the commission of and conviction for the previous offense must occur before the commission of the current offense").

Weaver committed the offenses in this case between April 8, 2015 and May 23, 2015, just before he turned eighteen years old on May 26, 2015. As previously noted, the

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<sup>2</sup> In case number CP-41-CR-1495-2015, Weaver entered a guilty plea to robbery and possessing a firearm without a license for which he received a sentence of 18-36 months on each count to be served concurrently to each other. In case number CP-41-CR-1501-2015, Weaver entered a guilty plea to delivery of a controlled substance (marijuana) for which he received a consecutive sentence 12-30 months. These cases aggregated to the 2 ½ to 5 ½ year sentence that Weaver was serving at the time of his sentencing in this case.

offenses were transferred to adult court by the agreement of the parties.

Weaver had a difficult childhood. He was removed from his mother's home at the age of eight, was placed in foster care and then adopted. Weaver claimed that he was abandoned by his adoptive parents and committed these crimes to support himself. However, he was not without support or opportunities. He is intelligent and a gifted athlete. He scored well on his SAT tests and had scholarship offers from several colleges. His teachers and coaches were supportive of him. In fact, according to the pre-sentence investigation, his coaches employed him, paying him approximately \$100 per day to do odd jobs. If he was having difficulties at home, he could have discussed his difficulties with his coaches, instead of luring people into meeting him and then stealing from them.

Furthermore, instead of taking his acquittal of rape charges as a wakeup call from a near miss at state incarceration and a second chance to take advantage of his educational and athletic opportunities, it only seemed to make Weaver think he was bulletproof. In fact, the court told Weaver "if I would have been in that situation you would have never seen me near a courtroom again, let alone committing other crimes." See Sentencing Transcript, 4/28/2016 at 16.

Weaver also received a substantial break when the Commonwealth agreed to a plea agreement for a single, consolidated count of theft instead of seven separate counts. In light of that break, Weaver's argument for a concurrent sentence simply was untenable as it amounted to no punishment for his multiple additional crimes. Weaver was not entitled to any further "volume discount" for his crimes. See *Commonwealth v. Petterson*, 49 A.3d 903, 912 (Pa. Super. 2012)(appellant was not entitled to a volume discount for his crimes simply because he managed to accomplish all of the acts in a relatively short period of time).

Weaver's crimes also had a significant impact on his victims. One victim's teenage daughter was with her when Weaver committed the crimes. The daughter did not sleep for days, knowing that Weaver had her family's phone numbers and fearing that he would come find them. She also had nightmares for several months. Another victim was on a fixed income. As a result of Weaver's crime against her, she not only had to go without a cell phone, but she had to continue paying for the phone that Weaver stole and the accompanying service contract for that phone.

Weaver was unable to see the harm that he caused to his victims. Although he said he was remorseful, he repeatedly made statements that he didn't hurt the victims and his focus was on himself, which made his statement of remorse seem hollow. Weaver said:

Sir, I would like to say that, how do I want to put it? Sir, I didn't hurt none of these victims, sir, I didn't plan to hurt none of the victims, sir. Like when I – when I committed the crimes I was doing them to support. I'm not minimizing, or like – or – or justifying my actions, but I'm saying when I was doing the crimes it wasn't out of the fact that I was just doing them, it was the fact that I was trying to look out for myself, because I needed—I needed money because I wasn't hurting victims. Like I took the phone and ran, like I could have—like it could have been a lot worse. And I never had a gun in one of these situations, sir, and I just wanted to say that like I've never been out on bail...I never been arrested 5 times as an adult. This is my first adult arrest, and all these crimes happened as a juvenile...then they tried to move them up and charge me when I turned 18....

Again, I'm not minimizing, I'm not trying to justify my actions or none of this, I'm just saying like people don't know my life, like I've had a hard life. Like it doesn't just—I didn't just do this, do these crimes out of spite. I was trying to get my life together, I was going to high school. Like—like people don't understand how hard that is for me, because one, my mom in 8 years old I got taken away from my mom because she didn't enroll me in school. So me going to school, doing what I have to do, playing sports, trying to adapt to the community.

Yeah, I've been arrested when I was younger, I did crimes. Obviously I'm going to be punished for doing crimes when I was younger, but I got conspiracy, like I didn't do the crime, I had to admit doing it in order—in order to get to a—a boot camp. Like it wasn't like I did these

crimes by myself, or I just did these crimes, sir. I'm just saying I was trying my hardest, I was going to high school, I took my SATs, I was going to go to college. My adopted parents, they gave up on me. I can't say nothing else, they gave up on me.

I'm not trying to—again I'm not trying to minimize, yes, I'm very remorseful, yes, I'm doing my time up here, yes I've been thinking a lot about my bad decisions. It's not like I'm going up here going through the motions, I'm really trying to do treatment, I'm trying to do what I can do.

Sentencing Transcript, 4/28/2016, at 12-13.

The court recognized that Weaver was a young man who had a difficult childhood, but at some point the court had to say “[e]nough is enough here” and make Weaver responsible for his choices. *Id.* at 16. Weaver had services and sanctions in the juvenile system. He had a near miss with a rape charge in the adult system. He is intelligent and a gifted athlete, and these qualities gave him opportunities to go to college. Yet, nothing – neither the “stick” of punishment nor the “carrot” of an opportunity to go to college—could keep Weaver from continuing to commit crimes.

DATE: 12-15-16

By The Court,

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Marc F. Lovecchio, Judge

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