

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1374 – 2015
	:	
vs.	:	CRIMINAL DIVISION
	:	
DENESHYA POOLE,	:	
Defendant	:	Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant’s Post-Sentence Motion, filed January 20, 2017. Argument on the motion was heard February 16, 2017, following which the court directed the preparation of a transcript of the trial and sentencing hearing. Those transcripts were completed March 1, 2017 and the matter is now ripe for decision.

Following a jury trial on October 26, 2016, Defendant was convicted of one count of aggravated assault – enumerated person (corrections officer) and one count of simple assault in connection with an incident at the State Correctional Institution at Muncy where Defendant is an inmate. On January 12, 2017, Defendant was sentenced on the aggravated assault to incarceration of 18 to 36 months; the charge of simple assault was determined to merge for sentencing purposes.

In her Post-Sentence Motion, Defendant contends the verdict was not based on sufficient evidence and was against the weight of the evidence. Defendant also seeks reconsideration of her sentence.

With respect to the evidentiary issues, Defendant specifically argues that the element of bodily injury was not proved.¹ At trial it was shown that during the incident, which involved the corrections officer removing Defendant's handcuffs after she had been placed in her cell and while her hands were extended through "the wicket", Defendant moved her fingers in such a way as to scratch the officer on the back of his hand. Defendant posits that a scratch is not bodily injury, citing Commonwealth v. Mayo, 414 A.2d 696 (Pa. Super. 1979), and that the Commonwealth failed to prove that Defendant intended to cause bodily injury.

While the court agrees that the Mayo Court found that light scratches which disappeared entirely from view within a few hours of being inflicted did not constitute bodily injury,² the scratches in the instant case *could* meet the definition of bodily injury. The officer testified that Defendant dug her fingernails into the back of his hand and that this caused two scratches which bled. N.T., October 25, 2016 at pages 29 and 39. Another witnessing officer testified that the officer had a cut on his hand and that his hand was covered in blood. Id. at page 47. Considering this evidence in the light most favorable to the Commonwealth as verdict winner, the jury could reasonably have found the injuries to constitute impairment of a physical condition. In any event, the testimony of the victim that Defendant "kept trying to dig her fingernails into me", Id. at page 35, could support a finding that Defendant *attempted* to cause

¹ Both aggravated assault of an enumerated person and simple assault require a showing that the actor caused or attempted to cause "bodily injury". 18 Pa.C.S. Sections 2702(a)(3) and 2701(a)(1).

² Bodily injury is defined as "[i]mpairment of physical condition or substantial pain." 18 Pa.C.S. § 2301. The Court found that since they disappeared quickly the scratches could not be said to have impaired the victim's physical condition and further, that it could be assumed they did not cause substantial pain.

bodily injury, even if the injury actually caused did not rise to the level of “bodily injury”.

With respect to the weight of the evidence claim, although the court commented while sentencing that the injury appeared to be “insignificant”, the verdict did not shock the court’s sense of justice. Thus, it is determined that the verdict was not against the weight of the evidence.

Finally, Defendant argues that the sentence was excessive even though it falls in the mitigated range. At sentencing, Defendant asked for the sentence to be totally concurrent with the sentence she is currently serving. As noted above, the court found the lack of significant injury to the victim warranted a lesser sentence, but imposed that sentence consecutive to her current sentence. Defendant’s argument focuses on “the gravity of the offense as it relates to the impact on the life of the victim”, but in doing so overlooks other factors which the court found significant.

The sentencing code guidelines require the sentence to be "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). Moreover, the reasonableness of the sentence imposed by the trial court is determined by considering:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
- (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
- (3) The findings upon which the sentence was based.
- (4) The guidelines promulgated by the commission.

Commonwealth v. Riggs, 63 A.3d 780 (Pa. Super. 2012), *citing* 42 Pa. C.S.A. § 9781(d).

In this case, although the court noted the lack of impact on the victim, it also considered the possible effect a completely concurrent sentence could have on the prison population and how that effect could affect the class of persons intended to be protected by the statute; i.e. “protection of the public” should refer in this instance to the corrections officers who interact with inmates such as Defendant. Further, the court considered that Defendant showed absolutely no remorse for her conduct. In light of these additional factors, the court does not believe its sentence is excessive.

ORDER

AND NOW, this day of March 2017, for the foregoing reasons, Defendant’s Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Robert Cronin, Esq.
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson