

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-882-2015
 :
 MICHAEL SPENCER, :
 :
 Defendant : Post-Sentence Motion

OPINION AND ORDER

On July 29, 2016, following a jury trial, Defendant was found guilty of, among other charges: count 1, criminal attempt to commit homicide¹ of Tyree Green, a felony of the first degree; count 3, aggravated assault - attempting to cause or causing serious bodily injury to Julie Rosa-Santiago, a felony of the first degree; count 5, aggravated assault – attempting to cause or causing serious bodily injury to Anthony Snyder, a felony of the first degree; count 9, aggravated assault – attempting to cause or causing serious bodily injury to Georgianna Strait,² a felony of the first degree; and count 12, aggravated assault- attempting or causing bodily injury to Jessica Eckman with a deadly weapon,³ a felony of the second degree. Although Defendant was found guilty of numerous other related charges, they are not relevant for the purposes of this Opinion.

On October 12, 2016, the court sentenced Defendant to an aggregate term of twenty-seven and a half (27½) years to fifty-five (55) years of incarceration in a state correctional institution, which consisted of six (6) to twelve (12) years on count 1; six and a

¹ Count 1 was a violation of 18 Pa. C.S.A. §903.

² Counts 3, 5, and 9 were violations of 18 Pa. C.S.A. §2702(a)(1).

³ Count 12 was a violation of 18 Pa. C.S.A. §2702(a)(4).

half (6 ½) to thirteen (13) years each on counts 3, 5 and 9; and two (2) to four (4) years on count 12. All of these sentences were consecutive to each other. The remaining sentences merged or were concurrent.

Defendant filed a post-sentence motion on October 31, 2016. A hearing and argument were held on January 3, 2017. Defendant participated by video conferencing from SCI – Camp Hill.

Defendant asserted four issues and each will be dealt with seriatim. First, Defendant alleged that the court erred in admitting an audio recording of the communication between Defendant and Defendant’s uncle wherein Defendant discussed his willingness to enter a plea for a minimum of 15 years.

During Mr. Spencer’s cross-examination, he was questioned concerning a conversation between he and his uncle while Defendant was incarcerated in the Lycoming County Prison. He was asked whether he discussed with his uncle his willingness to enter a plea for a minimum of fifteen (15) years.

At the time, Defendant objected on the basis that the discussions were part of “plea negotiations.” The court overruled the objection noting that Defendant’s statement evidenced consciousness of guilt.

In his post-sentence motion, Defendant asserted different objections. Specifically, Defendant argued that he was in jail without bail and was “forced to discuss” the plea with family members. Defendant argued that the admission of these statements would have a “chilling effect” on “required conversations.” Furthermore, Defendant argued

that the statement was not consciousness of guilt because many defendants discuss plea offers with family members. Finally, Defendant argued that the testimony was far too prejudicial.

To the extent Defendant asserted any objections in his post-sentence motion that were not preserved at trial, they are waived. Pa. R. E. 103(a)(1); *Commonwealth v. Poplawski*, 130 A.3d 697, 729 (Pa. 2015)(a failure to make a contemporaneous and specific objection results in waiver of the objection). However, despite said waiver, the court will address Defendant's arguments.

Regardless of whether Defendant was incarcerated is not relevant to whether his statement is consciousness of guilt. Furthermore, despite his assertions to the contrary, Defendant was not compelled to discuss the plea with family members over a telephone system that he knew was recording his conversations. He could have discussed any plea offer or his willingness to accept a plea through written correspondence or privately with counsel and family members during court proceedings.

Clearly, a defendant's statements referencing a willingness to enter into a plea constitute consciousness of guilt. *Commonwealth v. Van Divner*, 962 A.2d 1170, 1180 (Pa. 2009).

Defendant's conversations with his family members were also not part of any plea negotiations. Defendant's statements were not made in the course of a guilty plea that was later withdraw, a *nolo contendere* plea, or any other proceeding under the enumerated Rules of Pennsylvania Criminal Procedure or their equivalent in another jurisdiction, and the

prosecuting attorney was not a party to any of these conversations. See Pa. R.E. 410(a). In fact, there is no evidence that the Commonwealth was interested in plea negotiations, let alone participated in plea negotiations. Therefore, Defendant's attempt to cloak his voluntary admissions in the mantle of plea bargaining is baseless. Furthermore, Defendant's statements that he would enter a plea had significant probative value in light of the fact that he previously denied having any culpability.

Defendant next claimed that the court abused its discretion in sentencing the Defendant to consecutive sentences for each victim. Defendant argued that the court should have imposed concurrent sentences because his actions were all part of "one course of conduct."

Defendant's argument is without merit. It was clearly within the court's discretion to impose consecutive sentences, especially in light of the fact that each consecutive sentence was imposed with respect to separate crimes committed against separate individuals.

"It is well settled that, in imposing a sentence, a trial judge has the discretion to determine whether, given the facts of a particular case, a given sentence should be consecutive to, or concurrent with, other sentences being imposed." *Commonwealth v. Rickabaugh*, 706 A.2d 826, 847 (Pa. Super. 1997); see also 42 Pa. C.S.A. §9757.

Defendant next argued that his sentence was manifestly excessive. Defendant asserted that based upon his history and characteristics a sentence of "a twenty-year minimum would more appropriately balance the sentencing factors."

“Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion.”

Commonwealth v. Bricker, 41 A.3d 872, 875 (Pa. Super. 2012) (quoting *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002)). “[A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless ‘the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will.’” *Commonwealth v. Walls*, 926 A.2d 957, 961 (Pa. 2007) (quoting *Commonwealth v. Smith*, 673 A.2d 893, 895 (Pa. 1996)).

Defendant did not allege that the court’s sentence was the result of partiality, prejudice, bias or ill-will. Defendant alleged that it was manifestly excessive or unreasonable.

In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing court’s discretion, as he or she is in the best position to measure factors such as the nature of the crime, the defendant’s character, and the defendant’s display of remorse, defiance, or indifference.

Commonwealth v. Colon, 102 A.3d 1033, 1043 (Pa. Super. 2014)(quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

In imposing a sentence, “the 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 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 objectively weighed these considerations and imposed a sentence that it decided was

appropriate under all of the circumstances. The sentence was consistent with the protection of the public and reflected the substantial impact of the crime on the community. While the court considered Spencer's rehabilitative needs, it found the other interests to be far more compelling.

A review of the sentencing transcript supports the conclusion that Defendant's sentence under all of the circumstances was far from manifestly excessive or unreasonable. The court considered all of the required sentencing factors as well as additional information presented by both parties.

In fashioning the sentence, the court noted several very important conclusions: Defendant shot into a crowd of people with the least of provocation; the evidence was overwhelming; Defendant lacked remorse or regret; Defendant attempted to manipulate the system; people were now afraid to go out in the city of Williamsport; the physical, emotional and mental impact on the victims was life impacting and life lasting; Defendant acted by shooting the rounds down an alley with no regard whatsoever to who might be between he and the intended target; the offenses were "disastrous, heinous, [and] the stuff of nightmares;" there was little or no provocation whatsoever to justify the shooting, "someone felt disrespected or someone felt insulted"; while Defendant's rehabilitation was considered, and the court indicated a desire to promote Defendant's rehabilitation, the court did not see any effort or acknowledgement on the part of Defendant to be rehabilitated; and Defendant actually remarked that "since no one died, [he] shouldn't be taken away from [his] kids." (Sentencing Transcript, 10/12/16, at 31-37).

Defendant seemed to lack the capacity to comprehend the significance of his actions or the impact of his crimes on his victims. Defendant shot into a crowd of people over an insult or a slight. Several innocent bystanders were severely injured. They had to undergo surgeries to save their lives. One victim lost a kidney; another's intestines were damaged. The victims' lives drastically changed, both physically and mentally. In their victim impact statements, the victims described both their physical limitations and the psychological trauma they have suffered. For example, one of the victims was an active mother of four children before this incident. Now she is unable to work and is struggling financially. She has no feeling in her left leg and she cannot walk, run, and play with her children the way she used to. Another victim has dietary problems and difficulties using the bathroom. In their impact statements, the victims also stated they were afraid and suffered from Post-Traumatic Stress Disorder (PTSD) and flashbacks. Given the facts and circumstances of this case, Defendant was not entitled to a volume discount for his crimes. In fact, if the shoe was on the other foot and Defendant or his children were the victims of a similar shooting, Defendant would not think that the sentence imposed was manifestly excessive.

The court considered and balanced the appropriate sentencing factors. The court's decision to impose the aggregate sentence was not only based on the history and characteristics of Defendant, but also the nature and circumstances of the offenses, the court's observations of Defendant, the Pre-Sentence Investigative (PSI) report, the victim impact statements, and the sentencing guidelines. The court imposed a sentence that was

consistent with the gravity of the offense to the extent it impacted the victims and the community, the protection of the public, and Defendant's rehabilitative needs. Therefore, the court's sentence, while significant, was not manifestly excessive.

Finally, Defendant argued that the evidence was insufficient for all of the counts. Defendant failed, however, to specify how the evidence was insufficient or what elements of the offenses were not met by the evidence. Because Defendant asserted his insufficiency claim in nothing but a boilerplate manner, the claim is waived. *Commonwealth v. Roche*, 2017 PA Super 4, 2017 Pa. Super. LEXIS 2, *18-21 (Jan. 4, 2017) (Defendants' claims were waived because they were quintessentially vague and woefully inadequate).

Even if the claim was not waived, the Commonwealth presented abundant evidence to establish that Defendant intentionally shot down the alleyway aiming to hit Tyree Green, missing him, and actually hitting numerous other individuals who were seriously injured as a result. Chris Harold testified that he witnessed Defendant shooting down the alleyway. Adrian Stafford testified that he was next to Defendant, Defendant said "look, look," and Mr. Stafford heard rounds being fired. He and Defendant then returned to their car and pulled out. Defendant admitted to Mr. Stafford that he did the shooting. Mr. Stafford also saw the gun. Defendant eventually then fled to Philadelphia, left his white shirt in Mr. Stafford's car and admitted to another witness that he threw the gun in the river. Each aggravated assault victim also testified about being shot in the alleyway and the injuries that they suffered as a result of being shot. Therefore, when viewed in the light most favorable to the Commonwealth as the verdict winner, the evidence was clearly sufficient to support

Defendant's convictions.

ORDER

AND NOW, this 30th day of January 2017, the court denies Defendant's post-sentence motion.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Greta Davis, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file