

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No's . CR-220-2017; CR-221-2017
vs. : CR-1263-2017
:
NATHANIEL HILL, :
Defendant : Motion to Modify Sentence

OPINION AND ORDER

On May 23, 2018, Defendant pled guilty under Information 220-2017 to Count 1, delivery of a controlled substance, an ungraded felony and Count 9, possession with intent to deliver, also an ungraded felony, under Information 221-2017, to Count 2, possession with intent to deliver, an ungraded felony, and under Information 1263-2017, to Count 1 as amended, fleeing or attempting to elude a police officer, a misdemeanor of the second degree.¹

Sentencing was scheduled for August 21, 2018. The court directed that a presentence report be prepared.

Defendant's sentencing date was moved up from August 21 to July 3, 2018, because the presentence report was completed and Defendant requested such. Following the sentencing hearing, under Information 220-2017, with respect to Count 1, delivery of a controlled substance, an ungraded felony, the court imposed a 1 to 2 year state sentence. With respect to Count 9, possession with intent to deliver, also an ungraded felony, the court imposed a 1 to 2 year state sentence to run concurrent to that imposed with respect to Count 1.

Under Information 221-2017, with respect to Count 2, possession with intent to deliver a controlled substance, the court imposed a 1 ½ to 3 year state sentence to run

¹ These charges were committed when Defendant was a juvenile. The charges were originally brought via a petition in

consecutive to the sentence imposed under Information 221-2017.

Finally, under Information 1263-2017, with respect to Count 1, fleeing or attempting to elude a police officer, misdemeanor of the second degree, the court imposed a 4 month to 1 year state sentence to run concurrent to the sentence imposed under Information 221-2017.

The aggregate sentence imposed on all three Informations was a period of state incarceration, the minimum of which was 2 ½ years and the maximum of which was 5 years.

On July 13, 2018, Defendant filed a motion to modify his sentence arguing that it was manifestly unreasonable and that the court failed to take into account mitigating factors including “the work the defendant did to obtain his GED while incarcerated and the defendant’s juvenile status at the time the offenses were committed.” Defendant also argued that he was prejudiced because his mother did not appear until after argument and while the sentence was being imposed “due to confusion about the time the hearing was scheduled to begin.”

Oral argument on Defendant’s motion to modify sentence was held on August 23, 2018.

While Defendant argued that his mother did not appear for his sentencing until after he was given a chance to speak, he did not assert that the court in any way precluded his mother from speaking or that Defendant even requested that she speak. Certainly, had Defendant requested at any time during the proceeding to allow his mother to speak, the court would have allowed such. Moreover, the fact that Defendant’s mother did

juvenile court but were transferred to adult court. See Order dated January 26, 2017 and docketed February 7, 2017.

not appear until she did was not caused by any conduct of the court. Defendant's sentencing claim based upon his mother failing to appear in time has no merit.

Defendant concentrated his argument in connection with his reconsideration request on the assertion that the court "failed" to take into account the "mitigating factors" relating to Defendant's age, his "terrible" upbringing, and the fact that the defendant obtained his GED while incarcerated. Defendant argued that because the court did not take these factors into consideration, the sentence was manifestly unreasonable.

Defendant's argument is wholly without merit. First, the court ordered, received and thoroughly reviewed a presentence report. That report reflected Defendant's juvenile status at the time the crimes were committed, Defendant's troubled childhood and the fact that Defendant obtained his GED while incarcerated.

Specifically, the presentence report stated as follows:

"All three of these charges were committed when Mr. Hill was a juvenile but have been transferred to [a]dult [c]ourt for sentencing." It stated, among other things, that Defendant "comes from a troubled home life with both parents [either having] served or are currently serving [s]tate [p]rison sentences"; he "started to get into trouble at school and at home at a young age"; and he "has been in the [j]uvenile [s]ystem since age 15." Finally, the report noted that Defendant "completed his GED in the [c]ounty [p]rison."

"Where the sentencing judge had the benefit of a presentence investigation report, it will be presumed that he or she was aware of the relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors." *Commonwealth v. Horning*, 2018 PA Super 204, 2018 WL 3372367 *6 (July 11, 2018)(quoting *Commonwealth v. Ventura*, 975 A.2d 1128, 1135 (Pa. Super. 2009)).

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. In this context, an abuse of discretion is not shown merely by an error in judgement. Rather, [the defendant] must establish by reference to the record that the sentencing court ignored or misapplied the law, exercised its judgement for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Id. (quoting *Commonwealth v. Raven*, 97 A.3d 1244, 1253 (Pa. Super. 2014)).

The Sentencing Code sets forth the general sentencing standards for trial courts and provides that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offenses to the extent they relate to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant. 42 Pa. C.S.A. § 9721(b).

In this case, the court expressly considered the sentencing standards set forth in § 9721(b) and all of the mitigating factors argued by Defendant. There is no merit to Defendant's claim that his sentence was excessive because the trial court failed to consider certain mitigating factors.

As the court notes from the sentencing hearing reflect, Defendant argued that he had a very troubled upbringing, he was a juvenile, he was the victim of circumstances, he now has family support that he did not previously have, and his "change" is reflected by the fact he obtained his GED. While the court considered the circumstances, the court neither fully accepted them as mitigating nor as reflective that Defendant should not be sentenced to state prison.

Defendant's criminal activities were "well beyond his years." The criminal activities constituted choices to violate the law over a period of time. The incidents were not isolated.

Defendant was purposefully dealing in heroin. Heroin is a “lethal substance” that has a devastating effect not only on the community but on those who became addicted. Defendant’s conduct constituted a clear danger to the community. Defendant also involved others in his drug dealing activities.

The fleeing and eluding was equally as dangerous. The evidence was that two pedestrians actually had to jump out of the way while Defendant was fleeing in order not to get hurt. The court concluded that Defendant could potentially have “killed” numerous individuals.

In just a short period of time after being released from jail, Defendant committed new criminal offenses, violated electronic monitoring and did not complete the recommended conditions. Defendant had no identifiable mental health problems or substance abuse problems, and he was given numerous opportunities to change his behaviors, both as a juvenile and while in rehabilitation. He failed to take advantage of those opportunities. His conduct was extremely serious to the extent it impacted the community and endangered the public. Finally, protecting the community needed to be a primary consideration.

In this sentencing hearing like in all sentencing hearings, the court considers a spectrum. When a defendant is first involved in the criminal justice system, the court places more emphasis on rehabilitation. As defendants progress through the system, the court places greater weight on the severity of the offense and protecting the community. Defendant had his opportunities and now the court’s primary goal, without engaging in any euphemisms whatsoever, is retribution and punishment. Most importantly, society not only needs but deserves to be protected.

Lastly, it should be noted that the standard range for each separate offense

could have resulted in a minimum state sentence of 58 months. Instead, the court imposed a minimum of 30 months. Furthermore, the court made Defendant eligible for the Boot Camp program. Not only could this program shorten the duration of Defendant's time in state prison, it could provide Defendant with the structure and discipline that he lacked during his childhood and he needs to help him break his cycle of criminal activities.

ORDER

AND NOW, this 12th day of September 2018, following a hearing and argument, Defendant's Motion to Modify Sentence is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Assistant District Attorney
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Gary Weber, Esquire (Lycoming Reporter)
Work File