IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-585-2014**
	:	
NATHAN SHAFFER,	**:**	
Defendant	**:**	

OPINION AND ORDER

This matter came before the court on April 23, 2018 for a hearing and argument on Defendant's post sentence motions.

By way of background, a jury trial was held on May 22 and 23, 2017. The jury found Defendant guilty of two counts of rape of a child, two counts of statutory sexual assault, two counts of involuntary deviate sexual intercourse, two counts of sexual assault, two counts of aggravated indecent assault of a complainant less than 13 years of age, and one count of incest. The crimes occurred against two separate minor females, M.G. and B.W.

On January 3, 2018, the court sentenced Defendant to an aggregate term of 32 to 65 years' incarceration in a state correctional institution, consisting of 20 to 40 years on Count 1, rape of a child; a consecutive 10 to 20 years on Count 2, rape of a child; and a consecutive 2 to 5 years on Count 15, incest.

On January 10, 2018, Defendant filed his original post sentence motion and, on March 1, 2018, Defendant filed an amended post sentence motion. In his motions, Defendant seeks reconsideration of his sentence as well as a new trial based on claims that the court erred in its rulings on two evidentiary issues.[1]

[1] Defendant withdrew the claims in his original post sentence motion regarding the weight and sufficiency of the

In Count I of his amended post-sentence motion, Defendant asserted that the court should reconsider his sentence. Defendant made several arguments. First, defendant argued that the sentence "although technically in the standard sentencing range" was tantamount to being in the aggravated range. Defendant argued that there are no aggravating factors that would justify his sentence. Secondly, Defendant contended that the aggregate sentence was unduly harsh and manifestly excessive based upon defendant's history, characteristics and rehabilitative needs. Defendant next asserted that the court improperly considered defendant's failure to rehabilitate himself as Defendant's continual denial of his criminal conduct. Defendant next claimed that the court improperly considered defendant's "choice" to commit the criminal conduct when such a factor "is an element of the offenses of which he was convicted." Lastly, Defendant argued that the court's sentence was inconsistent with the provisions of the Sentencing Code.

Defendant's claims are clearly without merit. A review of the sentencing transcript indicates that the court reviewed the pre-sentence report, sexual offender assessment, a sentencing report from the Lycoming County Prison and a report submitted on behalf of the defendant by Rebecca Wright.

Among the factors which the court considered, based upon a review of the aforesaid records included, Defendant having no mental health history or substance abuse history; Defendant's denial of any past or present problems with alcohol, sexual, psychiatric, narcotics or assaultive behaviors; Defendant displaying characteristics and behaviors

---

evidence.

associated with pedophilic disorder; and Defendant's behavior being predatory.

The court specifically noted with respect to Defendant's conduct that he had familiarity and relationships with both of the victims prior to sexually molesting them and, as a result of this relationship, Defendant did not need to engage in a sophisticated approach type of behavior to establish a relationship. Instead, he utilized the familiarity and trust both victims had in him in order to engage in his illegal criminal behaviors. Furthermore, the court noted that the behaviors represented obvious efforts to avoid detection and maintain the relationship.

Rebecca Wright conducted a psychosexual assessment of Defendant. She diagnosed Defendant as suffering from major depressive disorder, recurrent, moderate with psychotic features, Post-Traumatic Stress Disorder, general anxiety disorder, and paraphilia not otherwise specified, as well as sexual abuse of a child.

Of particular significance to the court was that she noted that Defendant scored moderately on the paranoid personality disorder assessment. He demonstrates pervasive mistrust and suspiciousness of others such that their motives are interpreted as malevolent. Among other things, she listed these related symptoms as suspecting others without sufficient basis, others exploiting or harming him, preoccupation with unjustified doubts, reluctance to confide in others, reads hidden meanings or hidden demeaning or threatening messages and persistently bears grudges. He perceives attacks on his character, reputation and has recurring suspicions without justification.

Of great is significance to the court was the fact that Ms. Wright noted that it

appeared to her that Defendant had a limited understanding of the severity of the allegations made against him, he did not appear to be overly concerned, and he appeared uninformed of exactly how the allegations could negatively impact his life. She recommended that Defendant would benefit from sexual offender specific treatment.

Defendant advised Ms. Wright that he was not the first one that the victims accused. He noted that there was another person they accused and that the reason they "made up the statements" against Defendant was because he would not let them use his vehicle and they wanted him to buy them alcohol.

Contrary to what Defendant argued, the court considered the relevant sentencing factors including the nature and circumstances of the offenses, Defendant's history and characteristics, the court's observations of Defendant, the pre-sentence report, the guidelines and other relevant information. The court fashioned its sentence considering Defendant's rehabilitative needs, the gravity of the offense to the extent it impacted the victims and the community, and the protection of the public.

The court explained that it agreed with Defendant's expert that Defendant had a limited understanding of the severity of the allegations made against him and did not appear to be overly concerned. Sentencing Transcript, at 30. The court noted that it did not see any emotion, any remorse or any acceptance of responsibility. *Id*. The court noted that it did not see any acknowledgement by Defendant that the girls may had been victimized. *Id*.

With respect to Defendant's rehabilitative needs, the court noted that they were significant but that it was hard for the court to give much weight to that factor because

Defendant had no interest in rehabilitation. Sentencing Transcript, at 31. The court found Defendant's explanation regarding the allegations to be entirely lacking in credibility. The court specifically noted that it was essentially outrageous. More specifically, the court noted that the victims would have needed to endure the entire process including having their credibility attacked in open court, "all for the world to see, because they were mad at [Defendant] over not buying them some beer." *Id*. Furthermore, Defendant testified at trial under oath that Jennifer was asked to buy them alcohol and it had nothing to do with him. N.T., May 22, 2017, at 127-128.

The court specifically addressed the need to protect the public. The court echoed the concerns of Defendant's psychosexual assessment. Specifically, Defendant needed to learn why he committed the offenses, accept full accountability for the offenses, and learn healthier ways to address his emotional needs. He also needed to understand the victims' experience and explore how his childhood experiences impacted him emotionally and behaviorally. He needed to develop tools to prevent relapse and promote a healthier lifestyle.

The court concluded that Defendant's risk of re-offense was great even though generally speaking recidivism is low in connection with sexual offenders. In reaching this conclusion, the court noted that the offenses were predatory in nature, the conduct was progressive, and there was a significant breach of trust. The court likened the situation to "a wolf lying in wait." Sentencing Transcript, at 33.

With respect to the impact on the victims, the court stressed the fact that the

Defendant took everything from them but their lives. He took away their innocence, he took away their quality of life. *Id*. The court noted that "this is stuff of one's worst nightmares." *Id*. at 34. Among other things, the court noted that the victims will be anxiety-ridden, experience symptoms of Post-Traumatic Stress Disorder, be depressed and never have the quality of life that they should have had.

The court noted as well that this is "the stuff of nightmares for the community." The court noted that "the people who we trust the most take advantage of those who are the most vulnerable." *Id.* at 35. The court noted that this type of conduct tears "at the very fabric of any type of civil community."

Finally, and with respect to defendant's "choice" argument, it is misstated and clearly in error. The court noted that Defendant's choice is what landed him in court. The court noted that Defendant's continuing choices and the impact on the poor young girls was the main reason for the sentence.

In summary, the court noted as follows: "I considered all the factors…in weighing…in deciding what weight I should give to them, protecting the public, and considering the gravity of the offense to the extent it impacts the victims and the community, have much more weight than your rehabilitative needs at this time, which the court said is kind of a non-factor because the court cannot really gauge what his needs were." Sentencing Transcript, at 36.

Taking defendant's claims in total, it does not appear that the sentence is inconsistent with any specific provisions of the Sentencing Code; nor is it contrary to the

fundamental norms which underlie the sentencing process.

The court noted that the overall sentencing scheme involved Defendant raping two minor children, one of whom was his biological niece. The sentence of the court with respect to Count 1, rape of child, was a minimum of twenty (20) years and a maximum of forty (40) years. The sentence of the court with respect to Count 2, rape of a child was a minimum of ten (10) years and a maximum of twenty (20) years. Both of these sentences were within the standard range.

Contrary to what defendant argued, the sentence was not in the aggravated range. Indeed, defendant's claim that the sentence is tantamount to an aggravated range sentence is without any merit whatsoever. The sentence was clearly within the standard range, as the top of the standard range was SL or statutory limit. Therefore, an aggravated guideline range did not exist for these offenses.

Defendant appears to argue that the court failed to place proper emphasis on factors when it sentenced him. However, sentencing is a matter vested in the sound discretion of the sentencing judge. *Commonwealth v. Robinson,* 931 A.2d 15, 26 (Pa. Super. 2007). Said discretion cannot be disturbed absent a manifest abuse of discretion. *Id.* An abuse of discretion is not shown merely by an error in judgment. Rather, a defendant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision. *Id; see also Commonwealth v. Rush,* 162 A.3d 530, 544 (Pa. Super. 2017).

With respect to defendant's manifestly excessive or unreasonable claim, a court's discretion must be given great weight. The court 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)(citing *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

In fashioning a sentence, the court must consider the statutory factors set forth in 42 Pa. C.S.A. § 9721 (b). A sentence must 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 the community, and the rehabilitative needs of the defendant." *Commonwealth v.Walls*, 926 A.2d 957, 962 (Pa. 2007); *Rush,* 162 A.2d at 544 n.11.

With respect to the aggregate sentence, "[i]t 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.

The court in this case objectively weighed all of the considerations and imposed the 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 victims and the community. While the court considered Defendant's rehabilitative needs, it found the other interests to be far more compelling.

The court obviously did not reference any aggravating factors because the

sentence was not an aggravated range sentence. The court need not justify an aggravated range sentence. While Defendant can certainly disagree, his disagreement regarding the sentence is not grounds to reverse it. Contrary to what Defendant claims, the court did consider Defendant's prior history including his lack of prior violent criminal offenses, his prior supervision history, and his prison behavior. Simply put, the court did not consider those factors to be of greater weight than the factors which justified the sentence. The court did not improperly consider Defendant's denial of his criminal conduct. In fact, the court specifically noted that Defendant had the right to do so. What the court found incredible was Defendant's claim that the victims lied because he would not buy them beer. The court did not improperly consider Defendant's choice. Regardless of whether intention is an element of the offense, the court referenced defendant's choice in committing the offenses as justification for the sentence in part.

Finally, the court agrees with Defendant that the offense gravity score addresses the seriousness of the offense. The court utilized the proper offense gravity score, the proper prior record score and imposed a sentencing within the standard range. The sentences were consecutive because there were two victims. The sentences were harsh because Defendant violated the trust of two innocent young girls, permanently impacting their lives. The sentence was harsh because, as evidenced by Defendant's own expert, Defendant had absolutely no understanding nor concept of his conduct and how it impacted others and what he should do to prevent himself from committing such conduct again. The sentence was harsh because the public needs to be protected from individuals like the

defendant for a significant period of time in order that others may not be victimized. The sentence was harsh but deserved and entirely consistent with the provisions of the Sentencing Code and law.

Defendant next asserts that the court erred when it precluded trial counsel from questioning Laura Quick, a Children and Youth Services (CYS) caseworker, about a note or a summary in the CYS file that contained a statement M.G. allegedly made to another CYS employee, Chet Troxell. In the statement, M.G. allegedly indicated that Defendant threatened to kill her if she told anyone. Trial counsel sought to introduce the statement as a prior inconsistent statement, as M.G. did not testify at trial that Defendant had threatened her.[2]

The court found that the statement was not admissible, because it could not be properly authenticated through the testimony of Ms. Quick. N.T., May 22, 2017 at 107-110. M.G. did not make the statement to Ms. Quick. Instead, the statement was contained in a summary or narrative created by Mr. Troxell when the alleged sexual abuse was reported through Childline, before Ms. Quick became involved in the case. Ms. Quick was an assessment worker with CYS, who interviewed M.G. and Defendant as a result of the call

[2] On direct examination, M.G. was asked whether Defendant ever said "don't tell anybody, keep this quiet or anything like that" to her. M.G. replied, "I'm not completely sure, but I—I'm sure he has at one point, but I don't remember." N.T., May 22, 2017, at 30. When asked on cross-examination if Defendant ever told her not to tell anyone, M.G. said, "Not that I know of. He—he may have, but I—I don't remember." *Id*. at 44.

received by Mr. Troxell.

Although trial counsel argued that the statement was part of a business record and was not being used for the truth of the matter asserted but as a credibility issue for M.G., the court found that argument might address a hearsay objection but it did not address authenticity. Contrary to Defendant's assertions in his amended post sentence motion, the mere fact that the statement was contained in a business record did not establish its authenticity. Business records are only self-authenticating when there is a certification of the custodian or other qualified person (i.e., the custodian or other qualified person submits an affidavit or verified statement) **and** the party offering the statement gives the adverse party reasonable written notice of the intent to offer the record. Pa. R. E. 902(11). Defense counsel did not offer such a certification in this case. Records can be authenticated through witness testimony, but the witness must either be the custodian of the records or a witness with knowledge.

The court also notes that it did not preclude trial counsel from presenting this evidence through other means. The court merely precluded trial counsel from presenting this evidence through Ms. Quick.

Trial counsel could have questioned M.G. about the statement, as she did with other allegedly inconsistent statements. If M.G. had acknowledged that she made the statement, defense counsel could impeach her with it. If M.G. did not recall making such a statement, defense counsel could have tried to refresh her recollection with the record. If M.G. still did not recall ever making such a statement, defense counsel could have called Mr.

Troxell as a witness. Defense counsel could not impeach M.G. through the testimony of Ms. Quick, however, because Ms. Quick had no idea what was said or not. N.T., May 22, 2017, at 110.

Even if the document was authentic, however, it could not be used to impeach M.G., because it was neither signed nor acknowledged by her, and no evidence was presented to show that the summary or narrative by Mr. Troxell contained a verbatim quote from M.G. As the Pennsylvania Supreme Court noted in *Commonwealth v. Simmons*,

> [I]t is axiomatic that when attempting to discredit a witness' testimony by means of a prior inconsistent statement, the statement must have been made or adopted by the witness whose credibility is being impeached. A written report which is only a summary of the words of the victim and not verbatim notes from the victim cannot be used to impeach the witness on cross-examination since it would be unfair to allow a witness to be impeached on a police officer's interpretation of what was said rather than the witness' verbatim words.

662 A.2d 621, 638 (Pa. 1995)(citations omitted), *cert. denied*, 516 U.S. 1128 (1996). Similarly, it would be unfair in this case to allow M.G. to be impeached on Mr. Troxell's interpretation of what was said or, worse yet, possibly a third party's interpretation of M.G.'s words that were relayed to Mr. Troxell.

The narrative or summary was made as a result of a report from Childline. It was unclear to the court whether M.G. made the statement to Mr. Troxell or whether M.G's counselor at the Meadows or some other third party called Childline and relayed that information to Mr. Troxell. M.G. testified at trial that she disclosed the sexual abuse to a counselor when she was 17 years old. N.T., May 22, 2017, at 17. She indicated that "the guy

at the Meadows had me report it, he wrote down all the information and it was reported after that." *Id*. at 41. The counselor is a mandated reporter. 23 Pa.C.S.A. §6311. As a mandated reporter, the counselor was required to either immediately make an oral report via the Statewide toll-free telephone number or a written report using electronic technologies. 23 Pa.C.S.A. §6313(a)(1). Trial counsel never asked M.G. if she spoke directly to Mr. Troxell. Therefore, it is unclear whether M.G. or a third party actually spoke to Mr. Troxell.

Even if the court erred in precluding this evidence, it probably would have hurt Defendant more than it would have helped him as the jury would have heard evidence about Defendant allegedly threatening M.G. to not disclose the sexual abuse he was perpetrating against her. Furthermore, M.G. could have explained away this omission as simply being nervous about testifying or forgetfulness due to her age at the time Defendant threatened her. The abuse occurred when M.G. was between the ages of approximately 6 and 13. The statement to the counselor occurred when she was 17. At trial, M.G. was 21. Given the intervening years from the time the statements would have been made and the time of trial, her lack of certainty and her inability to remember exactly what was said is not surprising.

Defendant also contends the court erred when it precluded the defense from introducing evidence that Defendant had a reputation "for being good around children." At trial, the following exchange occurred between defense counsel and Amanda Butler, Defendant's sister.

Q. So is it fair to say that you know your brother?
A. Yes.

Q. And you've known him for 33 years?
A. Yes.
Q. And you know people in the community who know him?
A. Yes.
Q. And are those folks in the community familiar with his reputation?
A. Yes.
Q. And those folks, what do they know about his reputation for lawfulness and truthfulness?
A. Most people consider Nathan to be a good man.
Q. Do they know him to be law abiding?
A. Yes.
Q. Do they know him to be a truthful man?
A. Yes.
Q. And what do they know about his reputation around children? What do they know about that?

MRS. KALAUS: Your Honor, I would object. I don't believe as far as we're talking about character evidence, I don't believe that reputation around children is one of the factors that we look at, rather it's lawfulness, truthfulness, character for peace. I don't believe the character around children is applicable.

THE COURT: Sustained. Unless there's an argument to the contrary, I --- I think she's correct. I think it's propensity, I don't think it is proper reputation evidence.

MS. DAVIS: Thank you, Your Honor. I don't have anything further for Ms. Butler.

N.T., May 22, 2017, at 134-135.

It is not clear what character trait defense counsel was attempting to elicit when she asked Defendant's sister about Defendant's reputation "around children." Trial counsel never mentioned Defendant's reputation in the community for chastity. Trial counsel might have been attempting to elicit admissible character evidence regarding chastity when she asked the witness about the defendant's reputation in the community around children or she might have been seeking testimony or the witness might have understood the

question as seeking testimony regarding Defendant being a good father or uncle or Defendant's specific acts in behaving appropriately around children.[3]

In a sexual abuse case, the defendant's reputation for chastity in the community is relevant and admissible. *Commonwealth v. Johnson*, 27 A.3d 244, 249-250 (Pa. Super. 2011); *Commonwealth v. Weiss*, 606 A.2d 439 (Pa. 1992). However, testimony regarding a defendant's specific acts in behaving appropriately around children in the family is not proper character evidence as to his general reputation for chastity in the community. *Johnson*, *id*.

Unfortunately, trial counsel did not make any argument to establish that the evidence she intended to elicit was proper reputation evidence for chastity. Despite the fact that during the argument on Defendant's post-sentence motions the prosecuting attorney noted that the phrase "good around children" was very ambiguous, post-sentence counsel did not indicate that the character trait at issue was Defendant's reputation for chastity. Furthermore, neither trial counsel nor post-sentence counsel made a proffer or a record to establish what the witness would have said. Without knowing what information the witness would have provided, the court cannot determine whether it erroneously excluded proper character evidence regarding Defendant's reputation in the community regarding chastity or properly excluded inadmissible evidence.

Accordingly, the following Order is entered.

---

[3] Character evidence is often problematic. Despite an attorney's best efforts to elicit reputation testimony,

ORDER

AND NOW, this ___ day of May 2018, the court DENIES Defendant's post-sentence motions.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: District Attorney
William Miele, Esquire (PD)
Gary Weber, Esquire, Lycoming Reporter
Work File

witnesses sometimes provide their own opinion rather than reputation testimony.