IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-1867-2017**
v.	:	
	:	
MALIK R. GALLASHAW,	:	**POST SENTENCE MOTION**
Defendant	:	

OPINION AND ORDER

Malik Gallashaw (Defendant), through Counsel, filed a Motion for Post Sentence Relief on December 21, 2018. A hearing on the Motion was held on February 26, 2019. In his Motion, Defendant alleges he was entitled to credit time, his sentence was unreasonable and excessive, and the verdict was against the weight of the evidence.[1] For the following reasons Defendant's Motion is denied.

Background

Defendant was charged with Terroristic Threats[2] and Harassment[3] on October 31, 2017. Correctional Officers Colin Ohnmeiss (Ohnmeiss) and Michael Romano (Romano) testified on behalf of the Commonwealth, while Defendant testified on his own behalf. The charges arose from an incident that occurred at the Lycoming County Prison on October 25, 2017, where Defendant was an inmate. On that date, Ohnmeiss and Romano were handing out lunch trays in N-Block. N.T. 10/25/18, at 12, 18. Both correctional officers testified that N-Block holds approximately twenty inmates and that during lunch time it is typically louder as inmates, including Defendant, will be talking amongst one another and will often interact with the correctional officers. *Id.* at 13-14, 20-21. Ohnmeiss testified that Defendant stated to "Romano that he was going to pull up to Second Street and put a hundred rounds in Romano

[1] Defendant's claim stating he was entitled to credit time was subsequently withdrawn at the hearing held on February 26, 2019.
[2] 18 Pa. C.S. § 2706(a).
[3] 18 Pa. C.S. § 2709(a)(4).

and a hundred rounds in his truck." *Id.* at 12. Then Defendant added emphasis on the statement by reiterating "seriously, I'm going to do it." *Id.* Ohnmeiss stated he was a "[h]undred percent certain" Defendant uttered the statement because he "watched [Defendant] say the entire sentence from the door of the block." *Id.* at 16. Romano also testified regarding the encounter, and stated that Defendant "told [Romano] that he was going to put a hundred rounds in [him] and a hundred rounds in [his] pretty red truck." *Id.* at 18. After that occurred, Defendant in a second encounter shortly after stated "seriously, I'm gonna put a hundred rounds -- I'm gonna come to Second Street and Hepburn and put a hundred rounds in you and a hundred rounds in your pretty red truck." *Id.* at 18-19. Romano explained that Second St. and Hepburn is the parking lot where he parks his truck and that he has a red truck. *Id.* at 19, 23.

Defendant testified on his own behalf stating that he never threatened Romano and he did not know that Romano had a truck until the write-up. *Id.* at 26. Defendant stated that the comment, which the correctional officers testified about, had been said on the block that day, but he was not the one who had said it. *Id.* at 27. Additionally on cross examination Defendant stated that you could not see out of the windows in the prison. *Id.* at 28. When asked about altercations with other inmates Defendant differentiated situations with inmates from those with correctional officers:

> You don't mess with the guards. Why? They control things. They control your visits. They control your block out. They control your mail. You don't – that's like it's called church and state. With these guards, you don't threaten them. You don't cause problems because they're guards; and you get in -- this will happen.
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> *Id.* at 32.

On rebuttal Romano testified that inmates could see out the windows and the parking lot where his truck would be parked. *Id.* at 37.

At the end of his one day jury trial, Defendant was found guilty of both charges. Defendant was then sentenced on December 13, 2018. On count one, Terroristic Threats, he was sentenced to a minimum of one year and maximum of two years in a state correctional institution to run consecutive to any sentence he was currently serving. On count two, Harassment, he was sentenced to a minimum of six months and a maximum of one year to run concurrent with count one.

Discussion

Whether the Court's Sentence was Unreasonable and Excessive

Defendant is a Repeat Felony 1 and Felony 2 Offender (RFEL). *See* 204 Pa. Code § 303.4(a)(2) ("Offenders who have previous convictions or adjudications for Felony 1 and/or Felony 2 offenses which total 6 or more points in the prior record"). Terroristic Threats is a misdemeanor of the first degree, which carries an offense gravity score (OGS) of three. 204 Pa. Code § 303.15. Based on Defendant's OGS and RFEL designation the standard range for count one was twelve to eighteen months. 204 Pa. Code § 303.16(a). "All numbers in sentence recommendations suggest months of minimum confinement." 204 Pa. Code § 303.9(e). Defendant was sentenced on count one, Terroristic Threats, to a minimum of one year and maximum of two years.[4] Sentencing has been found to be within the sound discretion of the trial court judge. *Commonwealth v. Allen*, 24 A.3d 1058, 1065 (Pa. Super. 2011). The Court had the benefit of a presentence investigation report prior to sentencing and considered all relevant factors in fashioning its sentence. Defendant's minimum sentence of one year is the lower end of his recommended standard range and therefore is not unreasonable and/or excessive. *See Commonwealth v. Raven*, 97 A.3d 1244, 1254-55 (Pa. Super. 2014) (sentencing

[4] Defendant sentence on count two, harassment, was ordered to be served concurrently, since that sentence would be enveloped by his sentence under count one it is not at issue.

a defendant within the standard range after considering all evidence at sentencing is not unreasonable or excessive). Defendant also challenges this Court's imposition of his sentence consecutively, as opposed to concurrently, with his previous convictions. It is well established it is within the sound discretion of the sentencing court whether to make sentences consecutive or concurrent under 42 Pa. C.S. § 9721(a). *Commonwealth v. Pass*, 914 A.2d 442, 446-47 (Pa. Super. 2006). The Court agrees with the Commonwealth's position that if it were to make Defendant's sentence concurrent it would diminish the seriousness of the offense and would not dissuade Defendant from similar actions while incarcerated.

Whether the Jury's Verdict was Against the Weight of the Evidence

An individual commits the crime of Terroristic Threats if the person "communicates, either directly or indirectly, a threat to . . . commit any crime of violence with intent to terrorize another." 18 Pa. C.S. § 2706(a)(1). "Neither the ability to carry out the threat nor a belief by the person threatened that it will be carried out is an essential element of the crime." *Commonwealth v. Fenton*, 750 A.2d 863, 865 (Pa. Super. 2000). The Commonwealth need not show victim was frightened, but that the defendant intended to terrorize. *Commonwealth v. Campbell*, 625 A.2d 1215, 1219 (Pa. Super. 1993). Additionally, "[a] person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person . . . communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures." 18 Pa. C.S. § 2709(a)(4).

Defendant specifically alleges that the jury could not have reached the conclusion that it had because the incident occurred in a loud area of the jail and Defendant did not have the opportunity to observe Romano's vehicle. Case law is well established that a jury may "believe all, part, or none of the evidence and [ ] determine the credibility of the witnesses, and

a new trial based on a weight of the evidence claim is only warranted where the jury's verdict is so contrary to the evidence that it shocks one's sense of justice." *Commonwealth v. Houser*, 18 A.3d 1128, 1136 (Pa. 2011). Here the jury made the determination to believe the testimony of Romano and Ohnmeiss, as opposed to Defendant's self-serving testimony. Romano and Ohmeiss's testimony would establish that Defendant did clearly make the statements and he would have had an opportunity to see out the windows and see Romano's vehicle. N.T. 10/25/18, at 12, 16, 18-19, 37. There was sufficient evidence provided, such that the jury's determination does not shock one's sense of justice and therefore a new trial will not be granted.

ORDER

AND NOW, this 14th day of March, 2019, based on the foregoing opinion, Defendant's Motion for Post Sentence Relief is hereby **DENIED.**

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of entry; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal *in forma pauperis* and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

BY THE COURT,

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Nancy L. Butts, P.J.

cc: Trisha Hoover Jasper, Esq.
Nicole Ippolito, Esq. ADA
NLB/kp