

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-1821-2017
:
vs. : CRIMINAL DIVISION
:
:
HOUSTON HALL, :
Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's judgment of sentence dated October 1, 2018 and docketed on October 5, 2018, which became final when the court denied post-sentence motions on November 19, 2018. The relevant facts follow.

Appellant Houston Hall (hereinafter "Hall") was charged with terroristic threats, endangering the welfare of children, two counts of simple assault, two counts of harassment, and criminal mischief. These charges arose out of an incident on October 22, 2017, in which Hall screamed obscenities and threats and slashed the tires of a vehicle in which his former girlfriend and her infant daughter were sitting. While visibly displaying the knife, Hall threatened to shoot his former girlfriend.

On July 30, 2018, Hall pled guilty to Count 1, terroristic threats, a misdemeanor of the first degree; Counts 3 and 4, simple assault by physical menace, misdemeanors of the second degree; Counts 5 and 6, harassment, misdemeanors of the third degree; and Count 7, criminal mischief, a misdemeanor of the third degree.¹

¹Upon agreement of the parties, the grading of Counts 5, 6, and 7 were lowered to summary offenses at the time

On October 1, 2018, the court sentenced Hall to one (1) year to two and one-half (2 ½) years on Count 1, terroristic threats and a consecutive one (1) year to two and one-half (2 ½) years on Count 3, simple assault by physical menace. The aggregate sentence was a period of state incarceration the minimum of which was two (2) years and the maximum of which was five (5) years. The sentences on the remaining counts either merged or were not terms of incarceration. The court also made Hall eligible for the State Motivational Boot Camp Program.

On October 10, 2018, Hall filed a motion to reconsider sentence, which the court denied in an Opinion and Order entered on November 19, 2018.

On December 18, 2018, Hall filed a notice of appeal. In Hall's concise statement of errors complained of on appeal, Hall argues that the court abused its discretion in imposing a state sentence "as specified in his motion to reconsider sentence and argued at the time of argument on the motion." In Hall's motion for reconsideration of sentence, Hall argues that the court abused its discretion by: (1) imposing consecutive sentences based upon "the nature of the interaction with the victims;" (2) improperly imposing a *de facto* deadly weapon used enhancement; (3) sentencing him to a state prison sentence; (4) improperly relying on the negligent action of the defense which required the appearance of the victims at more than one proceeding; (5) considering that it had cut Hall breaks in the past in that he had been released early by the court from the Re-entry Services Program prior to actually completing it, by granting Hall unsecured bail despite Hall violating bail conditions and releasing Hall early from supervision; and (6) imposing a manifestly excessive sentence.

Sentencing is a matter vested in the sound discretion of a sentencing judge.

Commonwealth v. Edwards, 194 A.3d 625, 637 (Pa. Super. 2018); *Commonwealth v. Derry*, 150 A.3d 987, 991 (Pa. Super. 2016)(citing *Commonwealth v. Hoch*, 936 A.2d 515, 517 (Pa. Super. 2007)). Sentences 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 on the community, and the rehabilitative needs of the defendant. *Commonwealth v. Ali*, 197 A.3d 742, 765 (Pa. Super. 2018).

When imposing a sentence, the court is required to consider the particular circumstances of the offense and character of the defendant. *Edwards*, 194 A.3d at 637. The sentencing court “should refer to the defendant’s criminal record, age, personal characteristics and potential for rehabilitation.” *Id.* Moreover, where a court is informed by a presentence report, it is presumed that the court is aware of all appropriate sentencing factors and considerations. *Commonwealth v. Ventura*, 975 A.2d 1128, 1135 (Pa. Super. 2009). As well, the sentencing court has discretion to impose a sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. *Commonwealth v. Austin*, 66 A.3d 798, 808 (Pa. Super. 2013). Defendants are not entitled to volume discounts for crimes and the imposition of consecutive rather than concurrent sentences should not be disturbed except in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment. *Id.*; see also *Commonwealth v. Lamonda*, 52 A.3d 365, 372 (Pa. Super. 2012)(en banc); *Commonwealth v. Prisk*, 13 A.3d 526, 533 (Pa. Super. 2011).

A sentence will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Hoch*, 936 A.2d 515, 517 (Pa. Super. 2007). An abuse of discretion is not shown merely by an error in judgment; rather, the 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.* at 517-518; *Commonwealth v. Conte*, 198 A.3d 1169, 1176 (Pa. Super. 2018)(quoting *Commonwealth v. Zirkle*, 107 A.3d 127, 132 (Pa. Super. 2014)(citations omitted)).

Pursuant to 42 Pa. C.S.A. §9781(a), the court must consider the nature of the offense, the history and circumstances of the defendant, the advisory guidelines promulgated by the sentencing commission, the pre-sentence report if any, as well as the court's observations of the defendant.

The term "unreasonable" commonly connotes a decision that is "irrational" or "not guided by sound judgment." *Commonwealth v. Walls*, 926 A.2d 957, 963 (Pa. 2007). The sentencing judge has broad discretion in determining a reasonable sentence, as it is in the best position to view the defendant's character, displays of remorse, defiance or indifference, and the overall effect and nature of the crime. *Id.* at 961. As well, when a court has been informed by a pre-sentence report, its discretion should not be disturbed. *Ventura*, 975 A.2d at 1135. Finally, the court enjoys an institutional advantage, bringing to its decisions an expertise, experience and judgment that should not lightly be disturbed. *Walls*, 926 A.2d at 961.

At sentencing, the court shall make as part of the record and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. *Commonwealth v. Cartrette*, 83 A.3d 1030, 1041 (Pa. Super. 2013). The judge, however, does not need to give a lengthy discourse explaining its reasons. *Commonwealth v. Crump*, 995 A.2d 1280, 1283 (Pa. Super. 2010). The record as a whole must reflect the court's

consideration of the facts of the crime and character of the defendant. *Id.*

The term “discretion” imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for purposes of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions.

Commonwealth v. Soto, 2018 PA Super 356, 2018 WL 6816969, *14 (Pa. Super.

2018)(quoting *Commonwealth v. Reese*, 31 A.3d 708, 715-716 (Pa. Super. 2011)(en banc)(citations omitted)).

All of Hall’s claims were thoroughly addressed by the court in its Opinion and Order filed on November 19, 2018, which addressed Hall’s motion for reconsideration of sentence. By way of summary and addressing each of Hall’s specified claims, there is nothing in the record to support Hall’s contention that the consecutive sentence was based upon the “nature of the interaction with the victims.”

Next, the standard guideline range for the deadly weapon possessed was 3-12 months. The sentence imposed on both Counts 1 and 3 was a minimum of 12 months. Hall’s claim that the court imposed a “*de facto*” deadly weapon used enhancement is without any basis in the record whatsoever.

Although the court did, in fact, sentence Hall to a state prison sentence, that sentence was based upon a consideration of all of the relevant factors and consistent with the purposes of sentencing.

Next, there was no support in the record for Hall’s claim that the court improperly relied upon the negligent action of [defense counsel] which required the appearance of the victims at more than one proceeding.

The court did consider Hall’s history which included certain “breaks” which

the court had given to him with the hope that he would have used the breaks as an opportunity to become a law abiding citizen, instead of continuing his criminal behaviors. Considering Hall's history was not improper. To the contrary, it was required and imperative.

Lastly, the court did not impose a manifestly excessive sentence. The record clearly shows that the court took several factors into consideration when formulating the sentence. The court considered the pre-sentence report, Hall's allocution, arguments of counsel and the other sentencing factors and imposed an individualized sentence consistent with the protection of the public, the gravity of the offense to the extent it impacted the victims and Hall's rehabilitative needs. As noted above, the specifics with respect to such are thoroughly set forth in the court's Opinion and Order filed on November 19, 2018.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Nicole Spring, Esquire (PD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)