

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-699-2014  
vs. :  
: CRIMINAL DIVISION  
: JORDEN WALTERS,  
: Appellant : 1925(a) Opinion

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

On June 16, 2014, Appellant was sentenced to three years' probation with respect to a consolidated count of criminal conspiracy to receive stolen property. The three years was to be served under the supervision of the Pennsylvania Board of Probation and Parole (PBPP) and to run consecutive to Appellant's state sentence in a related case.

Appellant's period of probation began on January 22, 2017 and would have expired on January 22, 2020. He completed max out sentences on two separate counts of statutory sexual assault. He had consensual sexual intercourse with the same 14 year old when he was 18 years old on two separate occasions. He received a one and one-half (1 ½) to three (3) year period of incarceration. During his incarceration, he did not complete any sexual offender programming and instead maxed out.

On February 2, 2017, a hearing was held to determine whether Appellant should be subject to the conditions, special conditions and supplemental conditions for sexual offenders. The court noted that since the purpose of probation is rehabilitative and since Appellant may pose a risk without having undergone any appropriate programming,

assessment or treatment, the imposition of the conditions was appropriate under the circumstances. Complying with the conditions would, in the court's opinion, enhance Appellant's rehabilitation regardless of the crimes for which he was presently under supervision.

Appellant did not do particularly well on probation and a bench warrant was issued for his arrest on March 22, 2018 for failing to report as directed. He was apprehended and the bench warrant was vacated on April 19, 2018. By Order dated May 16, 2018, the court directed that Appellant be transported from the Lycoming County Prison to the Cove Forge treatment facility to begin an inpatient drug and alcohol treatment program.

The conduct which led to Appellant being sent to Cove Forge included his absconding, as well as using methamphetamines and other controlled substances. Unfortunately, he was discharged from Cove Forge. When officials went to the facility to detain Appellant, he absconded yet again.

Appellant appeared before the court on July 12, 2018. A final hearing was scheduled for August 20, 2018.

At the August 20, 2018 hearing, Appellant admitted to the violations. He admitted to possessing a small amount of marijuana and drug paraphernalia, which formed the basis of a prior conviction. He admitted that he absconded from supervised bail after his home plan was revoked. He admitted that while he was absconding he was using methamphetamines and other controlled substances. He admitted that when officers came to pick him up at the facility, he did not comply with the directives but, instead, he walked out of the door to the deputy sheriffs. He admitted that once he was at the inpatient treatment facility and was informed that the "cops" or adult probations officers were present, he ran

approximately five miles until he was apprehended.

At the time, the court determined not to sentence Appellant but rather to request additional information. Appellant's history was replete with substance abuse issues. In April of 2018 he was placed on the jail to treatment program. Previously, in February of 2018 the court placed him on supervised bail with the understanding that he undergo an assessment, and be placed on a drug patch. Appellant's history of substance abuse and treatment certainly would be relevant at sentencing. On September 21, 2018, the court resentenced Appellant on the consolidated count of receiving stolen property to a five year period of Intermediate Punishment with the first six months to be served at the Lycoming County Work Release Facility.

A condition of Appellant's Intermediate Punishment was that he attend and complete the Lycoming County Drug Court Program, while he was at the work release facility to continue to actively participate in NA/AA groups as well as outpatient counseling through Crossroads Drug and Alcohol group, and that he not commit any misconducts while at the work release facility.

The court specifically advised Appellant that it wanted to give him the benefit of the doubt and the opportunity to recover appropriately from his decades long substance abuse disorder. The court noted that Appellant's behaviors, however, threatened the safety of the community. The court specifically noted that while it expected setbacks while Appellant was on the Drug Court Program, if Appellant was removed from the Drug Court Program and was brought before the court for resentencing, the court would in all likelihood impose a significant period of state incarceration.

Not long thereafter, Appellant was again in front of the court. On February

14, 2019, based upon Appellant's counseled admissions, the court found that Appellant violated the terms of his Intermediate Punishment by refusing to be placed onto the Drug Court Program, by not actively participating in NA/AA group at the work release facility, by committing numerous misconducts while at the work release facility, and at least twice committing behaviors that returned him to the Lycoming County Prison.

After considering all of the relevant sentencing factors, the court sentenced Appellant to a period of state incarceration the minimum of which was two years and the maximum of which was five years. Appellant was given credit for time served and made eligible for the State Motivational Boot Camp Program.

Appellant filed a motion for reconsideration which was denied by order of court dated February 25, 2019. Appellant filed a notice of appeal on March 12, 2019. In response to the court's Rule 1925(b) Order, Appellant filed a concise statement on March 21, 2019, asserting two issues: (1) the court abused its discretion when imposing the sentence; and (2) an Anders brief was expected to be filed.

In the motion for reconsideration which was denied by the court, Appellant argued that his violations did not warrant resentencing him to confinement in a state correctional institution. Appellant argued that the imposition of the sentence was manifestly excessive and an abuse of discretion based upon the facts and circumstances of the violations, his rehabilitative needs, and all the risks of his own safety and health upon incarceration in a state facility.

Appellant argued that he was essentially immature and that his behavior at the work release facility should not be enough of a reason to send him to a state correctional facility.

Appellant seemingly forgets that his history of violations before this court was long and extensive. Appellant absconded on more than one occasion, continued to use controlled substances, was removed from an inpatient treatment facility, took probation officers on a five mile fleeing and pursuit, engaged in violations of the pre-release facility causing him to be removed and returned to the county prison and causing him to be ineligible for the Drug Treatment Court Program.

Sentencing is a matter vested in the sound discretion of the 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. In a violation of parole context, the court must consider the defendant's conduct on supervision as well as the length of time the defendant was on supervision. The sentencing court should refer to the defendant's criminal record, age, personal characteristics, and potential for rehabilitation. *Id.*

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)).

Appellant argues that the court abused its discretion by imposing a manifestly unreasonable and presumptively excessive and harsh sentence. 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, the court enjoys an institutional advantage, bringing to its decisions an opportunity, expertise, experience and judgment that should not lightly be disturbed. *Id.*

Contrary to Appellant’s contentions, the sentence was not manifestly unreasonable. The record clearly shows that the court took several factors into consideration when formulating the sentence. The court considered all of the relevant sentencing factors, Appellant’s statement, the arguments of counsel, the court’s history with Appellant, Appellant’s prior pre-sentence reports, Appellant’s supervision reports, and Appellant’s failure to participate in his own rehabilitation. It imposed an individualized sentence consistent with the protection of the public, the gravity of the offenses to the extent they impacted any victims and the community, and Appellant’s rehabilitative needs. The court was aware of all of the relevant information and weighed the considerations along with the factors raised by Appellant.

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 the purpose 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)).

The reasoning behind the court’s sentence was clear. All of the court’s efforts to assist Appellant in his rehabilitation failed. Appellant continued to act out, continued to disobey authority, continued in his failure to obtain treatment, and continued to disobey court orders. Clearly, the sentence was designed to vindicate the court’s authority, to prevent Appellant from relapsing and to prevent Appellant from committing other criminal behaviors.

Unlike what Appellant may think, sentencing is not solely about a defendant and his needs to change. Certainly, in this court’s humble opinion, sentences might reflect more weight on individual rehabilitation, but as time passes and a defendant’s misconducts and behaviors continue, more weight must be placed on protecting the public, vindicating the authority of the court and reflecting the seriousness of a defendant’s conduct.

In this case, Appellant made his choice. He was given opportunity after opportunity to get the help that he needed, to change his behaviors and not be locked up. The court specifically admonished Appellant as to the consequences of his behaviors if he chose to continue them. The court’s sentence was reasoned and appropriate. Given the many opportunities that Appellant had, the court would even conclude that it was Appellant who sentenced himself.

DATE: \_\_\_\_\_

By The Court,

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Marc F. Lovecchio, Judge

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