

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : **No. CR-4-2019**
 : **Motion for Reconsideration**
 STEPHEN BRADSHAW : **of Sentence**
 Defendant :

OPINION AND ORDER

Before the Court is Defendant's Motion for Reconsideration of Sentence filed on January 2, 2020 and argued on March 16, 2020.

On October 4, 2019, Defendant pled guilty to four counts of delivery of heroin, two counts of delivery of cocaine and four counts of criminal use of a communications facility. The deliveries were all ungraded felonies while the criminal use were felonies of the third degree.

Defendant admitted that on November 3 of 2018 and November 10 of 2018, he delivered heroin and cocaine to another person which was facilitated through cell phone communications. He admitted that on November 14, 2018 and November 20, 2018, he delivered heroin to a third person also utilizing a cell phone to arrange the transactions.

On December 23, 2019, the court conducted Defendant's sentencing hearing. The court reviewed a pre-sentence investigation report (PSI), a risk needs assessment, a supervision report from prior supervision, a social assessment prepared by defense counsel and a sentencing report from the Lycoming County Prison. The court also heard arguments from counsel and a statement from Defendant.

On each delivery count, the court sentenced Defendant to two (2) to five (5)

years' incarceration in a state correctional institution. These sentences were consecutive to each other for a total aggregate period of eight (8) years to twenty (20) years' incarceration.¹

In Defendant's motion for reconsideration, Defendant argues that the sentence was "excessive" for several reasons. Defendant argues that the Commonwealth never made an offer; the court failed to provide "sufficient weight" to Defendant's "good behavior while incarcerated"; despite Defendant's minimization of his mental health and substance use disorders, Defendant actually suffers from such; the court did not "accord sufficient weight to the fact that" Defendant was never convicted of any crimes of violence or of a sexual nature; and Defendant pled guilty and did not proceed to trial.

During the argument on the motion, defense counsel additionally argued that the court failed to give "enough weight" to the following facts and circumstances: Defendant was in a relationship and married; Defendant is relatively young; Defendant suffers from an intellectual disability; Defendant's background and history was filled with substance use disorders by family members; Defendant accepted responsibility; and despite Defendant's intentions and his commitment to stay away from the "lifestyle", Defendant could not.

When Defendant spoke at the reconsideration hearing, he echoed many of the statements of his counsel noting that he grew up in a very rough neighborhood; he saw numerous individuals die from substance abuse, violence and sexually transmitted diseases;

¹ On each of the remaining counts to which Defendant pled guilty, the court sentenced Defendant to concurrent terms of one (1) to three (3) years' incarceration.

he was shot; he had a learning disability; and he was committed to getting his “mind right” and being law abiding in the future.

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 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.

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)).

In sentencing an individual, the court must follow the general principle that the sentence imposed call for confinement that is 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. 42 Pa. C.S.A. § 9721(b). The record as a whole must reflect the sentencing court’s consideration of the facts of the case and the defendant’s character. *Commonwealth v. Crump*, 995 A.2d 1280, 1283 (Pa. Super. 2010), *appeal denied*, 608 Pa. 661, 13 A.3d 475 (2010).

As well, in this case, the court reviewed the PSI. When a sentencing court has reviewed a PSI, it is presumed that the court properly considered and weighed all of the relevant factors in fashioning the defendant’s sentence. *Commonwealth v. Baker*, 72 A.3d 652, 663 (citing *Commonwealth v. Fowler*, 893 A.2d 758, 767 (Pa. Super. 2006)). When the sentencing court has the benefit of a PSI, it is also presumed that the court was aware of the relevant information regarding the defendant’s character and weighed those considerations in

conjunction with any mitigating factors. *Commonwealth v. Clemat*, 218 A.3d 944, 960 (Pa. Super. 2019).

Defendant requests that this court reweigh the sentencing factors to impose a different judgment. Defendant's contentions lack merit. This court's sentencing order comprehensively and thoroughly sets forth the factors considered and the reasons in support of the sentence. Defendant has failed to establish that this 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.

The appropriateness of a sentence is a question to be evaluated on a case-by-case basis. *Commonwealth v. Keener*, 784 A.2d 808, 811 (Pa. Super. 2001).

The court will not restate verbatim the factors and reasons set forth in its order of December 23, 2019. Clearly, the court considered the relevant and necessary factors. The arguments advanced on Defendant's behalf during the reconsideration hearing are not persuasive.

Interestingly, during defense counsel's argument on Defendant's request for reconsideration, defense counsel aptly noted that despite Defendant's intentions, he kept returning to the lifestyle like a "moth to a fire." It is well known that moths have an attraction to bright lights. The term or word "moath" was used in the 17th century to mean someone who was apt to be tempted by something that would lead to their downfall. Indeed, this was referenced by William Shakespeare in the Merchant of Venice (1596) when he noted "Thus ath the candle singed the moath." The defendant clearly knows right from wrong. In spite of

his intentions, Defendant remains attracted to activities that have led to his downfall. His most recent choices have not only led to, but certainly justify, the sentence imposed by the court.

ORDER

AND NOW, this ____ day of April 2020, following a hearing and argument, the court denies Defendant's Motion for Reconsideration of Sentence.

Defendant is advised that he has a right to appeal. Any appeal must be filed within thirty (30) days of the date of this Order.

Defendant is advised that he has the right to the assistance of counsel in the preparation of the appeal.

As Defendant is indigent and has been represented by an assistant public defender, he has the right to appeal *in forma pauperis* (without having to pay the costs and filing fees associated with an appeal) and to proceed with appointed counsel as provided in Rule 122.

As Defendant's sentence includes imprisonment of 2 years or more, he does

not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

By The Court,

Marc F. Lovecchio, Judge

cc: Matthew Welickovitch, Esquire (APD)
Devin Walker, Esquire (ADA)
Stephen Bradshaw, #QA8192
SCI Rockview, Box A, 1 Rockview Place, Bellefonte PA 16823
Gary Weber, Esquire (Lycoming Reporter)
Work file