

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

MARCUS DEGARMO,  
Appellant

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CR-661-2019

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

Appellant was charged with two counts of Criminal Solicitation—Rape of Child<sup>1</sup>, two counts of Criminal Solicitation—Indecent Assault<sup>2</sup>, two counts of Unlawful Contact with a Minor<sup>3</sup>, Contact/Communication with a Minor<sup>4</sup>, two counts of Criminal Solicitation—Child Pornography<sup>5</sup>, Child Pornography<sup>6</sup>, Corruption of Minors<sup>7</sup>, four counts of Criminal use of a Communication Facility<sup>8</sup>, Endangering Welfare of Children<sup>9</sup>, and Criminal Attempt—Child Pornography<sup>10</sup>. Following a jury trial, Appellant was found guilty of all counts except for Count 10, Child Pornography. On January 19, 2021, President Judge Nancy L. Butts sentenced Appellant on Count 1 and Count 3, Criminal Solicitation—Rape of a Child to consecutive state incarceration for an indeterminate period of time, the minimum of which was 102 months and the maximum was 204 months. On Count 7, Unlawful Contact with a Minor, Appellant was sentenced to state incarceration of a minimum of twenty-four (24) months and a maximum of forty-eight (48) months. On Count 8 and Count 9, Criminal Solicitation, Appellant was sentenced to state incarceration for a minimum of twenty-four (24) to forty-eight (48) months on

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<sup>1</sup> 18 Pa.C.S. § 902(a).

<sup>2</sup> 18 Pa.C.S. § 902(a).

<sup>3</sup> 18 Pa.C.S. § 6318(a)(1).

<sup>4</sup> 18 Pa.C.S. § 6318(a)(5).

<sup>5</sup> 18 Pa.C.S. § 902(a).

<sup>6</sup> 18 Pa.C.S. § 6312(d).

<sup>7</sup> 18 Pa.C.S. § 6301(a)(1).

<sup>8</sup> 18 Pa.C.S. § 7512(a).

<sup>9</sup> 18 Pa.C.S. § 4304(a)(1).

<sup>10</sup> 18 Pa.C.S. § 901(a).

each count. On Count 11, Corruption of minors, Appellant was sentenced to twenty-four (24) months and a maximum of forty-eight (48) months. On Count 12 and Count 13, Criminal Use of a Communication Facility, Appellant was sentenced to state incarceration for a minimum of twelve (12) months and a maximum of twenty-four (24) months. Appellant was sentenced to state incarceration for a minimum of twenty-four (24) months and a maximum of forty-eight (48) months on Count 16, Endangering the Welfare of a Child. Lastly, On Count 17, Criminal Attempt—Child Pornography, Appellant was sentenced to state incarceration for a minimum of twenty-four (24) to a maximum of forty-eight (48) months. In the aggregate, Appellant’s sentence in this matter was a minimum of 372 months (31 years) and a maximum of 744 months (62 years). Appellant was credited time previously served from April 25, 2019 to January 18, 2021.

Appellant files this appeal following the dismissal of his Post-Sentence Motion on May 28, 2021. This Court requested a Concise Statement of Matters Complained of on Appeal, which Defendant filed on June 10, 2021. Appellant raises two issues on appeal, firstly, that insufficient proof of intent was presented at trial to convict Appellant of Counts 1 through 6, Counts 12 through 15, and Count 17. Secondly, Appellant argues that the Court abused its discretion in resentencing him to an aggregate sentence, with a minimum of 372 months (31 years) and a maximum of 744 months (62 years). These issues have yet to be discussed by this Court due to Appellant’s premature filing of his notice of appeal, which removed these issues from this Court’s jurisdiction. Both issues shall be thoroughly discussed at this time based on the arguments presented in Appellant’s Post-Sentence Motion.

## **Analysis**

### ***Whether the Commonwealth established intent***

Appellant first raises the issue of whether the Commonwealth was able to present sufficient evidence of intent to properly convict him of Counts 1 through 6, Counts 12 through 15, and Count 17. “Intent can be proven by direct or circumstantial evidence; it may be inferred from acts or conduct or from the attendant circumstances.” Commonwealth v. Alexander, 383 A.2d 887 (Pa. 1978); *See also* Commonwealth v. Gregory, 406 A.2d 539 (Pa. Super. 1979). This Court believes based on his Post-Sentence motion that Appellant’s primary contention with the prosecution is in their use of SMS and Facebook messages at trial. Appellant is of the belief that the nature of the messages had such a shocking effect that it hampered the jury’s ability to truly examine the elements of the crimes for which he was convicted. Appellant argues that the Commonwealth failed to establish intent for the above listed counts. Upon a careful review of the trial transcript and the evidence exhibits, this Court believes the evidence submitted at trial established Appellant’s intent on all contested charges.

The Commonwealth submitted extensive evidence to support their case against Appellant. Such evidence included screenshots of the text and Facebook messages as well as voice recordings and a printed transcript of the audio messages Appellant sent to the child. These various messages to the victim included sexually explicit language, sexual innuendo, or requests for nude photographs of the child. Appellant’s argument against the Commonwealth’s use of the messages at trial because of their shock value does not convince this Court. The jury established their ability to differentiate the elements of each charge, particularly when they found Appellant not guilty of one of the charges. The content of the messages notwithstanding, testimony from Sergeant Christopher Kriner (Kriner) of the Old Lycoming Township Police Department asserted that Appellant admitted to sending the messages to the young girl. N.T. 8/28/2020, at 42. Video of the interview between Kriner and Appellant where Appellant admitted to sending the messages was played in front of the jury. In that interview, Appellant initially states that he

meant to send the messages to the child's mother who was his girlfriend at the time. However, other evidence suggests the truth of this statement is questionable. Some of the recovered messages extracted from Appellant and the victim's phones show Appellant ordering the child to delete "any and all messages" from Appellant. The victim also testified at trial that Appellant told her to delete the messages and to keep the content of said messages a secret. Appellant also deleted the explicit messages from his phone as well. These actions suggest consciousness of guilt. Furthermore, in his interview with Kriner, Appellant gives a contradictory reason for sending the messages. More specifically, Appellant argues that he sent those messages to the victim to teach her how to deal with harassment and to "see what she would say." Despite Appellant's alleged reasons, further proof of this specific prurient interest came to light when evidence of Appellant's internet searches for pornography revolving around ten-year-old girls was introduced into evidence. At the time Appellant sent these communications to the child, she was also ten years of age. Although Appellant may have wished for the jury not to see these inappropriate messages, their probative value far outweighed any shock or prejudice Appellant may or may not have experienced. Therefore, the evidence presented at trial showed Appellant's intent on all charges.

***Whether the Court abused its discretion when sentencing Appellant***

Secondly, Appellant contends that this Court abused its discretion in resentencing him to an aggregate sentence of a minimum of 372 months, or thirty-one (31) years, and a maximum of 744 months, or sixty-two (62) years. As argued in his Post-Sentence motion and at the hearing on said motion, Appellant believes the proportionality of the sentence is in conflict with the underlying conduct. Appellant asserts that a two (2) month period of sending messages to a child without supporting testimony that he acted on those messages is insufficient to uphold the sentence given. Appellant takes issue with the fact that based on the sentence he is currently

servicing, it will be over thirty (30) years before he is eligible for parole. More specifically, Appellant believes the sentence on Counts 1 and 3, which run consecutive to one another and aggregate to a sentence of 102 months to 204 months, or seventeen (17) years to thirty-four (34) years, is adequate punishment for his conduct, particularly because Appellant is required to register as a sex offender for the remainder of his life. Appellant avers that the court's decision to treat text messages and Facebook messages separately results in the duplication of his sentence and his sentence is "artificially enhanced" by "doubling the most serious charge in the information, solicitation; rape of a child." Appellant's Post-Sentence Motion, at 2. Appellant believes that the sentence consists of redundant counts when viewed through the lens of common sense, albeit not a legal lens. Appellant asks for a reduction in his sentence and an earlier parole date and stands firm in his belief that such a sentence reduction would still protect the public and allow time for his rehabilitation. Overall, Appellant feels the sentence is exorbitant and disproportionate punishment for sending inappropriate, sexual messages to a 10-year-old female child for a two-month period.

"[S]entencing is vested in the discretion of the trial court, and will not be disturbed absent a manifest abuse of that discretion. An abuse of discretion involves a sentence which was manifestly unreasonable, or which resulted from partiality, prejudice, bias or ill will. It is more than just an error in judgment." Commonwealth v. Brown, 249 A.3d 1206, 11 (Pa. Super. 2021). During Appellant's sentencing, it was confirmed that Appellant has a Prior Record Score of four (4) following a conviction from 2009. Appellant committed these offenses while on probation for the earlier offense. The Court refrained from sentencing Appellant on all convicted charges as it could have done, but instead handed down a sentence for Counts 1, 3, 7-9, 11-13, 16, and 17. This Court articulated its reasoning for treating the text messages and Facebook messages separately stating that to differentiate between the mediums of communications and sentence on

one and not the other is to convey that one method is not as important. N.T. 1/19/21, at 27. The facts of this case show that Appellant sent sexual messages to a minor child with whom he acted as a paternal figure. Even at the time of sentencing, Appellant maintained that he was “trying to teach the child how to handle sexual harassment through communications...” Id. at 19.

However, the evidence contradicts Appellant’s assertion because he demonstrated his prurient interest when he searched for pornographic material involving 10-year-old girls. The Court sentenced him on the higher end of the standard range but within the lower end of the aggravated range, which is well within the discretion of the trial court. The Court considered “the nature of the charge, the verdict of the jury...the feedback that I get from the client, the defendant, the feedback I get from the Commonwealth and the people who are most affected by this case.” Id. at 32. The Court fashioned a sentence within the statutory range that held Appellant accountable for the convicted conduct that would neither diminish the severity of the charges nor convey to the community that such behavior is acceptable. Therefore, this Court wholly relies on the initial sentencing conducted on January 19, 2021.

DATE: September 17, 2021

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Matthew Welickovitch, Esq.

NLB/jmh