

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000103-2019
vs. :
: CRIMINAL DIVISION
: MATTHEW SAUTER,
: 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 March 3, 2021, and amended July 16, 2021, which became final when the court denied Appellant’s post-sentence motion in an order entered on July 21, 2021.

By way of background, the Commonwealth charged Appellant with 96 counts of sexually related offenses. The charges arose out of Appellant engaging in oral, anal, and vaginal intercourse with a minor female when she was between the ages of 12 and 14 years old.

Following a non-jury trial held November 19-20, 2020, the court found Appellant guilty of six counts of rape of a child, twelve counts of involuntary deviate sexual intercourse (IDSI), twelve counts of statutory sexual assault, eighteen counts of aggravated indecent assault, twelve counts of corruption of minors, and eighteen counts of indecent assault.

On March 3, 2021, the court sentenced Appellant to undergo incarceration in a state correctional institution for an aggregate term of 90 years to 180 years. Trial counsel

filed a motion for reconsideration of sentence. Trial counsel also filed a petition to withdraw, which the court granted. The court appointed the Chief Public Defender to represent Appellant and granted new counsel's motion to file post sentence motions nunc pro tunc.¹

In his post-sentence motion to reconsider sentence nunc pro tunc, Appellant asserted that some of his convictions should have merged for sentence purposes and that the court erred and abused its discretion in imposing an excessive sentence. The court agreed that Appellant's convictions for indecent assault merged with his convictions for rape of a child and IDSI. As the sentences for these offenses were either concurrent with his sentences for rape of a child and IDSI or guilt without further punishment, the merger did not affect Appellant's aggregate sentence. The court denied Appellant's post sentence motion in all other respects.

Appellant filed a notice of appeal. The sole issue raised by Appellant on appeal is that the trial court "abused its discretion when imposing sentence as specified in his Motion for Reconsideration of Sentence and as argued during his hearing on the motion." More specifically, Appellant contended in his motions and at the hearing thereon that: the sentence imposed by the court was excessive in relation to other sentences in similar cases; the sentence was excessive because Appellant had no prior convictions and the sentence was in effect a life sentence; the court failed to consider his age and his prior law-abiding life; and the court erred by considering his education and employed status as aggravating factors.

DISCUSSION

¹ The court initially summarily denied trial counsel's motion for reconsideration of sentence, but later vacated that order. Court-appointed counsel incorporated in her post sentence motion nunc pro tunc the motion for reconsideration of sentence filed by trial counsel.

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 should 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).

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)). Furthermore, it is 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).

Appellant first asserts that his sentence was excessive as compared to other similar cases.

Initially, the court notes that Pennsylvania's sentencing system is based on

individualized sentencing. *Commonwealth v. Walls*, 926 A.2d 957, 966 (Pa. 2007). No two cases are identical. The sentencing guidelines were promulgated to provide a framework within which similar offenses could be treated similarly. Nevertheless, the guidelines are not mandatory, but rather advisory guideposts. The sentencing judge retains the discretion to sentence and tailor a sentence to the particular facts and circumstances of the case. The sentences imposed for each offense in this case were within the standard guideline ranges. The court imposed numerous consecutive sentences in this case because it found that Appellant was not entitled to a volume discount for his crimes.

Appellant's counsel argued that there were third-degree murderers who in her experience received lesser sentences than Appellant did in this case. The court does not view third-degree murder cases as similar to this case. In some ways, this case is worse. Third-degree murder involves an unintentional killing. Here, Appellant's acts were predatory, intentional and occurred repeatedly.

Appellant formerly dated the victim's mother for approximately five years. The victim and her brother viewed Appellant as a father figure. After Appellant and the victim's mother ended their relationship, the victim's mother lost her housing and abandoned the children. The victim's mother joined a carnival and ultimately relinquished her parental rights to her sister and her sister's husband. They suffered a house fire. They were living in a hotel and then a rental in the Williamsport area.

During this tumultuous time in the child's life, she happened to see Appellant at a birthday party for a mutual acquaintance. Shortly thereafter, Appellant began visiting the children every other week. The visits occurred at the residence where Appellant lived with his mother. Appellant's bedroom was in the basement of the house and the children slept

downstairs with him. At first, the visits involved both children but shortly after the visits started Appellant began visiting with the victim one weekend and her brother the next. Appellant would make the victim's brother sleep on an uncomfortable couch in his bedroom, but he would have the victim sleep in his bed with him.

While the victim was alone in the basement with Appellant, he repeatedly sexually abused her. He subjected her to vaginal, oral and anal intercourse on a biweekly basis. He violated her in countless degrading and unspeakable ways. He arranged for visits claiming he was a father figure, yet defied everything expected of a loving and fiduciary relationship. He utilized his position of trust to satisfy his deviant desires at the expense of the victim's quality of life. Although he may not have physically taken her life, she will have to live with what Appellant did to her every day of her life. She will have a lifetime of trauma, stress, remorse, physical issues, social issues and emotional issues. Her life is forever changed and the hurdles she will have to overcome to have a normal life, a normal sex life and a normal relationship with someone are going to be huge. Sentencing Transcript, 03/03/2021, at 32-36.

Appellant also contends that the court failed to consider his age, his lack of prior convictions and his prior law-abiding life. This contention is belied by the record. The court specifically noted that Appellant was 42 years old, single, a high school graduate, in good health, and steadily employed. Sentencing Transcript, 03/03/2021, at 19-20. He did not have any drug or alcohol issues and he never had any mental health issues. *Id.* His prior criminal history consisted of a summary retail theft and a summary traffic offense. *Id.* Up until these offenses occurred, Appellant "led a fairly normal, law abiding life." *Id.* at 20. The court weighed these factors before imposing sentence. *Id.* at 33. Nevertheless, the court

found that these factors were greatly outweighed by the nature and circumstances of the offense, Appellant's predatory behavior, his abuse of a position of trust to satisfy his deviant desires, his characteristics of a pedophilic disorder and how it increased his risk of re-offense as compared to others without such a congenital or acquired condition, and his lack of insight or remorse. *Id.* at 32-37. After weighing all the factors, the court found that the nature and circumstances of the offenses, their impact on the victim and the need to protect the community greatly outweighed Appellant's age, lack of prior convictions and prior law-abiding life and justified a lengthy sentence of state incarceration.

Appellant also asserted that the court considered his education and employed status as aggravating factors. At the reconsideration hearing, however, Appellant's counsel acknowledged that after re-reading the original sentencing transcript, it did not say what she thought it said. Reconsideration Transcript, 07/16/2021, at 6. Therefore, this issue lacks merit.

Finally, Appellant asserts that in effect the court imposed a life sentence. The court acknowledged such at sentencing. Sentencing Transcript, 03/03/2021, at 37. The court found that such a sentence was appropriate in this case. In support of its sentence, the court would rely on *Commonwealth v. Prisk*, 13 A.3d 526, 532-533 (Pa. Super. 2011). In *Prisk*, the Superior Court held that a sentence of 633 to 1500 years' imprisonment for 314 offenses, including rape, IDSI and indecent assault, was not excessive where the defendant's convictions stemmed from his systemic abuse of his stepdaughter on an almost daily basis over the course of six years and the sentencing court did not impose consecutive sentences for every count.

This case is similar to *Prisk*. Here, Appellant was convicted of 78 offenses,

including rape of a child, statutory sexual assault, IDSI, and aggravated indecent assault. He was a father figure to the victim and he sexually abused her biweekly when she was between the ages of 12 and 14. The court imposed several consecutive sentences, but it did not impose consecutive sentences for every count. In fact, none of Appellant's sentences for statutory sexual assault (which encompassed Appellant having vaginal intercourse with the victim once she turned 13 years old) contributed to his aggregate sentence.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

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