

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF	:	CR-1075-2014
PENNSYLVANIA	:	
	:	
	:	
v.	:	
	:	CRIMINAL DIVISION
DANTE WASHINGTON,	:	
Petitioner	:	POST-SENTENCE MOTION

OPINION AND ORDER

On December 20, 2016, a jury found Dante Washington (Petitioner) guilty of Criminal Attempt Homicide¹, Aggravated Assault Serious Bodily Injury caused², Aggravated Assault with a Deadly Weapon³, four counts of Robbery⁴, and Theft by Unlawful Taking⁵. Following the jury trial, the Petitioner was found guilty by this Court of Firearms Possessed by a Prohibited Person⁶ and Firearms not to be Carried without a License⁷. This Court sentenced Petitioner to state incarceration for a minimum of twenty (20) years and maximum of forty (40) years for the Attempted Homicide conviction. For Robbery, Inflicting Serious Bodily Injury (SBI), Petitioner was sentenced to state incarceration for a minimum of ten (10) years and a maximum of twenty (20) years. For Persons not to Possess a Firearm, Petitioner was sentenced to state incarceration for five (5) years to a maximum of ten (10) years. For Firearms not to be Carried without a License, Petitioner was sentenced to state incarceration for a minimum of one (1) year and

¹ 18 Pa.C.S. § 901(a).

² 18 Pa.C.S. § 2702(a)(1).

³ 18 Pa.C.S. § 2702(a)(4).

⁴ 18 Pa.C.S. § 3701(a)(1)(i); 18 Pa.C.S. § 3701(a)(1)(ii); 18 Pa.C.S. § 3701(a)(1)(iii); 18 Pa.C.S. § 3701(a)(1)(iv).

⁵ 18 Pa.C.S. § 3921(a).

⁶ 18 Pa.C.S. § 6105(c)(2).

⁷ 18 Pa.C.S. § 6106(a)(1).

a maximum of two (2) years. The aggregate state incarceration sentence totaled a minimum of thirty-six (36) years to a maximum of seventy-two (72) years.

Petitioner filed timely Post Sentence Motions that were summarily denied by this Court on March 6, 2017. Petitioner then filed a notice of appeal to the Superior Court that was also denied on November 2, 2018. Petitioner also filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court that was denied on May 23, 2019. Therefore, Petitioner's sentence became final on August 21, 2019. On September 20, 2019, Petitioner filed a timely *pro se* Post-Conviction Relief Act (PCRA) petition. Donald F. Martino, Esq. was appointed to represent Petitioner on October 9, 2019. Petitioner, through counsel, filed an Amended PCRA Petition on December 23, 2019. An initial conference was held on January 23, 2020. Due to the COVID-19 pandemic, an evidentiary hearing was delayed to allow for the Petitioner to be transported and participate in person and eventually held on October 5, 2020. This Court entered an Opinion and Order granting in part and denying in part Defendant's PCRA petition on February 2, 2021.

Following the partial grant of his PCRA petition, Defendant was resentenced by this Court on March 18, 2021 under the following counts: Count 1, Attempted Murder, to state incarceration for a minimum of ten (10) years and a maximum of twenty (20) years, under Count 3, Aggravated Assault with a Deadly Weapon, to state incarceration for a minimum of five (5) years and a maximum of ten (10) years, under Count 4, Robbery, Inflicting Serious Bodily Injury, to state incarceration for a minimum of ten (10) years and a maximum of twenty (20) years, Count 8, Persons not to Possess a firearm, to state incarceration for a minimum of five (5) years and a maximum of ten (10) years, Count 9, Firearms not to be Carried without a License, state incarceration for a minimum of one (1)

year and a maximum of two (2) years. Each sentence is to run consecutive, totaling an aggregate state sentence of a minimum of thirty-one (31) years and a maximum of sixty-two (62) years.

Petitioner, through his counsel, filed timely Post-Sentence Motions on March 23, 2021. This Court held a hearing on the motions on May 20, 2021. In his motions, Defendant advances three issues for the Court to address, alleging first that the imposition of a sentence under Count Three, Aggravated Assault with a Deadly Weapon, was an abuse of discretion due to lack of evidence in the record to support an increased sentence. Secondly, Defendant asserts that the application of the deadly weapon enhancement on Counts One and Four violated the United States Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000) and Alleyne v. United States, 570 U.S. 99 (2013). Thirdly, Defendant alleges that the Trial and Appellate Counsel provided ineffective assistance of counsel in violation of his rights under the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution. First, Defendant asserts that Appellate Counsel was ineffective for failing to appeal this Court's denial of a mistrial due to the statements of Juror Number 29 during *voir dire*. Second, Defendant also alleges that Trial Counsel was ineffective in failing to suppress the photographic lineup and the victim's in-court identification of Defendant. Third, Defendant believes Trial Counsel provided ineffective assistance by waiving argument that Eric Williams committed the offenses charged.

The majority of the issues raised in the Post-Sentence Motions have already been addressed by this Court in its Opinion and Order issued on February 2, 2021. Namely, the challenges to the application of the deadly weapon enhancement on Counts One and Four

as well as the issues regarding the ineffectiveness of Defendant's Trial and Appellate Counsel. Therefore, the Court relies on its prior Opinion and Order for these issues and those motions shall be denied accordingly. The sole issue that remains is the Defendant's contention with the sentence on Count Three as an abuse of the court's discretion. We will address that issue at this time.

The Pennsylvania Superior Court has held that when an illegal sentence is imposed, that sentence must be corrected. Commonwealth v. Kratzer, 660 A.2d 102, 104 (Pa. Super. 1995). "Likewise, we have held that if a trial court errs in its sentence on one count in a multi-count case, then all sentences for all counts will be vacated so that the court can restructure its entire sentencing scheme." Commonwealth v. Bartrug, 732 A.2d 1287, 89 (Pa. Super. 1999). This is held to be true even where an appellant "specifically limits his appeal to one particular illegal sentence... where those sentences are part of a common sentencing scheme." Id. The Pennsylvania Supreme Court has further held that, "when a defendant challenges one of several interdependent sentences, he, in effect, challenges the entire sentencing plan." Commonwealth v. Goldhammer, 517 A.2d, 1280, 83 (Pa. 1986). "[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).

On February 2, 2021, the Court granted a portion of Defendant's PCRA Petition, determining Defendant's Trial Counsel was ineffective for stipulating to serious bodily injury for Count One, Attempted Murder. The Court unlawfully imposed a sentence of

twenty (20) to forty (40) years on Count One subsequent to trial counsel's ineffectiveness when the statutory maximum for that charge is ten (10) to twenty (20) years. On March 18, 2021, Defendant was resentenced following the Court's opinion holding that the sentence on Count One was unlawful. On that date, Defendant was sentenced to five (5) to ten (10) years incarceration under Count Three, Aggravated Assault with a Deadly Weapon. However, at his original sentencing on February 14, 2017 following his jury trial, Defendant was not sentenced specifically on Count Three. Defendant now argues that this Court erred by imposing a sentence on this count for the following reasons. Defendant contends that the Court had previously indicated there was no reason to impose a sentence under Count Three and the reasons listed at his resentencing for imposing a more severe sentence on this count are not present in the record. Defendant also argues that the Court has acknowledged Defendant's rehabilitative efforts since his original sentencing date in 2017. As such, Defendant believes that the sentence imposed on Count Three amounts to an abuse of discretion due to the lack of evidence in the record that would support an increased sentence.

This Court disagrees with Defendant on this issue. Defendant challenged his sentence for a specific count that was found to be unlawful. As a result, Defendant was resentenced on the counts for which a jury of his peers had found him guilty. As previously stated, the Pennsylvania Supreme Court has held that, when a Defendant makes a challenge like the one Defendant has to the legality of a sentence, he is challenging the entire sentencing scheme. Commonwealth v. Goldhammer, 517 A.2d, 1280, 83 (Pa. 1986). Since the sentence for Count One was determined by this Court to be unlawful, the Court was required to resentence him on all counts to maintain the sentencing scheme from the

original sentencing date. Even though Defendant was not sentenced on Count Three originally, the lessening of the sentence on Count One would enable the Court to sentence Defendant on Count Three to maintain its sentencing scheme. As the law states, all of the charges must be re-evaluated and are available to the sentencing judge to provide a sentence on all counts at resentencing. Count Three did not merge with any other counts and the sentence given for Count Three was within the statutory guidelines. Defendant's assertion that the record does not support the reasons stated for a sentence on this count is unfounded. In its resentencing order, this Court cited to the seriousness of the offense and the impact on the victim as reasons for the sentence. These reasons are clearly contained in the record because of the unmistakably violent facts of this case and that a jury found Defendant guilty of this charge following a presentation of the facts and the applicable law. Therefore, the Court did not abuse its discretion in ordering a sentence on Count Three, Aggravated Assault with a Deadly Weapon, at the resentencing and Defendant's argument fails on this issue and his motion shall be denied.

ORDER

AND NOW, this 23rd day of July, 2021, upon review of the record and after an evidentiary hearing, Defendant's Post-Sentence Motions are **DENIED**.

Defendant is hereby notified that he has the right to appeal this order. An appeal is initiated by the filing of a Notice of Appeal with the Lycoming County Clerk of Courts within thirty (30) days after entry of this order. *See* Pa.R.App.P. 902, Pa.R.App.P. 903, Pa.R.App.P. 904. Defendant has the right to assistance of counsel in the preparation of the appeal. He has the right, if he is indigent, to appeal *in forma pauperis* (without the payment of costs and fees) and to proceed with assigned counsel as provided in Rule 122 of the Pennsylvania Rules of Criminal Procedure. He has a qualified right to bail under Rule 521(B) of the Pennsylvania Rules of Criminal Procedure. When the sentence imposed includes imprisonment of less than 2 years, the defendant has the same right to bail as before verdict unless the judge modified the bail order. When the sentence imposed includes imprisonment of 2 years or more, the defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge. In either scenario, the defendant's release on bail is conditioned on the defendant filing an appeal within 30 days after the entry of this order. If the Notice of Appeal is not filed in the Clerk of Courts' office with the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

By The Court,

Nancy L. Butts, President Judge

CC: DA
Donald A. Martino, Esq.

NLB/jmh