IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**No. CR-238-2019**
v.	:	
NICOLE ENGLER-HARPER,	:	**CRIMINAL DIVISION**
	:	**APPEAL**

Date: February 1, 2022

OPINION IN SUPPORT OF THE NOVEMBER 15, 2021 VERDICT AND THE ORDER OF JANUARY 6, 2022, IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Nicole Engler-Harper (hereinafter referred to as "Appellant") files this appeal following a jury trial held November 15, 2021 where she was found guilty of two (2) counts of Endangering the Welfare of Children and her subsequent sentencing held January 6, 2022, at which time this Court imposed consecutive periods of incarceration of twelve (12) to twenty-four (24) months on each count. Appellant filed a Post-Sentence Motion on January 10, 2022, which the Court summarily denied by Order of January 11, 2022. Thereafter, Appellant's Notice of Appeal was timely filed on January 13, 2022 and Appellant timely filed her Concise Statement of Matters Complained of on Appeal on January 19, 2022, wherein she cites the following:

1. The sentence imposed was unreasonable and excessive in light of the sentencing factors as the Court imposed consecutive sentences and failed to consider Appellant's reasons for her actions.

2. The verdict was against the weight of the evidence as to shock the conscience as there was no evidence these children were locked in their rooms

for long periods of time, that they were neglected and in light of her testimony that her actions were out of a place of love, safety, care and control.

3. The evidence presented by [sic] insufficient to establish the elements of the charges of Endangering the Welfare for the same reasons stated above.

As to the first error complained of, in light of the offenses for which Appellant was found guilty by the jury, the sentence imposed by the Court was reasonable. At the time of sentencing, the Court considered the pre-sentence investigation and statements on behalf of the Appellant and the Commonwealth. The Defendant did not speak at the time of sentencing.

Defendant had a Prior Record Score of 0 at the time of sentencing and, pursuant to the Pennsylvania Commission on Sentencing's Basic Sentencing Matrix, both counts hold an Offense Gravity Score of 6, providing for a standard range of three (3) to twelve (12) months, with an additional six (6) months in the aggravated range. 204 P.S. § 303.15; 204 P.S. § 303.16(a).

Pursuant to Section 9721, it is within a trial court's discretion to impose sentences of imprisonment consecutively or concurrently to one another and will not be disturbed absent a finding of manifest excessiveness of an aggregate sentence. 42 Pa.C.S.A. § 9721(a); *Com. v. Dodge* ("*Dodge I* "), 859 A.2d 771 (Pa.Super. 2004) (holding that a consecutive, standard range sentence on thirty-seven counts of theft related offenses was excessive); *Com. v. Graham,* 661 A.2d 1367, 1373 (Pa. 1995). The Superior Court, in determining whether a substantial question has been raised for purposes of appeal, considers "whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level **in light**

of the criminal conduct at issue in the case." *Com. v. Gonzalez-Dejusus*, 994 A.2d 595, 598–99 (Pa.Super. 2010) (emphasis added) (holding that an aggregate sentence of 20 to 40 years imprisonment was not excessive based on the crimes committed which included, separately, an armed robbery of two individuals at a retail store, a kidnapping of a father and infant daughter, and a car theft).

The Court here imposed a consecutive sentence of twelve (12) to twenty-four (24) months on each count. While the Court found the Defendant's actions to be inhumane and, if not for intervention from a third party, would have carried on indefinitely, the Court's sentence was within the standard range of the sentencing guidelines. The Defendant's actions were callus and will have a lifetime impact on the victims. Additionally, the Court was within its discretion to impose consecutive sentencing, considering the fact that there are two separate victims in this case. In addition to the above, the Court will rely on the sentencing transcript of January 6, 2022 for the purpose of this Opinion.

As to the second and third matters, the trial transcript speaks for itself and supports the conclusion that the evidence presented supported the verdict. Therefore, the Court will rely on it for the purposes of this Opinion. However, the Court also notes that "[a]n allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court." *Com. v. Widmer*, 744 A.2d 745, 751–52 (Pa. 2000). A new trial, therefore, should only be awarded when "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice," or when a verdict is so contrary to the evidence that it "shocks one's sense of justice." *Id.*; *Com. v. Brown,* 648 A.2d 1177, 1189 (Pa. 1994).

A person commits the crime of Endangering the Welfare of Children when they are a “parent, guardian or other person supervising the welfare of a child under 18 years of age” and “knowingly endangers the welfare of the child by violating a duty of care, protection or support.” 18 Pa.C.S.A. § 4304(a)(1). In determining whether the Commonwealth has proven the intent element, the Superior Court has established the following three-prong test: 1) the accused must be aware of his or her duty to protect the child; 2) the accused must be “aware that the child is in circumstances that could threaten the child's physical or psychological welfare;” and 3) the accused either must have failed to act or must have taken “action so lame or meager that such actions cannot reasonably be expected to protect the child's welfare.” *Com. v. Wallace,* 817 A.2d 485, 490–91 (Pa.Super. 2002), citing *Com. v. Cardwell,* 515 A.2d 311, 315 (Pa.Super. 1986).

Here, the facts presented at trial established that the Defendant, who cared for her biological child, two (2) years old, and her paramour’s son, five (5) years old, while her paramour was working, would lock the children in separate bedrooms with padlocks on the outside of the doors. The condition of the rooms were deplorable. The eldest child’s room contained only a stained mattress without bedding and a child’s training toilet. The windows were boarded up such that there was no natural light and the carpet was saturated with what smelled like urine. The child was found wearing nothing but underwear. The younger child was sleeping in a second room in a dirty pack-and-play and the room was extremely cluttered. On the day following this discovery, the Children and Youth caseworker returned to the home but there was no change. Defendant’s excuse was that she locked the children in the room to prevent the eldest child from

harming himself and others. Both children were malnourished and had to be given medical treatment.

Based on these facts, along with the other facts established at trial, this Court remains of the opinion that the guilty verdict does not "shock ones sense of justice" and that the evidence was sufficient to prove that Defendant knowingly violated her duty of care, protection, or support to the two minor victims. For the reasons set forth above, the Court finds that the guilty verdict of November 15, 2021 and the sentencing imposed on January 6, 2022 should be affirmed.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/ads

cc: Superior Court (Original +1)
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