

Analysis

Suppression Issues

Appellant's first two issues involve the suppression of evidence collected from Appellant's cellular phone pursuant to a contested search warrant. Since Appellant participated in a non-jury trial in front of this Court, Judge Lovecchio presided over the suppression issue to keep any information that may have been suppressed out of this Court's knowledge. Appellant argues that the search warrant used to collect evidence from his phone was overbroad. Appellant also asserts that the evidence collected from his phone was outside the scope of the search warrant. Specifically, the evidence challenged by Appellant is an extraction report of Appellant's iPhone including text, "out of what's colloquially known as the Notes app." N.T. 10/20/21, at 4. After hearing arguments and testimony on these particular issues, Judge Lovecchio denied Appellant's motion to suppress, stating, "the Court cannot ignore the purpose of the search warrant, nor the language. The purpose of the search warrant was to locate data that detailed the nature of the relationship between the Defendant and the alleged victim." *Id.* at 25. "The items to be seized included among others quote messages and conversations end quote. A message does not need to be communicated; it can be left for a recipient not then available. Commonwealth is correct that a synonym for a message includes a note or a memo...the Court finds that a communication also includes what's known as intrapersonal communication or self-talk." *Id.* Judge Lovecchio unequivocally found that the "Notes" application was included in the search warrant's scope for messages or conversation. *Id.* at 26. Judge Lovecchio also determined that the search warrant was not overbroad. *Id.* at 27.

Therefore, for the purposes of this Opinion, this Court will rely on Judge Lovecchio's holding denying Appellant's suppression motion on October 20, 2021.

Whether the Court abused its discretion when sentencing Appellant

Appellant further contends that this Court abused its discretion when it imposed a “manifestly excessive and unduly harsh sentence and did so without sufficiently considering the fundamental norms of the sentencing process.” Concise Statement of Matters Complained of on Appeal, at 1. Motion, at 2. “[S]entencing is vested in the discretion of the trial court, and will not be disturbed absent a manifest abuse of that discretion.” Commonwealth v. Brown, 249 A.3d 1206, 1211 (Pa. Super. 2021). “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.” Id. Appellant was sentenced after this Court conducted a hearing in which Appellant was determined to be a sexually violent predator. Prior to sentencing Appellant, the Court considered the biographical information on Appellant contained in a pre-sentence investigation report. N.T. 2/17/2022, at 15-18. The Court heard from the victim’s mother who spoke on the effect this situation has had on her child and their family as a whole. Id. at 23-24.

Not only did this Court sentence Appellant within the guidelines, but this Court refrained from sentencing Appellant on the majority of the convicted charges. Appellant was sentenced on eleven (11) counts, three (3) of which merged for the purposes of sentencing. Id. at 35. As a result, Appellant received a sentence guided by the mandatories and the guidelines on eight (8) charges out of the forty-eight (48) convictions under this docket. Id. The charges for which Appellant received a sentence were all the counts of Rape of a Child and all counts for Involuntary Deviate Sexual Intercourse. This Court was disturbed by Appellant’s conduct of encouraging “rule-breaking” behavior and seeking out this kind of relationship. Id. at 31-32. This Court stated, “it’s certainly clear that he took advantage of that relationship with the family...If he really meant for the best for that child it would have stopped immediately.” Id. at 32. This Court also placed significant emphasis on the impact to the child, namely that the child had to be hospitalized on suicide watch and the future ramifications this will have on his mental health and

personal life. Id. The Court stated that “eight charges that drive this train and for each charge I will impose the mandatory sentence...This is specific deterrence....” Id. at 33. Based on the evidence and testimony at the non-jury trial, the impact on the victim, the Appellant’s horrifying abuse of a mentor relationship with an autistic child, and the determination that Appellant’s testimony was not credible, this Court believes that Appellant’s circumstances is well within the discretion of the Court.

Therefore, this Court wholly relies on the initial sentencing conducted on February 17, 2022.

DATE: April 26, 2022

By the Court,

Nancy L. Butts, President Judge

xc: DA (MW)
PD (JL)

NLB/jmh