

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1890-2018
	:	
vs.	:	
	:	
LINDA S. STROUSE,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On January 4, 2019, Defendant was charged with 124 counts of theft and forgery related charges for the money that she stole and spent from the victim, Rose Strouse, now deceased. The Information was amended once on April 12, 2021 to correct the date range of the offenses and again on June 7, 2021, which reduced the charges to the following 25 counts:

1. Fourteen counts of Forgery, a Felony in the Third Degree;
2. One count of Identify Theft, a Felony in the Second Degree;
3. Two counts of Theft by Deception, a Felony in the Third Degree;
4. Six counts of Theft by Unlawful Taking or Disposition, a Felony in the Third Degree;
5. One count of Access Device Fraud, a Felony in the Third Degree; and
6. One count of Theft by Unlawful Taking or Disposition, a Misdemeanor in the First Degree.

Defendant pled open to all of the above counts on June 7, 2021 and on September 2, 2021, this Court sentenced Defendant to the following terms of incarceration, in addition to restitution in the amount of \$72,471.70:

1. On Counts 1 through 14, Forgery, 1 to 2 months;
2. On Count 15, Identity Theft, 1 to 2 months;
3. On Counts 16 and 17, Theft By Deception, 12 to 24 months;
4. On Counts 19 through 21 and Count 24, Theft by Unlawful Taking, 1 to 2 months;
5. On Counts on Count 22, Access Device Fraud, 1 to 2 months;
6. On Count 25, Theft By Unlawful Taking, 6 to 12 months; and
7. Counts 18 and 23, Theft By Unlawful Taking, merged for purpose of sentencing.

All sentences were ordered to run consecutively, for an aggregate period of incarceration of 50 to 100 months in a state correction institution.

On September 13, 2021, Defendant filed a Motion for Post Sentence Relief and argument was held on December 23, 2021. Defendant argues that the Court's sentence was excessive and that the Court gave undue weight to retribution rather than rehabilitation, deterrence, or incapacitation, including the facts that Defendant is 63 years old, has minimal criminal history, and has significant mental and physical health issues. Defendant, who spoke at the time of the December 23, 2021 hearing, stated that she wants to be able to pay back the restitution owed to the victim's family in this case and that she will not be able to do that while in prison. Her job is still available to her and she would like to begin counseling for her anxiety and mental health, as there is no such program available to her in prison.

The Court notes that in addition to Defendant's statement at the time of sentencing, the Court also considered several letters received in support of Defendant's character, statements from the victim's family, the Defendant's criminal history which consists of a

2016 retail theft charge to which Defendant pled no contest, and the Pre-Sentence Investigation Report of August 11, 2021.

According to the No Contest Plea Colloquy, Defendant had a Prior Record Score [hereinafter “PRS”] of 0 at the time of sentencing. Pursuant to the Pennsylvania Commission on Sentencing’s Basic Sentencing Matrix, the Offense Gravity Score [hereinafter “OGS”] and the standard range for the charges to which Defendant pled no contest are as follows:

1. Forgery (Counts 1 – 14) – OGS 3 and standard range of Restorative Sanctions to 1 month;
2. Identity Theft (Count 15) – OGS of 7 and standard range of 6 – 14 months;
3. Theft by Deception (Counts 16 and 17) – OGS of 5 and standard range of Restorative Sections to 9 months;
4. Theft by Unlawful Taking (Counts 18 – 21, 23, and 25) – OGS of 5 and standard range of Restorative Sections to 9 months;
5. Access Device Fraud (Count 22) – OGS of 5 and standard range of Restorative Sections to 9 months; and
6. Theft by Unlawful Taking (Count 24) – OGS of 3 and standard range of Restorative Sanctions to 1 month.

204 Pa. Code § 303.15; 204 Pa. Code § 303.16(a).

The maximum imprisonment for all of the above offenses is 7 years, which the exception of Count 15, Identity Theft, which is 10 years and Count 24, Theft by Unlawful Taking, which is 5 years. 18 Pa.C.S.A. § 1103(2) and (3); 18 Pa.C.S.A. § 1104(1).

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 shall impose a sentence of total confinement if, having regard to the nature and circumstances of the crime and the history, character, and condition of the defendant, it is of the opinion that the total confinement of the defendant is necessary because:

(1) there is undue risk that during a period of probation or partial confinement the defendant will commit another crime;

(2) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(3) a lesser sentence will depreciate the seriousness of the crime of the defendant.

42 Pa.C.S.A. § 9725.

In addition to the above, the Court, when determining a sentence, shall consider 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, the rehabilitative needs of the defendant, and the sentencing guidelines. 42 Pa.C.S.A. § 9721(b).

Here, Defendant pled no contest and allocuted to the following facts:

Throughout the years 2016 to 2018, Defendant came to know the victim, who was over 80 years old, when she married the victim's son and began living with them. During that time, Defendant took over the management of the victim's money and began spending it on new items such as vehicles, a pool, a camper, and an expensive wedding as well as opening credit cards in the victim's name. A total of 63 checks were forged or signed by the victim through deceit and made payable to Defendant with the money being taken out of the victim's bank accounts such that the account balances totaling almost \$47,000 in 2016 had balances of \$0.00 at the time this investigation began in 2018. The check amounts that Defendant wrote to herself range from \$6,000 to \$200. The total amount of the checks Defendant wrote to herself is over \$60,000. Defendant additionally opened a Discover credit card in Defendant's name and charged a total of \$5,012 to it. Defendant also purchased furniture and an air conditioning unit in Defendant's name, totaling \$3,527.70.

Initially, the Court notes that Defendant pled to only 25 counts from what began as a 124 count Information. Over the course of approximately two years, Defendant obtained **63 separate checks** written out from the victim's bank accounts, all of which were either forged by Defendant or signed by the victim under deceptive circumstances created by Defendant. Additionally, Defendant opened two lines of credit in the victim's name without the victim's knowledge or permission. The facts of this case do not demonstrate a misuse of

the victim's money on only one or two occasions. Rather, these are several separate and distinct acts that required deliberate planning and forethought for two years. The money taken did not amount to a couple hundred dollars but several thousands of dollars.

Additionally, the money that Defendant stole from the victim was not spent on necessities such as food or clothing, but rather on luxuries such as a pool and a camper.

Defendant argues that the sentence imposed is not necessary to address the nature and circumstances of the crime and that the Court gave undue weight to retribution rather than rehabilitation, deterrence, or incapacitation. The Court notes that Defendant was on probation for her 2016 theft charge at the time that she was committing these offenses. Clearly, probation did not serve as a strong enough deterrent. Additionally, Defendant was committing these crimes when she was only a few years younger than she currently is. It is not the case here where Defendant committed the crimes several decades before her arrest. Defendant committed these crimes despite her advanced age and thus, she was similarly sentenced.

Defendant took advantage of a situation over several years and destroyed the victim's and the victim's family's financial situation in the process. The Court recognizes that Defendant has a substantial amount of restitution to pay back. However, based on the timeline of her criminal history, her statements at the time of sentencing, and her report to the Adult Probation Office that she "disagrees with multiple points in the affidavit of probable cause" and "requests an opportunity to explain her feelings," the Court is not convinced that Defendant will not seek to exploit additional lucrative circumstances in order to benefit herself financially.

Again, Defendant was sentenced to an aggregate of 50 to 100 months imprisonment

as a result of all counts running consecutive. The Court's sentence was either within or below the standard sentencing guidelines on each count. Additionally, because the facts supporting each count are separate and distinct, the Court finds that a consecutive sentence is justified. Otherwise, if the sentences for the separate and distinct acts were served concurrently, the Defendant would essentially not be held accountable for the vast extent of her crimes. A concurrent sentence would treat her two years of ongoing, deceptive thefts as if she had committed a single act. This is not a single bad act but a lengthy course of purposeful and knowing behavior intended to steal the victim's assets. Anything less than the sentence imposed would lessen the gravity of the offenses and therefore, Defendant's Motion is denied.

ORDER

AND NOW, this 11th day of **January, 2022**, upon consideration of Defendant's Motion for Post Sentence Relief, and for the reasons set forth above, the Motion is **DENIED**. This Court's Sentencing Order of September 2, 2021 shall remain in full force and effect.

Defendant is hereby notified that she 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. She has the right, if she 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. She 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 her right to raise these issues.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (M.Wade)
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