

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0001209-2022
	: CP-41-CR-0001215-2022
vs.	:
	:
MICHAEL BLOOM,	: Opinion and Order Regarding
Defendant	: Defendant's Post Sentence Motion

OPINION AND ORDER

This matter came before the court on the post-sentence motion filed on behalf of Michael Bloom (Bloom).

By way of background, under Information 1209-2022, Bloom was charged with dealing in proceeds for unlawful activity, deceptive business practices, theft by deception, theft by failure to make required disposition, and theft by unlawful taking for taking \$18,000 from the Paintersville Christian Missionary Alliance church on January 30, 2022 for building improvement services and materials which he never provided. Under Information 1215-2022, Bloom was charged with dealing in proceeds for unlawful activity, six counts of deceptive business practices, six counts of misrepresenting or concealing contractor identifying information, six counts of deceptive business practices, six counts of misrepresenting or concealing contractor identifying information, six counts of receiving advance payment for services and failing to perform, six counts of theft by deception, six counts of theft by failing to make required disposition of funds, and six counts of theft by unlawful taking for, between March 4, 2021 and February 7, 2022, taking between \$3,000 and \$24,500 each from six different individuals for building or home improvement services and materials which he never provided. All of the services and materials related to the installation of elevators.

On February 10, 2023, Bloom entered on open guilty plea to Count 5 under Information 1209-2022 and Counts 32 through 37 under Information 1215-2022, each theft by unlawful taking graded as a felony of the third degree.

On April 27, 2023, the court sentenced Bloom to an aggregated term of 2 ½ years to 7 years' incarceration in a state correctional institution.

On May 5, 2023, Bloom filed a post sentence motion in which he alleged that although each sentence imposed was within the mid to high range of the standard guidelines, his sentence was excessive because each count was run consecutive to each other, and Bloom made extraordinary efforts to pay restitution in full to each victim prior to sentencing. Bloom asked the court to re-sentence him to the bottom of the standard guidelines and run each sentence concurrent.

The court held a hearing and argument on August 15, 2023 on Bloom's post-sentence motion. Defense counsel argued that the court failed to consider or failed to adequately consider that: (1) Bloom could no longer work in the construction/contractor industry; (2) Bloom's payment of restitution in full lessened the impact the victims; and (3) state incarceration does nothing and negatively impacts his rehabilitative needs.

The Commonwealth disagreed with defense counsel's assertions. The Commonwealth argued that the sentence imposed was well within the court's discretion. The court had the benefit of a pre-sentence investigation (PSI), the sentences imposed were within the standard ranges for each count, and the aggregate sentence imposed was within the statutory maximum for a single offense.

DISCUSSION

Sentencing is a matter vested within the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Rush*, 162 A.3d 530, 544 (Pa. Super. 2017), citing *Commonwealth v. Crump*, 995 A.2d 1280, 1282 (Pa. Super. 2010); see also *Commonwealth v. Perry*, 32 A.3d 232, 236 (Pa. 2011). “An abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.” *Perry*, *id* (internal quotations omitted), citing *Commonwealth v. Walls*, 926 A.2d 957, 961 (Pa. 2007).

In imposing the sentence, “the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant.” 42 Pa. C.S.A. § 9721 (b).

The court is also guided by § 9781 (d) of the Judicial Code, which requires appellate courts in reviewing a sentence to determine from the record whether the court considered: “(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the opportunity of the sentencing court to observe the defendant, including any pre-sentence investigation; (3) the findings upon which the sentence was based; and (4) the guidelines promulgated by the commission.” 42 Pa. C.S.A. § 9781 (d). In determining if a sentence is excessive or unduly harsh, great weight must be afforded to the sentencing court’s discretion. *Commonwealth v. Colon*, 102 A.3d 1033, 1043 (Pa. Super. 2014), quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

Where the sentencing court is informed by a presentence investigation report (“PSI”), it is presumed that the sentencing court was aware of relevant information regarding the

defendant's character and weighed those considerations and the appropriate sentencing factors. *Commonwealth v. Harper*, 273 A.3d 1089, 1097-1098 (Pa. Super. 2022); *Commonwealth v. Hill*, 210 A.3d 1104, 1117 (Pa. Super. 2019). “[W]here the court has been so informed, its discretion should not be disturbed.” *Harper*, 273 A.3d at 1098. “Further, where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code. *Hill, id* (citing *Commonwealth v. Moury*, 992 A.3d 162, 171 (Pa. Super. 2010)).

An allegation of excessiveness due to the imposition of consecutive sentences implicates the discretionary aspects of sentencing. *Commonwealth v. Mastromarino*, 2 A.3d 581, 585 (Pa. Super. 2010). The imposition of consecutive, rather than concurrent, sentences only raises a substantial question in the most extreme circumstances. *Moury*, 992 A.2d at 171. Furthermore, a defendant is not entitled to a volume discount for his crimes. *Commonwealth v. Prisk*, 13 A.3d 526, 533 (Pa. Super. 2011); *Commonwealth v. Hoag*, 665 A.2d 1212, 1214 (Pa. Super. 1995).

Bloom pleaded guilty to seven counts of theft by unlawful taking, each graded as a felony of the third degree. The maximum sentence the court could impose for each count was 7 years' incarceration or \$15,000 in fines or both or an aggregate of 49 years and \$105,000. Each offense had an offense gravity score (OGS) of five.

Bloom had a prior record score (PRS) of one on all offenses, except Count 32 which occurred between March of 2021 and October of 2021, as the victim with respect to that count made several payments to Bloom. All the other offense occurred after July 6, 2021. Bloom's prior record consisted of: a bad checks conviction graded as a misdemeanor of the first degree from Centre County in 2012 (see CP-14-CR-0002167-2011) for which he

received a sentence of one year of probation; a conspiracy to commit theft by unlawful taking graded as a misdemeanor of the first degree from Luzerne County on July 6, 2021 for which he was sentenced to 36 months' probation (see 40-CR-3271-2017); a conspiracy to commit theft by unlawful taking graded as a misdemeanor of the first degree from Luzerne County for which he was sentenced on July 6, 2021 to a concurrent term of 36 months' probation (see 40-CR-696-2019); and a conviction for receiving advance payments for services but failing to perform, a misdemeanor of the first degree, for which he was sentenced on July 6, 2021 to a concurrent term of 36 months' probation (see 40-CR-697-2019).

With an OGS of five and a PRS of one, the standard guideline range for each offense except Count 32 was 1-12 months. The standard range for Count 32 was RS-9 months. On Counts 5 of 1209-2022 and Count 33 of 1215-2022, the court imposed a minimum sentence of six months and a maximum sentence of twelve months. On the remaining counts, the court imposed a minimum sentence of three months and a maximum sentence of twelve months. Therefore, contrary to Bloom's assertions in his motion, his minimum sentences were in the low to mid-range of the sentencing guidelines, not the mid to high-range.

The court considered the fact that Bloom pleaded guilty and he paid restitution in full prior to sentencing. Those were the only two factors that weighed in favor of Bloom. Even these factors, however, were offset somewhat. Contrary to defense counsel's arguments, the victims were not made "whole." Although the money they paid to Bloom was eventually returned to them, they did not have elevators installed in their homes in a reasonable time as they had contracted for from Bloom and they did not have the money for a year or more to pay someone else to complete the job that Bloom did not. In fact, Bloom never even placed an order for the elevators. For example, in her victim impact statement the victim of Count

32 (Victim #2) stated that Bloom's "scam personally cost her more than just the money he stole from her," the elevator scam took [her] "two years to get completely out from under", she still has not had the elevator inspected and "all of the delay has been because of him." Furthermore, the court finds that Bloom paid full restitution prior to sentencing not out of concern for the victims but rather because it was a condition of his plea agreement and to benefit himself at sentencing.

Bloom's acceptance of responsibility by pleading guilty was diminished somewhat by his version of the offenses in the PSI. The PSI stated the following regarding Bloom's version:

[Bloom] reports that it was never his intention to steal money from anyone. He reports that he experienced a series of unfortunate events that began in the fall of 2021 that resulted in him experiencing a high amount of stress and depression, which caused a lack of focus on his work. More specifically, he reports that in October of 2021 his contract manager called a months' worth of customers and told them that they were not certified to do installations, causing them all to panic and put a dispute in with their credit card company. This resulted in QuickBooks removing \$120,000 in funds from his business account. He relates that this setback his company severely. A few months later, in January of 2022, his fiancée's granddaughter was murdered. [Bloom] reports that he loved her like his own. He also reports that during the same span of time his mother was hospitalized and almost died. As a result of this, [Bloom] reports that he neglected his work due to the stress and depression and things did not get done. He said it was never his intention to steal from people and that he is going to pay restitution in full.

Bloom is blaming his business's financial woes in part on his contract manager, rather than his own actions. Instead, it appears that Bloom was "taking from Peter to pay Paul", so to speak. Additionally, he received payments or partial payments prior to October 2021 from the victims of Counts 32, 33, and 34, who for their privacy will be referred to as Victim #2,

Victim #3 and Victim #4, respectively.¹

In comparison, there were a multitude of factors weighing against Bloom in this case. First, he was given substantial breaks in the past and did not take advantage of them. Bloom's crimes in his Luzerne County cases were reduced from felonies of the third degree to misdemeanors of the first degree. He also was permitted to plead no contest instead of guilty. He received concurrent sentences of 36 months' probation and his contractor license was revoked. The license revocation did not stop Bloom, however, from continuing to enter contracts and to take money from the seven victims in this case.

Second, he committed the same offenses over the course of more than seven years. The offense dates for his Luzerne County cases were December 28, 2015; October 26, 2016; and November 2, 2018. After he was charged in 2017 and 2019, his cases were delayed for years. He eventually entered a no contest plea on April 27, 2021 and was sentenced on July 6, 2021. In his current cases, the amounts and dates Bloom took money from the victims were as follows: Victim #2 - \$24,500 between March 4, 2021 through October 22, 2021; Victim #3 - \$22,000 between July 13, 2021 and December 9, 2021; Victim #4- \$12,000 on September 17, 2021; Victim #5 - \$9,860 on October 8, 2021; Victim #6 -\$17,750 on October 16, 2021; Victim #1 - \$18,000 on January 30, 2022; and Victim #7-\$3,000 on February 7, 2022.

Third, Bloom committed the offenses in this case while he was on bail, awaiting sentencing and on probation for the same type of offenses in Luzerne County. One would think that a sentence of three years' probation and the revocation of his contractor license

¹ For ease of reference, the court will refer to the church victim of Count 5 under Information 1209-2022 as Victim #1 and the victims of Counts 35, 36 and 37 under Information 1215-2022 as Victim #5, Victim #6 and

would have at least a little deterrent effect but it had absolutely no effect on Bloom. He was sentenced in Luzerne County and his contractor license was revoked on July 6, 2021, and he took a deposit or a partial deposit to install an elevator for Victim #3 on July 13, 2021. In other words, a later week Bloom was right back to committing the same crimes.

Fourth, Bloom is not entitled to a volume discount for his crimes. He already received a volume discount for his crimes in Luzerne County when he received concurrent sentences of probation there.

Fifth, most of the victims were elderly individuals. Victim #2 and Victim #7 were 84 years old. Victim #3 and Victim #4 were 75 years old. Victim #5 was 63 years old. Victim #6 was less than 60 years old, and Victim #1 was a church.

Sixth, there were seven different victims of seven separate felonies of the third degree. An aggregate sentence of 2 ½ years to 7 years is not unreasonable or excessive for multiple felonies against multiple victims. As the Commonwealth noted in its argument, the court could have imposed such a sentence for a single count in this case.

The court weighed the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant. The court concluded that a short sentence for each offense in the low to mid-range of the sentencing guidelines run consecutively to each other would provide justice to each of the victims without imposing an excessive or unreasonable sentence against Bloom. Based on all of the reasons set forth above, the court found that a sentence of probation or county incarceration was not appropriate in this case. When a defendant resumes his criminal activity within a week of his sentencing in another case involving the same type of

Victim #7, respectively.

crimes, a harsher sentence needs to be imposed for that individual receive the message and for the protection of the public to be ensured by state incarceration for at least a couple of years. The court agreed with Victim #2's victim impact statement that "If he spends a few years in jail for all his corruption I think it would be proper punishment for him."

The court will briefly address defense counsel's specific arguments.

Defense counsel first argued that the fact that Bloom entered a consent decree that he will no longer work in the construction/contractor industry is a positive impact on the protection of the public. The court disagrees. Unfortunately, the consent decree is little more than a promise on a piece of paper. Bloom had his contractor's license revoked on July 6, 2021, and he was placed on probation for 36 months. Since the lack of a license and the specter of going to jail for violating his probation were not sufficient to protect the public for more than a week, the court puts little to no weight on Bloom's promise not to work in the construction/contractor industry again.

Defense counsel next argued that payment of restitution in full lessened the impact on the victims as compared to receiving restitution in "dribs and drabs" while Bloom was incarcerated. Defense counsel argued that if the court had weighed this factor accurately in Blooms favor, it would send a message to others that when one makes the victims whole by paying restitution in full, there is a benefit. The court disagrees. Bloom did receive a benefit. The court would have imposed a longer sentence or his guilty plea would have been revoked had he not paid full restitution by the time of sentencing. Additionally, if this were Bloom's or anyone else's first offenses, the court might agree with counsel, but it isn't. Bloom paid restitution to his prior victims and kept committing the same offenses. Bloom entered an open plea because he was unwilling to accept any incarceration for his crimes and he wanted

to argue for probation, which he did but the court rejected. Under the facts and circumstances of this case, accepting defense counsel's argument would send the wrong message to others that as long as you are a person who can throw money at your problems, you can keep committing crimes and avoid incarceration. The court is unwilling to send that kind of message. Justice should be equal under the law.

Finally, defense counsel argued that state incarceration does nothing in this case but negatively impact Bloom's rehabilitation needs. Bloom had a good paying job which enabled him to pay back his victims, be a productive member of society, and support his significant other and family members. Defense counsel did not believe that the court took this factor into consideration when it imposed consecutive sentences on each count. The court could have imposed a sentence of county incarceration with work release eligibility which would have allowed Bloom to continue to be a productive member of society.

With all due respect to defense counsel and Bloom, such a sentence would not send a strong enough message to Bloom. He is still minimizing his crimes and his culpability in them. He should have thought about his significant other and his family before he continued to commit these types of crimes. The court also questions whether he could remain at the job he had prior to his sentencing. The PSI lists his employment as being a "consultant" for Pro Edge by Custom Built, which is a home-improvement company that the court believes is involved in the sale and installation of replacement windows and doors. Bloom indicated at sentencing that he "taught" home-improvement sales for that company. Although Bloom does not own or run the company, the court does not see much difference between sales of elevators and sales of windows and doors. It still seems to be working in the construction industry.

ORDER

AND NOW, this 16th day of August 2023, the court DENIES Bloom's post-sentence motion.

Bloom is advised that he has the right to appeal. Any appeal must be filed within 30 days of the date of this Order.

Bloom is advised that he has the right to assistance of counsel in the preparation of the appeal.

Bloom is advised that he has a qualified right to bail under Rule 521(B). In other words, when the sentence imposed is less than 2 years, he shall have the same right to bail as before his guilty plea and sentencing, unless the judge, pursuant to paragraph (D), modifies the bail order. When the sentence imposed is 2 years or more, he does not have a right to bail, but bail may be allowed in the discretion of the judge.

By The Court,

Nancy L. Butts, President Judge