

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0000966-2021
	:
vs.	:
	: Opinion and Order re
LATOYA HALL,	: Hall's Nunc Pro Tunc Post Sentence
Defendant	: Motion

OPINION AND ORDER

This matter came before the court on the Nunc Pro Tunc Post Sentence Motion filed on behalf of Defendant Latoya Hall ("Hall").

By way of background, Hall was charged with four counts of arson endangering persons, five counts of criminal attempt homicide, four counts of aggravated assault, four counts of false imprisonment, one count of arson endangering property of another, and one count of risking a catastrophe as a result of barricading herself and her minor children in her bedroom of her second-floor apartment and setting her bedroom curtains on fire. On September 3, 2021, Hall entered a guilty plea to a consolidated count of arson endangering persons encompassing counts 1 through 4, a consolidated count of false imprisonment encompassing counts 14 through 17, and Count 19, risking catastrophe. In exchange for the guilty plea, the Commonwealth agreed to a minimum sentence of 7 years and a maximum sentence of 25 years' incarceration in a state correctional institution and dismissal of the remaining charges. On December 21, 2021, the court sentenced Hall to 4 to 15 years for arson, a consecutive 2 to 5 years for false imprisonment, and a consecutive 1 to 5 years for risking catastrophe for an aggregate sentence of 7 to 25 years' incarceration in accordance with the plea agreement. Plea counsel did not file post sentence motions or an appeal on behalf of Hall.

On or about December 19, 2022, Hall filed a Post Conviction Relief Act (PCRA) petition in which she asserted that counsel was ineffective for failing to file a request for a competency evaluation, stating that the charge of risking catastrophe would be dismissed, and refusing to appeal after her request in writing to do so. She also alleged that the court abused its discretion by sentencing her to a maximum sentence of 15 years for arson, running her sentences consecutive to each other and failing to consider her mental health issues.

The court appointed counsel to represent Hall and gave PCRA counsel 60 days within which to file either an amended PCRA petition or a no-merit letter. PCRA counsel reviewed all of Hall's issues except the failure to appeal and found that they lacked merit, so he filed a no-merit letter. At a conference held on June 13, 2023, the court inquired about the failure to appeal claim. The court gave PCRA counsel an additional 30 days to investigate the failure to appeal issue and file either an amended PCRA petition or a supplemental no-merit letter.

On June 22, 2023, PCRA counsel filed an amended PCRA petition in which he asserted that counsel was ineffective for failing to file a requested appeal, and that to effectuate such an appeal and have the issues properly preserved for appeal, the court should grant the right to file a post sentence motion nunc pro tunc.

On August 11, 2023, the Commonwealth agreed that Hall's post sentence and appeal rights should be reinstated nunc pro tunc. The court granted Hall's PCRA petition with respect to the failure to file a requested appeal and gave PCRA counsel 10 days within which to file a post sentence motion nunc pro tunc.

On August 17, 2023, PCRA counsel filed on behalf of Hall a Nunc Pro Tunc Post Sentence Motion for Reconsideration of Sentence, in which it was asserted that the court imposed a manifestly unreasonable and excessive sentence without a sufficient statement of

reasons and without considering the individual factors relating to Hall.

At the argument scheduled on this matter, PCRA counsel indicated that he was surprised the court scheduled an argument on the petition and he was going to rely on the assertions in his motion. He acknowledged that the sentence imposed was in accordance with the plea agreement and, as a result, he would likely be required to file an *Anders* brief on appeal. With that acknowledgement, the Commonwealth did not have any argument.

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, as here, the parties reach a specific, negotiated sentence in the plea agreement, the court cannot modify the sentence; it must abide by the terms of the plea agreement. *Commonwealth v. Parsons*, 969 A.2d 1259, 1268 (Pa. Super. 2009)(when the parties enter a plea agreement on the record, and the court accepts and approves the plea, then the parties and the court must abide by the terms of the agreement); *Commonwealth v. Townsend*, 693 A.3d 980, 983 (Pa. Super. 1997)(where the parties have reached a specific sentencing agreement and the court has conducted a colloquy with the defendant regarding the terms of the agreement, the court cannot later modify the terms of the agreement). The parties reached an agreement for a specific sentence of 7 to 25 years’ incarceration in this case. Therefore, the court is prohibited from imposing a lesser sentence.

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ORDER

AND NOW, this 12th day of September 2023, the court denies Hall's Motion to Reconsider Sentence.

By The Court,

Nancy L. Butts, President Judge