

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1399-2022
	:	154 MDA 2024
vs.	:	
	:	
RODNEY POUST,	:	
Appellant	:	Appeal

Date: April 3, 2024

**OPINION IN COMPLIANCE WITH RULE 1925(a) OF THE
RULES OF APPELLATE PROCEDURE**

On or about October 15, 2022, Rodney Poust (“Appellant”) was charged with Aggravated Indecent Assault, Strangulation, False Imprisonment, Aggravated Assault, Rape, Indecent Assault, and Simple Assault. These charges stemmed from an incident wherein the Appellant physically and sexually assaulted his paramour over a period of several hours. A jury trial was held on August 11, 2023, where, after the close of testimony, the defense made an oral motion for a demurrer on Count 4, Aggravated Aassault. The Court granted the motion and dismissed Count 4, after which an Order was entered amending the Information to reflect that Count 4 would be Rape by Forcible Compulsion; Count 5 would be Indecent Assault; and Count 6 would be Simple Assault. Counts 1, 2, and 3 of the Information remained the same. The jury returned a verdict of guilty on all 6 Counts and answered in the affirmative to the special question of whether Count 2, Strangulation, was committed by a family or household member.

On December 19, 2023, the Appellant was sentenced on Count 1, aggravated indecent assault, forcible compulsion, to a period of incarceration of three (3) to six (6)

years; on Count 2, strangulation, applying pressure to throat or neck, to a period of incarceration of three (3) to six (6) years; on Count 3, false imprisonment, to probation for a period of two (2) years; on Count 4, rape, forcible compulsion, to a period of incarceration of six (6) to twelve (12) years; on Count 5, indecent assault, forcible compulsion, to probation for a period of two (2) years; and on Count 6, simple assault, to probation for a period of two (2) years. Counts 1 and 2 shall run concurrent to each other and Count 4 shall run consecutive to the sentences imposed on Counts 1 and 2 for an aggregate sentence of nine (9) to eighteen (18) years incarceration in a state correctional institution, with credit for time served. The Appellant was determined not to be a sexually violent predator.

On December 29, 2023, the Appellant filed a Motion to Reconsider Sentence, requesting that the court run all counts concurrent. Appellant averred that the Court did not give enough weight to the fact that all convictions stemmed from one incident drawn out over several hours. On January 3, 2024, the Court denied the Motion for Reconsideration without a hearing, indicating that the Court specifically addressed the issue of consecutive sentences based upon the nature and duration of the incident. Appellant filed a timely Notice of Appeal on January 29, 2024, and on March 6, 2024, filed a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. §1925(b). Appellant raises the following issues on appeal:

1. The Defendant submits the court erred in precluding the Defense from presenting the testimony of Robert Saiers, former paramour of alleged victim, that Wendy Maneval, alleged victim, had admitted to making false allegations of sexual nature against him. Defense contends this does not fall within the Rape Shield Law because it does not involve past sexual history. Additionally, precluding it violated Defendant's constitutional right to a fair trial.
2. The Defense submits the court erred in allowing the SANE nurse to testify to

statements made by Wendy Maneval, during the SANE examination, ruling that they were admissible hearsay under the medical treatment exception.

3. The Defense submits the court abused its discretion when it imposed an aggregate sentence of 9 to 18 years. Defense contends the court abused its discretion by running counts consecutive when they should have been run concurrent because it was one single event.

The first issue raised by the Appellant was the subject of a Motion to Preclude Testimony filed by the Commonwealth four days prior to the trial. The second issue arose from an oral motion made by Appellant's counsel at the time of the argument on the aforementioned Motion to Preclude Testimony. Both of these issues were addressed, and the reasons for the Court's rulings given in an Opinion and Order filed on August 9, 2023. The Court will rely on that Opinion and Order for purposes of this appeal.

With regard to the Appellant's third issue, he alleges this Court abused its discretion when it imposed an aggregate sentence of 9 to 18 years and ran counts consecutive when they should have been run concurrent. "Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." *Commonwealth v. Hess*, 745 A.2d 29, 31 (Pa. Super. 2000). "An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to 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." *Id.* The trial court is afforded broad discretion in sentencing criminal defendants "because of the perception that the trial court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it." *Commonwealth v. Mouzon*, 571 Pa. 419, 812 A.2d 617, 620 (Pa.2002) (quoting *Commonwealth v. Ward*, 524 Pa. 48, 568 A.2d 1242, 1243 (1990)).

Furthermore, under 42 Pa.C.S.A. § 9721, the court has discretion to impose sentences consecutively or concurrently and, ordinarily, a challenge to this exercise of discretion does not raise a substantial question. *Commonwealth v. Pass*, 914 A.2d 442, 446–47 (Pa.Super.2006). The imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment. *Id.*

The Court submits that it considered several factors when fashioning the Appellant’s sentence and choosing to run two counts concurrent to each other and one count consecutive to those counts, including: the victim’s statement at sentencing, the fact that, although all convictions arose from one incident the acts perpetrated against the victim were particularly egregious and occurred over a period of multiple hours with breaks in between, almost as if they were multiple incidents, and the Appellant’s apparent lack of remorse. However, the Court notes that, despite language in its Order docketed February 14, 2024, directing Appellant’s counsel to request the necessary transcripts in accordance with Pa.R.A.P. 1911 within five (5) days, no transcript of the sentencing was requested. “When the appellant fails to conform to the requirements of Rule 1911, any claims that cannot be resolved in the absence of the necessary transcript or transcripts must be deemed waived for the purpose of appellate review.” *Commonwealth v. Preston*, 904 A.2d 1, 7 (Pa. Super. 2006). “It is not proper for either the Pennsylvania Supreme Court or the Superior Court to order transcripts nor is it the responsibility of the appellate courts to obtain the necessary transcripts.” *Id.*

While this Court is of the opinion that it was well within its discretion to impose the

sentence it did upon the Defendant given the individual circumstances of the matter, the Court is also of the opinion that the Appellant has waived his challenge as he has not requested the transcripts that would be necessary to support his argument that the record disclosed that the judgment exercised by this court was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will. *See Com v. Hess, supra*.

For all of the foregoing reasons, this Court respectfully requests that the Appellant's appeal be dismissed and his judgment of sentence dated December 19, 2023, be affirmed.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: Superior Court (Original +1)
DA
PD (Howard Gold, Esquire)
Gary Weber, Esquire
Jennifer Linn, Esquire