

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY NASTATOS,	§
	§ No. 158, 2013
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. ID No. 1102018112
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 9, 2014  
Decided: April 15, 2014

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

This 15th day of April 2014, it appears to the Court that:

1) The defendant-appellant, Anthony Nastatos (“Nastatos”), appeals from a Superior Court conviction of three counts of felony Breach of Conditions of Release, one count of Harassment, and sixteen counts of Non-Compliance with Bond Conditions. Nastatos also appeals his sentence of thirty-two years at Level V, suspended after sixteen years.

2) Nastatos raises two claims on appeal: first, that the trial court abused its discretion when it allowed the State to present to the jury thirty-eight documents, including several Facebook messages, without properly authenticating them as required by D.R.E. 901; and, second, that the trial court, acting with a closed mind and relying on impermissible and erroneous

facts, erred in deviating significantly upward from the presumptive sentence of various non-violent felonies and misdemeanors, which resulted in the imposition of a cruel and unusual punishment. Nastatos voluntarily withdrew his first claim following our decision in *Parker v. State*.<sup>1</sup> We have determined that Nastatos' remaining claim is without merit. Therefore, the judgments of the Superior Court must be affirmed.

3) Nastatos and Alexandra Koval ("Koval") met in August 2009, while working at the same restaurant on Route 202 in New Castle County. The two developed a friendly relationship. Soon after they met, Nastatos anonymously covered Koval's car with flower petals. He later admitted to the act and told her he had romantic feelings for her. Koval told Nastatos she did not have romantic feelings for him.

4) A few days later, Koval and Nastatos went shopping together, had dinner at a restaurant, and met another co-worker for drinks that night. Nastatos' behavior that night made Koval uncomfortable. Koval's discomfort forced her to cancel other plans they had made together. After that, she avoided Nastatos.

5) A couple of months later, Koval's car ran out of gas and she was required to take a different vehicle to work. Nastatos left a can of gas

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<sup>1</sup> *Parker v. State*, 85 A.3d 682 (Del. 2014).

for Koval at work. Later, another can of gas was found at her house next to her car. After this, Nastatos began to regularly send Koval lengthy love poetry via text messages, and to wait for Koval after work. Koval told Nastatos that these overtures made her uncomfortable and asked him to leave her alone.

6) Nastatos then attempted to “friend” Koval on Facebook, under the pseudonym “Anakin Skywalker.” Koval rejected this friend request. Next, Nastatos attempted to friend Koval from a Facebook account attached to his real name. Koval neither accepted nor denied this friend request. The pending friend request allowed Nastatos to send Koval private messages on the Facebook website.

7) In the spring of 2010, Nastatos sent Koval a late night text message containing a long poem. Koval told her coworker about the text, and Nastatos’ previous behavior. The co-worker told the restaurant’s management. Koval’s manager examined the text messages and transferred Nastatos to another location.

8) Around this time, Koval also made her first report to the New Castle County Police Department (“NCCPD”). The NCCPD told Koval to block Nastatos’ cell phone number, which she did. Nastatos then began regularly contacting Koval on Facebook, both through the account

associated with his own name and the account with the name “Anakin Skywalker.”

9) In various messages, Nastatos called Koval his “wife” and “soul sister.” He also referenced Koval contacting the police, a necklace he had given Koval, and mutual friends and co-workers. Nastatos asserted his belief that the restaurant management was conspiring against him. In one message, Nastatos said, “I love you like I’ve never loved another person, but I can only do so much, especially when you are working against me.” Nastatos also referenced a desire to “challenge” anyone for Koval’s “hand.”

10) In September 2010, Koval again contacted the NCCPD. Police visited Nastatos, who claimed he and Koval were dating. The police advised Nastatos to stay away from Koval. Nastatos then expressed a belief that the police, the restaurant management, and Koval’s father were all “in on” keeping Koval and Nastatos apart.

11) The police visit did not dissuade Nastatos. He sent Facebook messages to Koval twice after the visit, referencing their prior dinner together and stating he was going to come to her new restaurant working location to see her. The NCCPD then arrested Nastatos. The Justice of the Peace placed bail conditions on Nastatos to have no more direct or indirect contact with Koval.

12) Nastatos continued to regularly send Koval Facebook messages, begging her to talk to him. Nastatos also sent a message to Koval's father discussing Koval and referencing the restaurant management's conspiracy to keep him and Koval apart. In January 2011, Nastatos sent Koval a Facebook message telling her the no-contact order did not matter because the two were bound by a higher power. Nastatos continued to regularly send Koval Facebook messages referencing her employer, the NCCPD, and his desire to meet with her.

13) On February 9, 2011, Nastatos sent Koval a message stating he would be at the Riverfront in Wilmington waiting for her. Koval was at her second job at a restaurant at the Riverfront and saw Nastatos outside of the window of the restaurant. The two did not interact.

14) Six days later, Nastatos arrived at the restaurant which was Koval's primary place of employment and attempted to speak with Koval. Koval ran to her car. As she was fleeing, Nastatos threw a ring box at her. Koval contacted the NCCPD. Nastatos sent Koval a Facebook message saying that the restaurant manager would be holding the ring for Koval.

15) Four days later, Nastatos sent Koval the following Facebook message:

Allie, I'm in love with you. Never in my life have I cared about one person more than you. Half of me wants to kill people for

interfering. If you ask, I will. . . . I have had many people take a knee to me. Never have I kneeled to another person until I kneeled to you. I will be wearing our wedding bands until I see you again.

16) Koval contacted the NCCPD, who arrested Nastatos for additional charges. The Justice of the Peace Court issued a second no-contact order.

17) In March 2011, while incarcerated, Nastatos sent Koval a letter asking if she would marry him. He sent her a second letter five months later, referring to her as “Alexandra Nastatos” and professing his continued love for her. In this second letter, he also referenced her employer and his interactions with the NCCPD. Eight months later, Nastatos sent Koval a third letter. In this letter, he referenced her employer, the restaurant manager the NCCPD, and Koval’s father.

18) Nastatos was charged with one count of felony Breach of Conditions of Bond During Commitment for each letter. He was also charged with Stalking and one count of misdemeanor Non-Compliance with Conditions of Bond for each of the Facebook messages he sent after his bond condition was ordered.

19) Nastatos was deemed incompetent to stand trial due to mental illness. In January 2012, while held at the Delaware Psychiatric Center (“DPC”), Nastatos threatened a staff member. DPC determined that this

threat was not related to his mental illness. Nastatos further refused to engage in treatment and refused to appear in court. Through his treatment at DPC, Nastatos' competency was deemed to have been restored.

20) As a result, DPC transferred him to the custody of the Delaware Department of Corrections ("DOC"). Upon his incarceration at DOC, Nastatos stopped taking his medications and was again deemed incompetent. He returned to the DPC for treatment. Nastatos eventually agreed to cooperate with the DPC program. In August 2012, DPC declared that Nastatos was competent to stand trial.

21) In December 2012, Nastatos' case proceeded to trial. The jury found Nastatos guilty of Harassment as a lesser-included offense of Stalking, three felony counts of Breach of Conditions During Commitment, and sixteen counts of Non-Compliance with Conditions of Bond. While he was awaiting sentencing, the State transferred Nastatos from DPC to DOC.

22) Following his trial, a presentence investigation revealed that Nastatos was diagnosed with schizophrenia in 2000. In 2003, he attempted suicide and suffered from a major depressive disorder with psychotic symptoms and R/O bipolar disorder.<sup>2</sup> He was treated for a psychotic disorder again in March 2010.

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<sup>2</sup> The Presentence Report is available as a separate filing on the docket.

23) At his sentencing hearing, the trial judge considered the nature of Nastatos' crime, his refusal to obey conditions of bail or incarceration, his refusal to cooperate with treatment, his significant criminal history, and the effect his behavior had on Koval. The trial judge sentenced Nastatos to a total of thirty-two years of incarceration at Level V, suspended after sixteen years.

24) Nastatos appealed his conviction and sentence to this Court. During the pendency of his appeal, we decided *Parker v. State*. In that case, we held that "social media evidence should be subject to the same authentication requirements under the Delaware Rules of Evidence Rule 901(b) as any other evidence."<sup>3</sup> Based on our decision in *Parker*, Nastatos voluntarily withdrew his first claim relating to the State's authentication of his text messages and social media evidence. Thus, only his claim related to his sentence remains.

25) Nastatos claims that the trial judge acted with a closed mind and improperly deviated from the sentencing guidelines by sentencing him to a minimum of sixteen years in prison. The Delaware Code delineates the statutory ranges for incarceration for Nastatos' convictions as follows:

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<sup>3</sup> *Parker v. State*, 85 A.3d 682, 687 (Del. 2014).



- Felony Breach of Bond Condition (three counts) – Zero to five years;<sup>4</sup>
- Misdemeanor Non-Compliance with Bond Conditions (sixteen counts) – Up to one year;<sup>5</sup> and
- Misdemeanor Harassment (one count) – Up to one year.<sup>6</sup>

26) The statutory maximum sentence for Nastatos’ combined twenty counts is thirty-two years. Thus, the trial judge’s sentence was within the statutory limits.

27) When a sentence is within statutory limits, we review for an abuse of discretion.<sup>7</sup> We will not “find error of law or abuse of discretion unless it is clear from the record below that a sentence has been imposed on the basis of demonstrably false information or information lacking a minimal indicium of reliability.”<sup>8</sup> Constitutional claims are reviewed *de novo*.<sup>9</sup>

28) “[A] sentencing court has broad discretion to consider ‘information pertaining to a defendant’s personal history and behavior which is not confined exclusively to conduct for which the defendant was convicted.’”<sup>10</sup> “A judge sentences with a closed mind when the sentence is

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<sup>4</sup> Del. Code Ann. tit. 11, §§ 2113(c)(1), 4205(5).

<sup>5</sup> *Id.* §§ 2113(c)(2), 4206(a).

<sup>6</sup> *Id.* §§ 1311(b), 4206(a).

<sup>7</sup> *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

<sup>8</sup> *Id.* at 843 (citations omitted).

<sup>9</sup> *Ploof v. State*, 75 A.3d 840, 851 (Del. 2013).

<sup>10</sup> *Mayes v. State*, 604 A.2d at 842 (quoting *Lake v. State*, 1984 WL 997111, at \*1 (Del. Oct. 29, 1984)).

based on a preconceived bias without consideration of the nature of the offense or the character of the defendant.”<sup>11</sup>

29) In sentencing Nastatos, the trial judge explained his deviation from the sentencing guidelines:

So to the extent the sentence I’m about to impose exceeds that recommended by SENTAC, I cite excessive cruelty, prior criminal conduct, repetitive criminal conduct, prior criminal conduct (*sic*), need for correctional treatment, undue depreciation of the offense, custody status at time of some of the offenses, lack of remorse, lack of amenability, and vulnerability of the victim.

30) Nastatos first argues that the trial judge erred in considering aggravating factors not listed in the SENTAC Benchbook.<sup>12</sup> For example, the Benchbook lists only “excessive cruelty” as an aggravating factor under the violent crime category.<sup>13</sup> As none of Nastatos’ crimes were violent, he argues the trial judge erred in considering this aggravating factor.

31) We have consistently held that trial courts are not required to follow the recommendations of the Sentencing Commission.<sup>14</sup> “Sentencing guidelines are voluntary and nonbinding and do not provide a basis for

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<sup>11</sup> *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).

<sup>12</sup> Delaware Sentencing Accountability Commission, SENTAC Benchbook (2013), available at [http://courts.delaware.gov/Superior/pdf/benchbook\\_2013.pdf](http://courts.delaware.gov/Superior/pdf/benchbook_2013.pdf) [hereinafter Benchbook].

<sup>13</sup> Benchbook at 124.

<sup>14</sup> *Dennis v. State*, 65 A.3d 616, 2013 WL 1749807 (Del. Apr. 23, 2013) (Table); *Mayes v. State*, 604 A.2d at 845; *Gaines v. State*, 571 A.2d 765, 766-67 (Del. 1990).

appeal.”<sup>15</sup> In deciding Nastatos’ sentence, the trial judge looked to Nastatos’ criminal history. This included violent incidents,<sup>16</sup> his continued harassment of Koval despite court orders and incarceration, the mental anguish caused by his harassment on Koval and her family, reports from Delaware Psychiatric Center staff of Nastatos’ violent threats, and his refusal to engage in treatment. Because the trial judge’s consideration of “excessive cruelty” is not an error of law and was based on reliable information, it does not amount to an abuse of discretion.

32) Nastatos next argues that his history of mental health trouble should have mitigated his sentence. Specifically, Nastatos contends that the trial judge failed to consider his mental health at the time of the crimes when deciding his sentence. This claim, however, is not supported by the record.

33) The record reflects that the State presented the Presentence Report to the trial judge, which included an analysis of Nastatos’ psychiatric condition. Rather than ignoring Nastatos’ mental health, the record shows that the trial judge was concerned with public safety in fashioning an appropriate sentence. In response to Nastatos’ assertion that he was not

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<sup>15</sup> *Dennis v. State*, 2013 WL 1749807 at \*3.

<sup>16</sup> The Presentence Report shows Nastatos has been convicted of Attempted Burglary Second Degree, Criminal Mischief, Offensive Touching.

violent, the trial judge questioned whether the court “should wait until he becomes violent for the court to take protective or prophylactic measures[.]”

34) The record reflects that the trial judge did consider Nastatos’ mental health history. There is no evidence that the trial judge relied on inaccurate or unreliable information. The sentence was within the statutory range and, thus, within the “broad discretion” of the trial court.<sup>17</sup>

35) The record also demonstrates that, prior to sentencing, the trial judge addressed Nastatos’ “closed mind” argument. Specifically, the trial judge stated: “I do not think I have a closed mind. I do not think I’m biased. I sentence people for murder, rapes, and all kinds of things. As I said in a recent homicide case, . . . it’s not personal. It’s just business. And in this case it’s just business.”<sup>18</sup> These statements indicate the trial judge did not sentence Nastatos with a closed mind.

36) Further, Nastatos conceded that his bias argument during the sentencing hearing, explaining: “I’m not saying that [the court has a closed mind] – at this point I’m not saying that that’s the case at all.”<sup>19</sup> Moreover, Nastatos never filed an application for the trial judge to recuse himself at any

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<sup>17</sup> *Mayes v. State*, 604 A.2d at 842.

<sup>18</sup> Sentencing Transcript at 36, *State v. Nastatos*, No. 1102018112 (Del. Super. Ct. Mar. 1, 2013).

<sup>19</sup> *Id.* at 7.

point in the proceedings. Thus, the record does not support Nastatos' claim that the trial judge sentenced Nastatos with a closed mind.

37) Finally, Nastatos argues that his sentence was so disproportionate that it constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution. We have established a two-part inquiry to evaluate Eighth Amendment claims of disproportional sentencing: (1) "a threshold comparison of the crime committed to the sentence imposed to determine '[whether] such a comparison leads to an inference of gross disproportionality,'" and (2) "a comparative analysis of the sentence with similar cases to determine whether the sentencing court acted 'out of step with sentencing norms.'"<sup>20</sup>

38) Nastatos has not raised the threshold inference required by the first part of the two-part inquiry. The trial judge, considering the record evidence and Pre-Sentence Report, found multiple aggravating factors, including past violent behavior and a flagrant disregard for court orders and incarceration. There is no indication that the trial judge's sentence was "grossly disproportional" to the crimes Nastatos committed when considered with the aggravating factors. As Nastatos has not met the first part of the

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<sup>20</sup> *Wehde v. State*, 983 A.2d 82, 87 (Del. 2009) (alteration in original) (quoting *Crosby v. State*, 824 A.2d 894, 908 (Del. 2003)).

test, we need not consider a comparative analysis of his sentence with similar cases.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice