

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

TAMMY CASSERLY,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1036 MDA 2012

Appeal from the Judgment of Sentence May 25, 2012
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-CR-0001386-2011

BEFORE: BOWES, GANTMAN, and OLSON, JJ.

MEMORANDUM BY BOWES, J.:

FILED MAY 10, 2013

Tammy Casserly appeals from the judgment of sentence imposing an aggregate term of eight to twenty-three months imprisonment after she pled guilty to tampering with physical evidence and false reports to law enforcement. We affirm.

The trial court summarized the facts underlying Appellant's guilty plea as follows:

Mark Ketusky was found dead in his Jeep, parked at a Little League baseball field on February 23, 2010. [Appellant], having removed a revolver from the interior of [Mr.] Ketusky's Jeep, led state police to believe that [Mr.] Ketusky was the victim of criminal homicide. For a year and a half, [Mr.] Ketusky's family believed the same.

Between Monday, February 22, 2010, and June 14, 2011, the Pennsylvania State Police were investigating the murder of [Mr.] Ketusky. State police interviewed [Appellant], a friend to the Ketusky family, shortly after finding [the decedent].

Although [Appellant] denied having any direct knowledge of how [Mr. Ketusky] died, [Appellant] identified to police specific people, local criminal organizations, the mafia in Hazleton, and people involved with gambling operations in Philadelphia, whom she believed to have been involved in [Mr.] Ketusky's death. She told police that [Mr. Ketusky] had been killed during the commission of a robbery in a botched drug deal. Finally, on June 21, 2011, [Appellant] admitted to police that she agreed to help [Mr. Ketusky] cover up his suicide, and that she took [Mr. Ketusky's] revolver from his Jeep after [he] shot himself.

Trial Court Opinion, 7/26/12, at 1-2.

Appellant entered an open guilty plea on March 30, 2012. Following the preparation of a presentence investigation ("PSI") report, the trial court convened a sentencing proceeding. Mr. Ketusky's wife and two daughters testified during the hearing regarding the adverse effects Appellant's crimes had on them. In addition, the Commonwealth presented testimony from Pennsylvania State Police Corporal James Cuttitta who outlined the resources the police depleted as a result of Appellant's false reports and interference with their investigation. In detail, Corporal Cuttitta testified that as a result of Appellant's misdirection, more than twenty investigators performed over 125 police interviews, executed search warrants, and incurred lab fees exceeding \$7,500 during the futile homicide investigation. N.T., 5/25/12, 15-16.

After considering the foregoing evidence, the trial court entered the above-referenced judgment of sentence on May 25, 2012. Specifically, the court imposed an aggravated-range sentence of six to twelve months imprisonment for tampering with physical evidence and a consecutive

standard-range sentence of two to eleven months imprisonment for false reports to law enforcement. At the close of the sentencing hearing, the trial court advised Appellant of her appellate rights as follows:

You have the right to challenge the voluntariness of your plea of guilty, the jurisdiction of this Court to have heard your case, the effectiveness of counsel and the lawfulness of the sentence imposed. You can do it in one of two ways. You can file a motion with this Court within the next 10 days, and if I were to deny that motion, you would then have 30 days from the date of the denial to file an appeal with the Superior Court, or you could bypass this Court entirely and raise your challenges for the first time in the form of an appeal to the Superior Court.

N.T., 5/25/12, at 20-21.

Appellant did not file a post-sentence motion. Instead, she filed a timely notice of appeal and complied with the trial court order directing her to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant raises a single issue for our review: "Did the Court abuse its discretion in sentencing the defendant to consecutive sentences in the aggravated range of the sentencing guidelines?" Appellant's brief at 7.

Our standard of review follows:

[T]he proper standard of review when considering whether to affirm the sentencing court's determination is an abuse of discretion.... [A]n 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.... An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest

unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.... The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that the sentencing 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. Walls, 592 Pa. 557, 926 A.2d 957, 961 (2007) (internal citations omitted).

Commonwealth v. Allen, 24 A.3d 1058, 1064 (Pa.Super. 2011).

Appellant's sole issue challenges the discretionary aspects of the judgment of sentence. While she initially frames her protest as a challenge to the imposition of an excessive sentence, the crux of Appellant's argument is that the trial court failed to consider two of the sentencing factors identified in 42 Pa.C.S. § 9721(b)¹, *i.e.*, protection of the public and her

¹ 42 Pa.C.S. § 9721(b) provides in pertinent part as follows:

In selecting from the alternatives set forth in subsection (a) [relating to sentencing alternatives], the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with 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, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing and taking effect under section 2155 (relating to publication of guidelines for sentencing, resentencing and parole and recommitment ranges following revocation). . . . In every case where the court imposes a sentence or resentence outside the guidelines adopted by the Pennsylvania Commission on Sentencing[,] . . . the court shall provide a contemporaneous written statement of the reason or reasons for the deviation

(Footnote Continued Next Page)

rehabilitative needs, and that the court imposed an aggravated range sentence without identifying the particular facts that supported the deviation from the standard range. Appellant's brief at 9-10.

Before we reach the merits of a discretionary sentencing issue, we must ascertain whether 1) a timely appeal was filed from the judgment of sentence; 2) the issue was preserved during the trial court proceedings; 3) the appellant complied with Pa.R.A.P. 2119(f); and 4) the Rule 2119(f) statement reveals a substantial question that the sentence was not appropriate under the sentencing code. ***Commonwealth v. Lebarre***, 961 A.2d 176, 178 (Pa.Super. 2008). Herein, Appellant's notice of appeal was filed timely. However, Appellant failed to raise her sentencing claims during the sentencing proceeding or in a post-sentence motion. Thus, these issues are waived. **See** Pa.R.A.P. 302 (issues not raised in the lower court are waived and cannot be raised for the first time on appeal). In ***Commonwealth v. Foster***, 960 A.2d 160, 163 (Pa.Super. 2008), we noted: "Claims relating to the discretionary aspects of a sentence are waived if not raised either at sentencing or in a post-sentence motion." **See also** ***Commonwealth v. Shugars***, 895 A.2d 1270 (Pa.Super. 2006) and ***Commonwealth v. Malovich***, 903 A.2d 1247, 1251 (Pa.Super. 2006) (to
(Footnote Continued) _____

from the guidelines to the commission, as established under section 2153(a)(14) (relating to powers and duties). Failure to comply shall be grounds for vacating the sentence or resentence and resentencing the defendant.

preserve challenge to discretionary aspects of sentence, appellant must level issue during sentencing or post-sentence motion).

We further observe that since the sentencing claims relate to the discretionary aspects of the sentence, Appellant's "inclusion of the issue[s] in [her] Pa.R.A.P. 1925(b) statement will not save [them] from being waived because [the a]ppellant failed to raise it in the court below, as required by Pa.R.A.P. 302(a). . . ." **Foster, supra** at 163 (citing **Commonwealth v. Melendez-Rodriguez**, 856 A.2d 1278 (Pa.Super. 2004) (*en banc*)). As Appellant's sentencing claims are waived due to her failure to raise them at sentencing or in a post-sentence motion, we cannot address them at this juncture.

Moreover, assuming *arguendo* that Appellant had raised and preserved these issues, which she did not, her assertions are unpersuasive.² As noted, Appellant first asserts that the trial court failed to consider certain aspects of § 9721(b). We disagree. Since the the trial court had the benefit of the PSI report, we can assume that it was aware of relevant information, including Appellant's potential for rehabilitation. **See Commonwealth v. Griffin**, __

² We observe that Appellant's assertions raise substantial questions that the sentence was not appropriate under the sentencing code. **See Commonwealth v. Riggs**, 2012 WL 3860048, *5 (Pa.Super. 2012) (assertion that trial court failed to consider relevant sentencing criteria required by 42 Pa.C.S. § 9721(b) raises substantial question); **and Commonwealth v. Booze**, 953 A.2d 1263, 1278 (Pa.Super. 2008) (allegation that court failed to state on record the reasons for imposing aggravated-range sentence raises substantial question).

A.3d___, 2013 WL 1313089 *4 (internal quotation marks omitted) ("Where the sentencing court had the benefit of a presentence investigation report . . ., we can assume the sentencing court was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors.). Similarly, while a trial court is required to state the reasons for the sentence it imposed, the requirement is satisfied by the trial court's statement that it has reviewed the PSI report. **Commonwealth v. Reynolds**, 835 A.2d 720, 734 (Pa.Super. 2003).

Likewise, as it relates to the second component of Appellant's claim, the record belies Appellant's contention that the trial court failed to delineate the reasons for imposing an aggravated range sentence. Specifically, the court explained as follows:

The Court: There are two aspects of tampering with the evidence, and the false reports have two consequences. The state police wasted how many man hours out there trying to investigate a homicide that did not occur, and it gave you every opportunity to tell them what the real situation was, and the pain to the family of letting them believe that their loved one was murdered instead of being able to deal with the real facts, frankly I think might warrant, would justify going into the aggravated range. . . .

. . . .

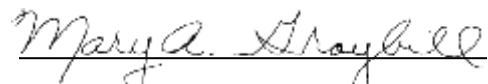
The Court: On the charge of tampering with physical evidence, the defendant is sentenced in the aggravated range for the reasons I stated that this was more than a usual tampering. It was extraordinarily painful for the family and just wasted enormous resources for the state police when they could be out there investigating other crimes. The defendant is sentenced to

6 to 12 months on the charge of false reports. The defendant is sentenced to 2 to 11 months for consecutive for a total sentence of 8 to 23 months to be served in the Schuylkill County Prison.

N.T., 5/25/12, at 19-20. As the trial court explained the reasons for the aggravated range sentence, and the certified record, as evidenced by both the testimony adduced during the hearing and the PSI report, supports the court's decision, Appellant's challenge to the discretionary aspect of her sentence is meritless.

Judgment of sentence affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/10/2013