NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ANTHONY J. LEE Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 120 EDA 2013

Appeal from the Judgment of Sentence November 20, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0001936-2011

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.[*]

MEMORANDUM BY MUNDY, J.: **FILED DECEMBER 17, 2013**

Appellant, Anthony J. Lee, appeals from the November 20, 2012 aggregate judgment of sentence of 19½ to 39 years' imprisonment, imposed by the trial court following his conviction for robbery, two counts of false imprisonment, and firearms not to be carried without a license.[1] After a careful review of the record and the issues presented, we affirm in part and vacate in part.

The trial court summarized the history of this case as follows.

> The incident that gave rise to the charges in this case occurred on the night of February 22, 2011, at a Subway restaurant located at 1901 Hamilton Street in Allentown. Specifically, around 8:30 P.M. on that date, Kristy Elekes and Hannah Hallman were

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[*] Former Justice specially assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 3701(a)(1)(ii), 2903(a), and 6106(a)(1), respectively.

> working at the restaurant when [Appellant] came in and pointed a loaded [.]45-caliber semi-automatic handgun at Ms. Elekes. [Appellant] then grabbed Ms. Hallman, pointed the gun at her head, and demanded she get money out of the cash register. [Appellant] turned the gun back towards Elekes, threatened to kill her if Hallman did not give him the money, and then counted down from three to one. Hallman complied and handed money to [Appellant]. He then took both women to the back of the restaurant, ordered them to lie on their stomachs, and tied the women's ankles with zip ties, which he brought with him. [Appellant] then took a laptop computer and the women's purses. He stopped near the women, bent down, and threatened to come back and kill them if he saw his picture in the news. [Appellant] then ran out of the store.
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> Detective Sergeant Glenn Granitz, Jr., of the Allentown Police Department was driving in the parking lot of the Subway and encountered [Appellant] running from the restaurant. [Appellant] entered a vehicle and fled the area. Detective Granitz followed. [Appellant] eventually stopped the vehicle and fled on foot. Detective Granitz caught up with the vehicle, but could not stop [Appellant]. Inside the vehicle, police subsequently found the laptop, the women's purses, a handgun, and package of zip ties. [Appellant's] fingerprints were also found in the vehicle. Detective Granitz was ultimately shown a photo lineup and immediately picked out [Appellant's] photo as the person he saw running through the parking lot. Ms. Elekes and Ms. Hallman were unable to pick [Appellant's] photo out of the lineup, but subsequently identified him at the preliminary hearing.

Trial Court Opinion, 3/1/13, at 1-2.

Appellant was charged with robbery, two counts of false imprisonment, and firearms not to be carried without a license. Appellant filed an omnibus pretrial motion on September 28, 2011, seeking, *inter alia*, suppression of

in-court identifications of three Commonwealth witnesses and an out-of-court identification of one of those same witnesses. Hearings on Appellant's omnibus motion were conducted on December 14, 2011, January 4, 2012, and January 13, 2012. On June 26, 2012, the trial court denied Appellant's motion to suppress the witnesses' identifications. The case proceeded to a jury trial held on October 16-18, 2012. The jury found Appellant guilty of all charges. On November 20, 2012, the trial court sentenced Appellant to an aggregate sentence of 19½ to 39 years' incarceration, being the maximum term for each charge imposed consecutively. On November 30, 2012, Appellant filed a post-sentence motion to modify sentence. The trial court denied Appellant's timely post-sentence motion on December 7, 2012. Appellant filed a timely notice of appeal on January 4, 2013.[2]

On appeal, Appellant raises the following issues for our review.

> I. Did the trial court err prior to trial by failing to suppress the in-court and out-of-court identifications of Kristy Elekes, Hannah Hallman, and Detective Glenn Granitz?
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> II. Did the trial court abuse its discretion at sentencing when it: (1) imposed a manifestly excessive and unreasonable term of incarceration, i.e., the statutory maximum for each offense consecutive to each other; and (2) improperly considered unauthenticated letters attached to the pre-sentence investigation as having been authored by the [Appellant]?

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[2] Appellant and the trial court have complied with Pa.R.A.P. 1925.

> III. Did the trial court unlawfully impose conditions of parole supervision on [Appellant's] state sentence?

Appellant's Brief at 4.

In his first issue, Appellant challenges the trial court's denial of his pretrial suppression motion, which allowed allegedly tainted identification testimony of three Commonwealth witnesses to be admitted at trial. ***Id.*** at 17. In our review of this issue, we are guided by the following principles.

> Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous. Where … the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review.

Commonwealth v. Jones, 988 A.2d 649, 654 (Pa. 2010) (citations and quotation marks omitted), *cert. denied*, ***Jones v. Pennsylvania***, 131 S. Ct. 110 (2010).

> When analyzing the admission of identification evidence, a suppression court must

> determine whether the challenged identification has sufficient indicia of reliability. This question is examined by focusing on the totality of the circumstances surrounding the identification. In deciding the reliability of an identification, a suppression court should evaluate the opportunity of the witness to see the criminal at the time the crime occurred, the witness's degree of attention, the accuracy of any description given, the level of certainty when identification takes place, and the period between the crime and the identification.

Commonwealth v. Sanders, 42 A.3d 325, 330 (Pa. Super. 2012) (internal quotation marks and citations omitted).

Appellant first challenges the trial court's failure to suppress the in-court identifications by victims Kristy Elekes and Hannah Hallman that Appellant claims were tainted by an unduly suggestive prior out-of-court identification. Appellant's Brief at 17. Appellant argues, "[i]f there is an unduly suggestive pretrial procedure, the witness's in-court identification must be suppressed unless it carries indicia of reliability independent of the tainted procedure." ***Id.*** at 18, *citing* ***United States v. Emanuele***, 51 F.3d 1123, 1128 (3d Cir. 1995).

> While the suggestiveness of the identification procedure is one relevant factor in determining the reliability of an identification, suggestiveness alone will not forbid the use of an identification, if the reliability of a subsequent identification can be sustained. Suggestiveness arises when the police employ an identification procedure that emphasizes or singles-out a suspect.

Commonwealth v. Davis, 17 A.3d 390, 394 (Pa. Super. 2011) (internal quotation marks and citations omitted), *appeal denied*, 29 A.2d 371 (Pa.

2011). "Identification evidence will not be suppressed unless the facts demonstrate that the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." ***Commonwealth v. Fulmore***, 25 A.3d 340, 346 (Pa. Super. 2011) (internal quotation marks and citations omitted), *appeal denied*, ***Commonwealth v. Kingwood***, 34 A.3d 827 (Pa. 2011).

Appellant relates that Elekes and Hallman, when shown a photographic array within two hours of the robbery, were unable to identify Appellant as the offender. Appellant's Brief at 20-21; ***see also*** N.T., 12/14/11, at 25-27, N.T., 1/4/12, at 30-31, 51-55.[3] Subsequently, Elekes and Hallman were present at Appellant's preliminary hearing and observed Appellant in handcuffs for about 15 minutes. N.T., 12/14/11, at 31; N.T., 1/4/12, at 30-31, 64-65. At that time, both witnesses related to the prosecutor that they recognized Appellant as the individual who robbed them.[4] ***Id.*** Appellant contends that the identification by the witnesses at the preliminary hearing was unduly suggestive and taints any subsequent identification. Appellant's Brief at 22.

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[3] Elekes, in fact, identified the photograph of another individual in the array as the perpetrator, indicating she was 70% sure of her identification. N.T., 1/4/12, at 30-31, 52, 55.

[4] Appellant waived his preliminary hearing and neither Elekes nor Hallman testified at that time.

Further, Appellant contends that "there is no clear and convincing evidence that either witness has a reliable basis to identify [Appellant] independent from the suggestive confrontation." ***Id.*** Appellant catalogues various circumstances he deems support that conclusion, including the fact that each witness gave only general descriptions to the police immediately following the incident and related their impressions to each other. ***Id.*** at 23, 27. Additionally, Appellant notes each witness acknowledged some difficulty distinguishing cross-racial features, acknowledged they were under a lot of stress during the robbery and focused on the weapon, and acknowledged relying to some extent on Appellant's teardrop tattoos in their identifications. ***Id.*** at 25-26, 29. Finally, Appellant acknowledges that both witnesses emphatically asserted their in-court identification of Appellant at the suppression hearing was based on their observation of Appellant during the robbery and their memory of that event, rather than their subsequent observation of Appellant at the preliminary hearing or other sources. ***Id.*** at 26, 28. Appellant concludes, "[they] may truly believe their recollection comes from the crime and not the intervening suggestive encounters, however, [] such a notion is contrary to our current understanding of human memory, and quite frankly, defies common sense." ***Id.*** at 28.

The trial court, considering all the circumstances, found that the confrontation at the preliminary hearing was not unduly suggestive and that the Commonwealth met its burden to show that the witnesses' in-court

identifications were based on legitimate independent bases. Trial Court Opinion, 6/26/12, at 11. Specifically, the trial court, addressing the reliability factors cited above, noted each witness had ample time to closely observe Appellant's face in adequate light with heightened attention. The witnesses' descriptions of the perpetrator, "[a]lthough general in nature, … were consistent with [Appellant's] appearance." ***Id.*** at 12. Finally, the trial court determined both witnesses were highly certain of their identifications and that they were grounded on their observations during the robbery and not influenced by subsequent encounters. ***Id.***

We conclude the record supports the trial court's findings and conclusions. We agree with the trial court that, in view of all the circumstances, any suggestiveness in the preliminary hearing identification by the witnesses was insufficient as a matter of law to support a conclusion that there would be "a very substantial likelihood of irreparable misidentification." ***Fulmore***, ***supra***. Further the witnesses' inability to identify Appellant in the photo array, although raising a credibility issue, does not preclude the in-court identifications, which were independently based on facially reliable circumstances. ***See Commonwealth v. Davis***, 459 A.2d 1267, 1270 (Pa. Super. 1983) (noting "inability to identify appellant at the lineup did not affect the admissibility of Cusack's in-court identification testimony but only its weight and credibility"). Accordingly, we

discern no error in the trial court's denial of Appellant's motion to suppress the in-court identification of Elekes and Hallman.

Appellant also challenges the refusal of the trial court to suppress the out-of-court and in-court identifications of Detective Granitz. As noted above, Granitz identified Appellant from the same photo array presented to Elekes and Hallman. Appellant contends the photo array procedure used with Granitz was unduly suggestive. Appellant's Brief at 30. Specifically, Appellant argues that Granitz was aware of Appellant and his mug shot from a prior criminal case and that Granitz heard radio dispatches mentioning Appellant by name in connection with the robbery prior to his view of the photo array. ***Id.*** at 30-31. Additionally, Appellant asserts that the selected images in the photo array were not sufficiently uniform in build and skin tone to ensure reliable identification. ***Id.*** at 32. Appellant also faults the photo array procedure used with Granitz because his identification was not recorded, the array was not conducted blindly by a presenter unfamiliar with the makeup of the array, Granitz through his experience as a police officer knew the array contained a suspect, and Granitz was advised after viewing the array that he identified the suspect. ***Id.*** Appellant argues that when this combination of factors is "considered together, there existed a substantial likelihood that [] Granitz misidentified [Appellant] from the array as the person he saw at the time of the robbery." ***Id.*** at 33.

Compounding the allegedly suggestive photo identification, Appellant contends an independent basis for a reliable identification by Granitz is lacking. ***Id.*** at 34. "Granitz's opportunity to view the perpetrator at the time of the crime was quick and minimal. The detective's one- to two-second observation occurred under startling conditions in a darkened parking lot from a distance of about [17] feet from inside a vehicle." ***Id.*** "[S]uch observations cannot form the basis for a reliable trial identification over a year later." ***Id.*** at 35.

The trial court found the photo array procedure employed in this case was not unduly suggestive. Trial Court Opinion, 6/26/12, at 14. Addressing Appellant's contentions, the trial court, after viewing the photo array, determined "that all the individuals represented do in fact have very similar features, and … there is nothing unduly suggestive about the array." ***Id.*** Based on our review of the record, we agree. "Photographs used in line-ups are not unduly suggestive if the suspect's picture does not stand out more than the others, and the people depicted all exhibit similar facial characteristics." ***Fulmore***, ***supra*** (citation omitted). The trial court also found that Granitz's exposure to a photo of Appellant in connection with a prior 1998 homicide charge was sufficiently remote in time to eliminate any influencing effect on Granitz's instant identification. Trial Court Opinion, 6/26/12, at 14. The trial court made a specific finding of fact that Granitz did not hear radio communications mentioning Appellant's name prior to the

photo array identification. We conclude the record supports the trial court's factual findings and, accordingly, afford them deference. We additionally conclude the trial court did not err in determining the photo array procedure was not unduly suggestive.[5]

In his second issue Appellant argues the trial court abused its discretion in imposing his sentence, and that his sentence is "manifestly excessive and unreasonable[.]" Appellant's Brief at 36. Specifically, Appellant argues that, "the imposition of aggregate maximum consecutive sentences can result in a manifestly excessive sentence if the totality of sentencing factors do not support it." ***Id.*** at 37. Appellant also avers the trial court erred by considering unauthenticated letters attributed to Appellant that were included in Appellant's presentence report. ***Id.*** These claims address the discretionary aspects of Appellant's sentence. ***Commonwealth v. Lebarre***, 961 A.2d 176 (Pa. Super. 2008) (recognizing a claim that considered an inappropriate factor addresses the discretionary aspects of sentencing).

"A challenge to the discretionary aspects of a sentence must be considered a petition for permission to appeal, as the right to pursue such a

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[5] Absent a finding that the out-of-court identification of Appellant by Granitz was unduly suggestive, we need not address Appellant's reliability challenge to any independent in-court identification. Nevertheless, we agree the record supports the trial court's conclusion that Granitz had such an independent basis under the totality of the circumstances. ***See*** Trial Court Opinion, 6/26/12, 14-15.

claim is not absolute." ***Commonwealth v. Lamonda***, 52 A.3d 365, 371 (Pa. Super. 2012) (*en banc*) (citation omitted), *appeal denied*, 75 A.3d 1281 (Pa. 2013).

> An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:
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> [W]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence …; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Commonwealth v. Moury, 992 A.2d 162, 170 (Pa. Super. 2010) (internal quotation marks and citations omitted).

> The determination of what constitutes a substantial question must be evaluated on a case-by-case basis. A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process.

Commonwealth v. Glass, 50 A.3d 720, 727 (Pa. Super. 2012) (internal quotation marks and citations omitted).

Instantly, Appellant has preserved his issues in a timely post-sentence motion, filed a timely notice of appeal, and included a proper Rule 2119(f) statement in his appellate brief. Therefore, the only remaining issue before

we may address the merits of Appellant's claim is whether he has raised a substantial question for our review.

"A claim of excessiveness of sentence does not raise a substantial question where the sentence imposed is within the statutory limits." ***Commonwealth v. Wagner***, 702 A.2d 1084, 1085-1086 (Pa. Super. 1996) (citation omitted). "Generally speaking, the court's exercise of discretion in imposing consecutive as opposed to concurrent sentences is not viewed as raising a substantial question that would allow the granting of allowance of appeal." ***Commonwealth v. Gonzalez-Dejusus***, 994 A.2d 595, 598 (Pa. Super. 2010).[6]

Recently, in ***Commonwealth v. Dodge***, --- A.3d ---, 2013 WL 4829286 (Pa. Super. 2013), this Court held that under certain circumstances a challenge to the trial court's imposition of consecutive, as opposed to concurrent sentences, does raise a substantial question. In reaching this conclusion we qualified that, "[t]o make it clear, a defendant **may** raise a substantial question where he receives consecutive sentences within the

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[6] To the extent Appellant introduces other arguments relative to the excessiveness of his sentence into his Rule 2119(f) statement, we conclude they are waived. "[A]ny issues not raised in a Rule 1925(b) statement will be deemed waived; the courts lack the authority to countenance deviations from the Rule's terms; the Rule's provisions are not subject to *ad hoc* exceptions or selective enforcement…." ***Commonwealth v. Hill***, 16 A.3d 484, 494 (Pa. 2011). Furthermore, an appellant cannot satisfy the mandate of Rule 1925(b) by incorporating by reference the arguments contained in other filings. ***Commonwealth v. Dodge***, 859 A.2d 771, 774 (Pa. Super. 2004), *vacated on other grounds*, 935 A.2d 1290 (Pa. 2007); ***accord Commonwealth v. Osteen***, 552 A.2d 1124, 1126 (Pa. Super. 1989).

guideline ranges if the case involves circumstances where the application of the guidelines would be clearly unreasonable, resulting in an excessive sentence; however, a bald claim of excessiveness due to the consecutive nature of a sentence will not raise a substantial question." ***Id.*** at *3. In the instant case, Appellant's bald assertion that 19½ to 39 years' imprisonment was excessive, in light of the violent nature of his crimes, does not meet the "clearly unreasonable, resulting in an excessive sentence" threshold required by our holding in ***Dodge***. ***Id.*** As a result, we conclude Appellant's first discretionary aspects of sentencing issue does not raise a substantial question for our review. ***See Glass***, ***supra***; ***Moury***, ***supra***.

Appellant's second discretionary sentencing issue, alleging the trial court improperly considered unauthenticated letters, does raise a substantial question. A claim that the trial court considered incorrect factual assertions or improper factors raises a substantial question. ***Commonwealth v. McAfee***, 849 A.2d 270, 274 (Pa. Super. 2004), *appeal denied*, 860 A.2d 122 (Pa. 2004). Accordingly, we proceed to address the merits of this challenge.

"The imposition of sentence is vested in the discretion of the trial court, and should not be disturbed on appeal for a mere error of judgment but only for an abuse of discretion and a showing that a sentence was manifestly unreasonable." ***Commonwealth v. Williams***, 69 A.3d 735, 740 (Pa. Super. 2013). "The proper standard of review for an appellate court is to focus on the pertinent statutory provisions in the Sentencing

Code, specifically 42 Pa.C.S. § 9781(c) and (d), and 42 Pa.C.S. § 9721(b)."

Id. at 741 (citation omitted). Those statutes provide as follows.

> **§ 9781. Appellate review of sentence**
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> …
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> **(c) Determination on appeal.--**The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:
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> (1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
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> (2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
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> (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.
>
> In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.
>
> **(d) Review of record.--**In reviewing the record the appellate court shall have regard for:
>
> (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 presentence investigation.
>
> (3) The findings upon which the sentence was based.
>
> (4) The guidelines promulgated by the commission.

42 Pa.C.S.A. § 9781.

> Generally, our review of a sentence [for abuse of discretion] is limited [] to whether the sentencing court explicitly or implicitly considered the section 9721(b) factors, and we may not re-weigh the significance placed on each factor by the sentencing judge. Given such a deferential standard of review, our Supreme Court recognized that rejection of a sentencing court's imposition of sentence on unreasonableness grounds would occur infrequently.

Williams, ***supra*** at 742 (internal quotation marks and citations omitted.)

Appellant claims the trial court erred in relying on "unauthenticated evidence as a consideration in fashioning an appropriate sentence." Appellant's Brief at 42. Appellant contends there was no evidence assigning authorship to three of the threatening letters contained in the pre-sentence investigation report, including the letter to victim Hallman.[7]

> Admission of evidence is within the sound discretion of the trial court, and this Court will find the trial court abused its discretion only where it is revealed in the record that the court did not apply the law in reaching its judgment or exercised manifestly unreasonable judgment or judgment that is the result of partiality, prejudice, bias, or ill will. In addition, it is the exclusive province of the finder of fact to determine the weight of relevant evidence.

Commonwealth v. McKellick, 24 A.3d 982, 986 (Pa. Super. 2011). "A document may also be authenticated by circumstantial evidence, a practice which has been uniformly recognized as permissible." ***Commonwealth v.***

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[7] At the sentencing hearing, Appellant objected to the letters on lack of authentication grounds. N.T., 11/10/12, at 6-7.

Brooks, 508 A.2d 316, 318 (Pa. Super. 1986) (citation omitted). "[C]ircumstantial evidence [] may include factors relating to the contents of the writing and the events before and after the execution of the writing." ***Id.*** at 321.

Here, the letters contained references to Appellant's criminal cases and known gang membership. The letter to victim Hallman was received in an envelope from the correctional facility housing Appellant at the time, on which Appellant's name appeared as sender. The timing of the receipt of each letter coordinated with Appellant's circumstances. The handwriting in the letters bore a resemblance to Appellant's handwriting in known documents. Accordingly, we agree with the trial court that "sufficient indicia of reliability existed with regard to the letters to permit [the trial court] to rely upon the same at the time of sentencing." Trial Court Opinion, 3/1/13, at 6.

With his last issue, Appellant asserts the trial court lacked jurisdiction to impose parole conditions as part of his sentence. Appellant's Brief at 43. This raises a legality of sentence issue.[8] ***Commonwealth v. Coulverson***,

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[8] The conditions imposed at the sentencing hearing consist of the following.

> [THE COURT]: … Conditions of parole include: refraining from alcoholic beverages or illegal drugs – no alcoholic beverages, no illegal drugs; obtain and maintain a satisfactory residence and suitable employment; undergo such drug and alcohol, psychiatric, psychological, anger management

(Footnote Continued Next Page)

34 A.3d 135, 142 (Pa. Super. 2011). The trial court acknowledges the correctness of Appellant's position and concedes its stated parole conditions are not legally binding on the Board of Probation and Parole. Trial Court Opinion, 3/1/13, at 6. "[The trial court is] cognizant of the fact that the Board of Probation and Parole maintains exclusive parole authority and that the conditions I recommended are advisory only." ***Id.***, *citing*, 61 Pa.C.S.A. § 6134; ***see also Commonwealth v. Mears***, 972 A.2d 1210, 1212 (Pa. Super. 2009) (noting a trial court is without authority to impose release conditions on a defendant serving a sentence subject to the Pennsylvania Board of Probation and Parole, and holding that any purported conditions are advisory only).

Therefore, to the extent the trial court's order may be construed to impose conditions upon Appellant's release, the same is vacated and such

(Footnote Continued)

> evaluation, counseling, treatment and therapy, including in-patient and out-patient treatment as recommended by the parole officer, including regular and random urinalysis testing.
>
> …
>
> And you will have no contact with Hannah Hallman and Kristy Elekes and members of their immediate families during your entire period of supervision.
>
> And, of course, remain out of the Subway located at 19th and Hamilton Streets in Allentown, during your entire period of supervision.

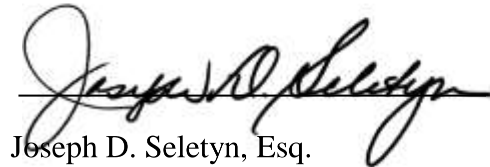
N.T., 11/20/12, at 41-42., ***see also*** Trial Court Order, 11/20/12, Special Conditions Sheet.

conditions shall be deemed advisory only. ***See Coulverson***, ***supra*** at 143. The vacated conditions do not disrupt the trial court's overall sentencing scheme, so no remand is necessary. Therefore, having concluded Appellant's first two issues lack merit, we affirm Appellant's judgment of sentence in all other respects.

Judgment of sentence affirmed in part and vacated in part. Jurisdiction relinquished.

Justice Fitzgerald Concurs in the Result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/17/2013