

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RAYMOND BRYAN GOURGUE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1457 EDA 2012

Appeal from the Judgment of Sentence April 3, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0002788-2011

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and MUSMANNNO, J.

MEMORANDUM BY LAZARUS, J.

Filed: February 20, 2013

Raymond Bryan Gourgue appeals from his judgment of sentence, entered in the Court of Common Pleas of Lehigh County, after he pled guilty to persons not to possess, use, manufacture, control, sell or transfer firearms (F-2).¹ Officers uncovered a fully-loaded sawed-off shotgun in a coal bin in the basement of Gourgue's residence; Gourgue did not have a license to possess the gun.² Gourgue entered into an agreement with the Commonwealth that his sentence would not exceed the standard range of the sentencing guidelines. The trial court ultimately sentenced Gourgue to

¹ 18 Pa.C.S.A. § 6105.

² Because Gourgue had been previously convicted of the crime of retaliation against victims/witnesses, 18 Pa.C.S.A. § 4953, he was not permitted by law to possess a firearm.

42-84 months' imprisonment – a standard range sentence, albeit at the top end of the range. After careful review, we affirm.

Gourgue filed a motion to reconsider his sentence which was denied. He now appeals, contending that his sentence is harsh, manifestly excessive, unjust and unreasonable because he: fully cooperated with police from the time of his arrest, told the officers that they would find a firearm in his basement closet, and agreed to plead guilty and waive his right to a presentence investigation (PSI). Gourgue also claims that the court's sentence is improperly based on two attempted criminal homicide charges that were dismissed and that the court did not give due consideration to mitigating factors (cooperation with authorities/steps to improve when previously incarcerated) in fashioning his sentence.

When the discretionary aspects of a sentence are questioned, an appeal is not guaranteed as of right. ***Commonwealth v. Moore***, 617 A.2d 8, 11 (Pa. Super. 1992). Rather, two criteria must be met before an appeal may be taken. First, the appellant must "set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of the sentence." Pa.R.A.P. 2119(f). Second, an appeal will only be granted when a "substantial question" has been presented; to present a "substantial question" an aggrieved party must articulate clear reasons why the sentence imposed by the trial court compromises the sentencing scheme as a whole. 42 Pa.C.S.A. § 9781(b); ***Commonwealth v. Tuladziecki***, 522 A.2d 17 (Pa. 1987).

Gourgue has included a Rule 2119(f) statement in his appellate brief. Moreover, we find that he presents us with a substantial question which invokes our appellate jurisdiction and permits us to review his sentencing claims. ***Commonwealth v. Baker***, 580 A.2d 1162 (Pa. Super. 1990).

The record reflects that even though Gourgue waived a PSI, the trial court had the benefit of a 2010 PSI, which it reviewed prior to sentencing Gourgue. The court was informed of new information not contained within the 2010 PSI, as well as a variety of other facts, not the least of which was that Gourgue committed the instant offense while having been on parole only for a few months for the crime of retaliation against witness, victim, or party. In addition, the court noted that when he had committed the prior retaliation crime, Gourgue had been on probation for eight months for a prior simple assault conviction. Finally, the court took notice of Gourgue's active drug dealing and violent behavior that spanned five years, as well as a series of misconducts Gourgue had committed while in prison – all leading to the judge's conclusion that Gourgue is unable to conform to institutional rules and regulations.

Moreover, contrary to Gourgue's assertions, the sentencing court specifically noted that he had secured his GED while previously incarcerated. N.T Guilty Plea/Sentencing Hearing, 4/3/2012, at 6, 39. Additionally, while Gourgue cites his cooperation with police as a mitigating factor, the notes from his guilty plea hearing indicate otherwise. When officers arrived at Gourgue's home and took him into custody, following the issuance of an

arrest warrant, Gourgue initially refused to consent to a search of his home. N.T. Guilty Plea/Sentencing Hearing, 4/3/2012, at 13.

Here, the trial court based its sentence on a PSI, additional updated information, the sentencing guidelines, the nature and circumstances of the offense, the fact Gourgue received his GED in prison, and Gourgue's seeming inability to rehabilitate and strong likelihood to re-offend. N.T. Guilty Plea/Sentencing, 4/3/2012, at 38-40, 43, 46-47. The court also noted that it was confining its review to the charges before it, was not issuing Gourgue a "volume discount" based on his other outstanding offenses, and reiterated the parties' agreement that Gourgue's minimum sentence would be within the standard range of the guidelines. N.T. Guilty Plea/Sentencing, 4/3/2012, at 4, 35. Finally, Gourgue indicated to the court that no promises had been made to him, *id.* at 18-20, and that he was aware of the possible sentence he could receive. *Id.* at 4. Gourgue ultimately received the benefit of his bargain, a minimum sentence within the standard range of the guidelines.

Based on the record, we conclude that the trial court's sentence was neither unreasonable nor a manifest abuse of the trial court's discretion. ***See Commonwealth v. Muller*** 528 A.2d 191 (Pa. Super. 1987) (when sentence is within statutory limits and court has complied with Sentencing Code, reviewing court will not reverse sentence absent manifest abuse of discretion); ***see also Commonwealth v. Devers***, 546 A.2d 12 (Pa. 1988) (where PSI exists, presumption stands that sentencing judge was both aware

of and appropriately weighed all relevant information regarding defendant's character along with mitigating statutory factors).

Judgment of sentence affirmed.