NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
BRIAN LINGAFELT,	:	
	:	
Appellant	:	No. 1518 WDA 2011

Appeal from the Judgment of Sentence Entered May 12, 2011,
In the Court of Common Pleas of Blair County,
Criminal Division, at No. CP-07-CR-0002539-2009.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: February 8, 2013

Appellant, Brian Lingafelt, appeals from the judgment of sentence entered on May 12, 2011, in the Blair County Court of Common Pleas. We affirm.

In a related case concerning Jessica Roe, who in 2006 was Appellant's girlfriend and is now Appellant's wife, the Honorable Elizabeth A. Doyle set forth the background of this matter as follows:

> On November 9, 2006, [Jessica Roe] was under the supervision of the Blair County Adult Probation and Parole office ("Blair County"). Agents of that office and the Pennsylvania State Board of Probation and Parole ("State") went to [Jessica Roe's] residence at 1212 6th Avenue, Altoona to serve an arrest warrant on [her] for failure to appear at a hearing and to make contact with her boyfriend, Brian Lingafelt, who was under State supervision. They went to the door of the residence and knocked. [Jessica Roe] answered the door and was arrested on the warrant. The group proceeded upstairs and knocked on the

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*Retired Senior Judge assigned to the Superior Court.

> apartment door. Mr. Lingafelt opened the door and let them in. Agent Vasbinder of the State then saw a digital scale covered by a white powder residue on a table (Transcript 2/10/09, p. 10, line 10), which from his training and experience, he believed to be indicative of narcotics trafficking. Blair County Agent Cutshall saw in plain view an outer surveillance camera attached to the apartment, a scale covered with white powder residue, numerous small plastic baggies, larger bags, rubber bands, a money counting machine and a safe through an open closet door. He believed these items to be evidence of narcotics trafficking. Knowing from his supervision of him that Mr. Lingafelt had a past history of weapons and violence, Agent Vasbinder placed Mr. Lingafelt in handcuffs and asked both he and [Jessica Roe] for consent to search the residence, which they both gave. (Transript [sic] 2/10/09 p. 11, line 19; p. 25 lines 10-24) Mr. Lingafelt then led the officers to a shotgun. The officers were concerned that there were more weapons in the apartment and began a search. While searching the residence the officers found more drugs, drug paraphernalia, and a handgun. As a result of the initial viewing of contraband and the safe, the Altoona Police applied for and were given a search warrant for the contents of the safe. More drugs and money were found inside.

Suppression Court Opinion in the matter of ***Commonwealth v. Roe*** (No. CR 2067-2008), 7/31/09, at 2-3.[1]

The suppression court in Appellant's case concluded that the parole agents saw suspected contraband in plain view and obtained permission to search the apartment. Suppression Court Opinion, 9/24/10. The search revealed contraband, and this caused the agents to seek and obtain a search

[1] Copies of the proceedings concerning this related criminal case against Appellant's wife, Jessica Roe, were ordered to be filed in the certified record in the instant matter. Order, 10/12/11, at Docket Entry #54. Therefore, the suppression court's opinion in the Jessica Roe matter is properly part of the certified record in this case.

warrant that led to the discovery of additional contraband. ***Id***. Thus, the suppression court denied Appellant's motion to suppress. ***Id***.

Appellant's case proceeded to trial, and Appellant was convicted of possession of a controlled substance with intent to deliver ("PWID") methadone, possession of methadone, cocaine, and marijuana, possession of drug paraphernalia, and criminal conspiracy to commit PWID. The trial court sentenced Appellant to: a term of 10 to 20 years of incarceration on the PWID methadone conviction, which included the five-year mandatory minimum due to a finding that Appellant possessed a firearm (42 Pa.C.S.A. § 9712.1(a)) and a five year mandatory minimum due to the weight of the methadone possessed under 18 Pa.C.S.A. § 7508(2)(iii); a consecutive term of 90 to 180 months of incarceration on the conspiracy conviction; a consecutive term of 6 to 12 months on the possession of drug paraphernalia conviction; a consecutive term of 6 to 12 months of incarceration on the possession of marijuana conviction; a consecutive term of 6 to 12 months of incarceration on the possession of cocaine conviction. The conviction for possession of methadone merged with the conviction of PWID methadone for sentencing purposes. This resulted in an aggregate sentence of 19 to 38 years of incarceration. A timely post-sentence motion challenging the sentence, seeking a new trial, and for a judgment of acquittal was filed and denied in an order entered September 8, 2011. This timely appeal followed.

On appeal, Appellant raises the following issues for this Court's consideration:

> 1. WHETHER THE SUPPRESSION COURT ERRED IN FAILING TO SUPPRESS THE WARRANTLESS ENTRY BY STATE PAROLE AGENTS, THE CONCOMMITANT [sic] SEARCH OF THE APARTMENT, THE SEIZURES OF ITEMS THEREIN, AND THE FRUIT THEREOF INASMUCH AS THE AGENTS LACKED REASONABLE SUSPICION OF A PAROLE VIOLATION AND THE SEARCH WAS NOT REASONABLY RELATED TO THE DUTIES OF THE AGENTS?
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> 2. WHETHER THE TRIAL COURT ERRED IN DENYING A JUDGMENT OF ACQUITTAL ON THE POSSESSION WITH INTENT TO DELIVER, POSSESSION, AND POSSESSION OF DRUG PARAPHERNALIA CONVICTIONS INASMUCH AS THE EVIDENCE DID NOT SUFFICE TO PROVE CONSTRUCTIVE POSSESSION OF THE CONTRABAND?
>
> 3. WHETHER THE TRIAL COURT ERRED IN DENYING A JUDGMENT OF ACQUITTAL ON THE CONSPIRACY CONVICTION INASMUCH AS THE EVIDENCE DID NOT SUFFICE TO PROVE AN AGREEMENT OR AN OVERT ACT?
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> 4. WHETHER THE SENTENCING COURT ERRED IN APPLYING THE MANDATORY MINIMUM AT 42 PA.C.S. § 9712.1(a) INASMUCH AS THE COMMONWEALTH DID NOT PROVE THAT APPELLANT HAD CONSTRUCTIVE POSSESSION OF THE FIREARM?
>
> 5. WHETHER THE SENTENCING COURT ABUSED ITS DISCRETION IN IMPOSING SENTENCE BY RUNNING ALL OF THE TERMS CONSECUTIVELY, RESULTING IN A NON-INDIVIDUALIZED SENTENCE THAT EXCEEDED THE GRAVITY OF THE CRIMINAL CONDUCT?

Appellant's Brief at 10-11.[2]

[2] For purposes of our discussion, we have renumbered Appellant's issues.

In Appellant's first issue, he challenges the order denying his motion to suppress and claims that the search of the apartment and seizure of the contraband were unlawful. We disagree.

The standard of review we apply in an appeal from the denial of a motion to suppress is set forth below:

> We determine whether the court's factual findings are supported by the record and whether the legal conclusions drawn from them are correct. Where, as here, it is the defendant who is appealing the ruling of the suppression court, we consider only the evidence of the prosecution and so much of the evidence for the defense which remains uncontradicted when fairly read in the context of the whole record. If, upon our review, we conclude that the record supports the factual findings of the suppression court, we are bound by those facts, and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Daniels, 999 A.2d 590, 596 (Pa. Super. 2010) (citation omitted).

Here, the record reveals that the parole agents and constables went to the apartment to serve an arrest warrant. N.T., Appellant's Suppression Hearing, 4/29/10, at 5.[3] Ms. Roe exited the apartment and descended a flight of common-area stairs to answer the door. N.T. (Jessica Roe's Suppression Hearing), 2/10/09, at 9. Upon opening the door in the lower level common area, the arrest was effectuated. ***Id***. The agents then endeavored to speak with Appellant. N.T., 4/29/10, at 15. The agents

[3] The Notes of Testimony from Jessica Roe's suppression hearing were incorporated by stipulation of the parties. N.T., 4/29/10, at 3.

knocked and announced their presence and desire to speak with Appellant – they did not immediately enter the apartment. N.T. (Jessica Roe's Suppression Hearing), 2/10/09, at 10. Appellant then answered the door and granted the agents entry. ***Id***. At this point, the agents were lawfully standing in the apartment, and it was from this lawful vantage point that they saw the suspected contraband (a scale covered in white powder and baggies used for packaging narcotics) in plain view.[4] ***Id***. The agents then asked Appellant and Ms. Roe for consent to search the apartment, and they granted their consent. ***Id***. at 11 and 25. As such, we discern no error in the trial court denying the motion to suppress.

Appellant's next two issues on appeal challenge the trial court's denial of his motion for judgment of acquittal. We note that a motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and it is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge. ***Commonwealth v. Hutchinson***, 947 A.2d 800, 805 (Pa. Super. 2008) (citation omitted). "The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light

[4] The plain view doctrine allows the warrantless seizure of an item when: (1) law enforcement officers observe the item from a lawful vantage point; (2) the incriminating nature of the item is immediately apparent; and (3) the officers have lawful right of access to object. ***Commonwealth v. Guzman***, 44 A.3d 688, 695 (Pa. Super. 2012) (citations omitted).

most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt." ***Id***. In applying this test, we may not weigh the evidence and substitute our judgment for the fact-finder. ***Id***. Additionally, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence, and any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. ***Id***. at 805-806. "The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence." ***Id***. at 806. "Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered." ***Id***. "Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence." ***Id***.

First, Appellant argues that the evidence was insufficient to sustain his conviction for the crimes of PWID, possession of a controlled substance, and possession of drug paraphernalia because the Commonwealth failed to establish constructive possession of the drugs or paraphernalia. We disagree.

At the outset, we note that:

> [c]onstructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Commonwealth v. Brown, 48 A.3d 426, 430 (Pa. Super. 2012) (internal quotation marks and citation omitted).

Possession of a controlled substance is defined as:

> Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

35 P.S. § 780-113(a)(16). Possession of a controlled substance with intent to deliver is defined as:

> Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

35 P.S. § 780-113(a)(30). Possession of drug paraphernalia is defined as:

> The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking,

> storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 P.S. § 780-113(a)(32).

Here, the record reflects that parole agents encountered Appellant alone in the apartment with a scale covered in drug residue, narcotics, drug packaging materials, a money counting machine, syringes, and surveillance equipment. N.T., Trial, 2/28/11, at 37-38. Moreover, despite Appellant's name not being on a lease, there were men's clothes and men's shoes in the apartment. ***Id***. at 38-50. Additionally, Appellant's counsel stipulated that Appellant had, on some occasions, paid rent for the apartment. ***Id***. at 118. There was evidence of a suspected cutting agent (used to dilute the product) found in the kitchen. ***Id***. at 67. Additionally, there was evidence of narcotics in a plastic baggie in the toilet, and Agent Cutshall testified that in his experience that was indicative of an individual attempting to flush contraband down the toilet. ***Id***. at 58-60. When viewed in their totality, these facts and circumstances support the finding that Appellant was in constructive possession of the contraband, and we discern no error in the trial court's conclusion and denial of the motion for acquittal. As such, Appellant is entitled to no relief.

Next, Appellant argues that the evidence was insufficient to prove criminal conspiracy. Again, we disagree.

To sustain a conviction for criminal conspiracy pursuant to 18 Pa.C.S.A. § 903:

> [t]he Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent, and (3) an overt act done in furtherance of the conspiracy. Circumstantial evidence may provide proof of the conspiracy. The conduct of the parties and the circumstances surrounding such conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a reasonable doubt.
>
> Additionally[,] an agreement can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode. These factors may coalesce to establish a conspiratorial agreement beyond a reasonable doubt where one factor alone might fail.

Commonwealth v. Bricker, 882 A.2d 1008, 1017 (Pa. Super. 2005) (citation omitted).

As noted above, Appellant was in constructive possession of narcotics for the purpose of distribution. Whereas here, Ms. Roe was the other occupant of the dwelling where Appellant and Ms. Roe were in constructive possession of narcotics, a scale, a money counting machine, packaging materials, cutting agents, and external surveillance equipment, we discern no error in the conclusion that Appellant was engaged overtly in a conspiracy to sell narcotics with Ms. Roe. ***Bricker***, 882 A.2d at 1017.

Next, Appellant argues that the trial court erred in applying the 5-year mandatory minimum sentencing provision of 42 Pa.C.S.A. § 9712.1(a) for possession of a firearm in close proximity to the drugs. Appellant cites to ***Commonwealth v. Person***, 39 A.3d 302 (Pa. Super. 2012), as support for his argument that the trial court erred in imposing the mandatory minimum sentence. In ***Person***, a panel of this Court stated that in order for the mandatory minimum of section 9712.1(a) to apply, the Commonwealth is required to prove by a preponderance of the evidence that the defendant possessed the firearm and that he did so within close proximity to narcotics. ***Id***. at 305. Upon review of the record in the instant case, we conclude that Appellant's argument fails.

The record reveals that when questioned by the agents, Appellant informed them that there was a shotgun in the apartment. N.T., Sentencing, 5/12/11, at 8. Agent Cutshall testified that a shotgun was indeed found in a bedroom. ***Id***. After the discovery of the shotgun, the agents found a handgun under a pillow in the living room where drugs and paraphernalia were recovered. N.T., Jessica Roe Suppression Hearing, 2/10/09, at 31-33.

In ***Commonwealth v. Zortman***, 985 A.2d 238 (Pa. Super. 2009), a panel of this Court concluded that, where drugs were found in multiple rooms of the residence, a gun found in the bedroom constituted close

proximity for purposes of 42 Pa.C.S.A. § 9712.1(a). Here, the record reveals that there was a shotgun in the bedroom and a handgun in the living room of the apartment where the methadone and other contraband were located. N.T., Jessica Roe Suppression Hearing, 2/10/09, at 31-33; Suppression Court Opinion in the matter of ***Commonwealth v. Roe*** (No. CR 2067-2008), 7/31/09, at 3. Upon review of the facts and the cases of ***Person*** and ***Zortman***, we discern no error in the trial court's conclusion that Appellant possessed a gun in close proximity to the drugs. Accordingly, the trial court correctly applied 42 Pa.C.S.A. § 9712.1(a).

Finally, Appellant argues that the sentencing court abused its discretion by running all of the terms consecutively, resulting in a non-individualized sentence that exceeded the gravity of the criminal conduct. Such a claim presents a challenge to the discretionary aspects of his sentence. ***See Commonwealth v. Mastromarino***, 2 A.3d 581 (Pa. Super. 2010) (stating that a claim of excessiveness based on the imposition of consecutive sentences implicates discretionary aspects of sentencing).

Where an appellant challenges the discretionary aspects of a sentence there is no automatic right to appeal, and an appellant's appeal should be deemed a petition for allowance of appeal. ***Commonwealth v. W.H.M.***, 932 A.2d 155, 162 (Pa. Super. 2007). As we observed in ***Commonwealth v. Moury***, 992 A.2d 162 (Pa. Super. 2010):

> [a]n 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, ***see*** Pa.R.Crim.P. [720]; (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).

Id. at 170 (citing ***Commonwealth v. Evans***, 901 A.2d 528 (Pa. Super. 2006)). Whether a particular issue constitutes a substantial question about the appropriateness of sentence is a question to be evaluated on a case-by-case basis. ***Commonwealth v. Kenner***, 784 A.2d 808, 811 (Pa. Super. 2001), *appeal denied*, 568 Pa. 695, 796 A.2d 979 (2002).

Here, the first three requirements of the four-part test are met because Appellant filed a timely appeal, filed a timely motion for modification of sentence, and included a statement pursuant to Rule 2119(f) in his brief. ***Moury***, 992 A.2d at 170. Therefore, we address whether Appellant raises a substantial question requiring us to review the discretionary aspects of the sentence imposed by the sentencing court.

Allowance of appeal will be permitted only when the appellate court determines that there is a substantial question that the sentence is not appropriate under the Sentencing Code. ***Commonwealth v. Hartle***, 894

A.2d 800, 805 (Pa. Super. 2006). A substantial question exists where an appellant sets forth a plausible argument that the sentence violates a particular provision of the Sentencing Code or is contrary to the fundamental norms underlying the sentencing process. ***Id***. This Court does not accept bald assertions of sentencing errors. ***Commonwealth v. Malovich***, 903 A.2d 1247, 1252 (Pa. Super. 2006). An appellant must articulate the reasons the sentencing court's actions violated the Sentencing Code. ***Id***. Indeed, our Supreme Court has clearly instructed that:

> only where the Appellant's Rule 2119(f) statement sufficiently articulates the manner in which the sentence violates either a specific provision of the sentencing scheme set forth in the sentencing code or a particular fundamental norm underlying the sentencing process, will such a statement be deemed adequate to raise a substantial question so as to permit a grant of allowance of appeal of the discretionary aspects of a sentence.

Commonwealth v. Mouzon, 571 Pa. 419, 434, 812 A.2d 617, 627 (2002).

In his statement of questions involved and Pa.R.A.P. 2119(f) statement, Appellant argues that the sentencing court abused its discretion by running all of the terms consecutively resulting in a 19 to 38 year sentence that is manifestly excessive and non-individualized. Appellant's Brief at 39.

Generally, Pennsylvania law "affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. Any challenge

to the exercise of this discretion ordinarily does not raise a substantial question." ***Commonwealth v. Prisk***, 13 A.3d 526, 533 (Pa. Super. 2011) (citing ***Commonwealth v. Pass***, 914 A.2d 442, 446–447 (Pa. Super. 2006) and ***see Commonwealth v. Hoag***, 665 A.2d 1212, 1214 (Pa. Super. 1995) (stating that an appellant is not entitled to "volume discount" for his crimes by having his sentences run concurrently). However, in ***Commonwealth v. Dodge***, 957 A.2d 1198 (Pa. Super. 2008), *appeal denied*, 602 Pa. 662, 980 A.2d 605 (2009), this Court concluded that, under the facts of that case, consecutive sentences on thirty-seven counts of theft-related offenses resulting in an aggregate sentence of 58½ to 124 years of incarceration constituted a virtual life sentence and was, therefore, so manifestly excessive as to raise a substantial question. "Thus, in our view, the key to resolving the preliminary substantial question inquiry is whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of the criminal conduct at issue in the case." ***Prisk***, 13 A.3d at 533 (quoting ***Mastromarino***, 2 A.3d at 587).

As stated above, the trial court sentenced Appellant to a term of 10 to 20 years of incarceration on the PWID conviction. This sentence included the five-year mandatory minimum due to the finding that Appellant possessed a firearm (42 Pa.C.S.A. § 9712.1(a)) and a five-year mandatory

minimum due to the weight of the methadone possessed under 18 Pa.C.S.A. § 7508(2)(iii). Then there was the consecutive term of 90 to 180 months of incarceration on the conspiracy conviction, the consecutive term of 6 to 12 months of incarceration on the possession of drug paraphernalia conviction, the consecutive term of 6 to 12 months of incarceration on the possession of marijuana conviction, and the consecutive term of 6 to 12 months of incarceration on the possession of cocaine conviction. This resulted in an aggregate sentence of 19 to 38 years of incarceration.

As noted, there were two mandatory minimum sentences that were imposed for the PWID methadone. The statutes provide that these mandatory minimum sentences can, at the discretion of the trial court, be aggregated limited only by the statutory maximum. 42 Pa.C.S.A. § 9712.1(b). Moreover, the trial court explained

> 1. The undersigned presided over [Appellant's] trial by jury and thereby became absolutely convinced that [Appellant] is a drug dealer who engaged in drug trafficking for pure profit on a daily basis and in total defiance of the laws of this Commonwealth.
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> 2. [Appellant] is possessed of a very serious prior criminal record involving convictions for not only drug violations but also violent assaultive conduct.
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> 3. [Appellant] received a fair trial by a jury of his peers and the verdict returned by that Jury is an absolute rejection of his claim of innocence and a clear indication that the jurors found that he is in the business of drug dealing.
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> 4. In the judgment of the undersigned Judge[,] [Appellant] represents a threat to the safety and well-being of all law abiding

> citizens in this community in that his drug selling encourages drug addiction and the destruction of the lives of the addicts.
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> 5. Any claim by [Appellant] that he himself is a drug addict is categorically rejected by the undersigned Judge as being untrue.
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> 6. [Appellant's] demonstrated refusal to obey the law requires that this Court remove him from the community and order his imprisonment for a substantial period of time.
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> 7. This Court has concluded that when he is not incarcerated [Appellant] makes no contribution to the community other than [] increase crime statistics and bring addictions to his customers.
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> 8. The sentences provided to [Appellant] include the application of statutory mandatories prescribed by the legislature of the Commonwealth.
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> 9. The sentences provided to [Appellant] conform to the guidelines published by the Pennsylvania Commission on Sentencing and the Pennsylvania General Assembly.
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> 10. The sentences provided to [Appellant] are in accord of the recognized purposes of sentencing, namely, punishment, deterrence, and rehabilitation.

Sentencing Order, 5/12/11, at 5-6. After review of the record and the rationale expressed by the trial court, we cannot conclude that the sentence imposed was so manifestly excessive, based on the facts of the case and the criminal conduct involved, as to amount to a substantial question. ***Prisk***, 13 A.3d at 533. Accordingly, we conclude that Appellant's sentencing claim fails.

For the reasons set forth above, we conclude that Appellant is entitled to no relief. Accordingly, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

OTT, J., Concurs in the Result.