

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MATTHEW RYAN WHEELER,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1539 WDA 2012

Appeal from the Judgment of Sentence September 14, 2012
In the Court of Common Pleas of Crawford County
Criminal Division at No.: CP-20-CR-0000259-2012

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

Filed: March 4, 2013

Appellant, Matthew Ryan Wheeler, appeals from the judgment of sentence entered on September 14, 2012,¹ following his open guilty plea to one count of tampering with or fabricating physical evidence as a misdemeanor in the second degree.² We affirm.

The charges arose from an incident wherein Appellant assisted two co-defendants in concealing stolen copper wire in the woods, knowing that

* Retired Senior Judge assigned to the Superior Court.

¹ Although Appellant purports to appeal from the order denying his post-sentence motions, an appeal properly lies from the judgment of sentence made final by the denial of post-sentence motions. ***See Commonwealth v. Dreves***, 839 A.2d 1122, 1125 n.1 (Pa. Super. 2003) (*en banc*). We have corrected the caption accordingly.

² 18 Pa.C.S.A. § 4910(1).

there was an on-going investigation into the theft of the wire. Appellant entered his open guilty plea on September 6, 2012. On September 14, 2012, the trial court sentenced Appellant to a term of not less than twelve nor more than twenty-four months of incarceration to be served consecutively to any other sentence Appellant might be serving. Appellant filed a post-sentence motion challenging the discretionary aspects of sentence. The motion was denied on September 19, 2012. The instant, timely appeal followed.³

On appeal, Appellant raises the following issue for our review:

Whether the sentencing court abused its sentencing discretion when it imposed a minimum incarceration sentence outside of the aggravated range of the Pennsylvania Sentencing Guidelines?

(Appellant's Brief, at 8).

Appellant challenges the discretionary aspects of his sentence on appeal.⁴ The right to appeal the discretionary aspects of a sentence is not absolute. *See McAfee, supra* at 274. When an appellant challenges the discretionary aspects of the sentence imposed, he must present "a

³ Appellant filed a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b); the trial court an opinion relying on its written sentence. (*See* Opinion Sur Pa.R.A.P. 1925(a), 10/01/12, at 1).

⁴ We note that Appellant preserved his discretionary aspects of sentence claim by filing a timely post-sentence motion for reconsideration of sentence. *See Commonwealth v. McAfee*, 849 A.2d 270, 275 (Pa. Super. 2004), *appeal denied*, 860 A.2d 122 (Pa. 2004).

substantial question as to the appropriateness of the sentence[.]” ***Commonwealth v. Anderson***, 830 A.2d 1013, 1017 (Pa. Super. 2003) (citations omitted). An appellant must, pursuant to Pennsylvania Rule of Appellate Procedure 2119(f), articulate “a colorable argument that the sentence violates a particular provision of the Sentencing Code or is contrary to the fundamental norms underlying the sentencing scheme.” ***Commonwealth v. Kimbrough***, 872 A.2d 1244, 1263 (Pa. Super. 2005) (*en banc*), *appeal denied*, 887 A.2d 1240 (Pa. 2005) (citation omitted). If an appellant’s Rule 2119(f) statement meets these prerequisites, we determine whether a substantial question exists. ***See Commonwealth v. Goggins***, 748 A.2d 721, 727 (Pa. Super. 2000) (*en banc*), *appeal denied*, 759 A.2d 920 (Pa. 2000). “Our inquiry must focus on the **reasons** for which the appeal is sought, in contrast to the **facts** underlying the appeal, which are necessary only to decide the appeal on the merits.” ***Id.*** (emphasis in original).

Here, Appellant has included a Rule 2119(f) statement in his brief. (***See*** Appellant’s Brief, at 11-13). Appellant argues that the sentence was manifestly excessive and unreasonable because the sentencing court failed to state sufficient reasons to justify a sentence beyond the aggravated range. (***See id.*** at 12). This claim raises a substantial question, therefore, we will address the claim on its merits. ***See Commonwealth v. Cunningham***, 805 A.2d 566, 575 (Pa. Super. 2002), *appeal denied*, 820

A.2d 703 (Pa. 2003) (“A claim that the court imposed an unreasonable sentence by sentencing outside the guidelines raises a substantial question which is reviewable on appeal.”) (citation omitted).

After a thorough review, we conclude that Appellant’s claim that the sentencing court abused its discretion by sentencing him outside the guidelines lacks merit. In fashioning the sentence, the sentencing court stated that it considered that Appellant was on supervision for one or more offenses at the time he committed the present offense; that Appellant continued not to respond to supervision at the county level; that his prior record score did not take into account his abundance of summary convictions; and noted its belief that Appellant would continue to commit crimes unless he received a lengthy incarceration. (**See** Amended Sentence, 9/14/12, at 1). The sentencing court also noted at sentencing that Appellant had been continuously involved in one criminal proceeding after another for the last several years, and that, not counting Appellant’s juvenile record, Appellant had been involved in criminal proceedings since 1999 and continued to reoffend. (**See** N.T. Sentencing, 9/14/12, at 4). Given this, Appellant’s claim that the sentencing court abused its discretion in sentencing him outside the guidelines is meritless. **See Commonwealth v. Walls**, 926 A.2d 957, 966-68 (Pa. 2007) (so long as the trial court imposed an individualized sentence that was reasonable there was no abuse of discretion); **Commonwealth v. P.L.S.**, 894 A.2d 120, 131 (Pa. Super.

2006), *appeal denied sub nom. Commonwealth v. Schaffer*, 906 A.2d 542 (Pa. 2006) (the sentencing guidelines mandate that a sentencing court consider prior unsupported criminal conduct when the prior record score does not adequately account for a defendant's criminal history); *Commonwealth v. Lawson*, 650 A.2d 876, 882 (Pa. Super. 1994), *appeal denied*, 655 A.2d 985 (Pa. 1995) (trial court did not abuse its discretion in sentencing outside the guidelines where Appellant had a lengthy criminal history, did not respond well to probation or parole, and was unlikely to be rehabilitated); *Commonwealth v. Mills*, 496 A.2d 752, 754 (Pa. Super. 1985) (“[I]t is difficult to perceive any reason more compelling for imposing a sentence in excess of that recommended by the guidelines than the fact of convictions for repetitive offenses committed even after release on parole from a lengthy sentence of incarceration.”).

Judgment of sentence affirmed. Jurisdiction relinquished.