

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	·	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	·	
v.	·	
DONALD SNYDER, JR.,	·	
Appellant	·	No. 1576 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Potter County
Criminal Division at No.: CP-53-CR-0000237-2011

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

MEMORANDUM BY PLATT, J.

Filed: March 15, 2013

Appellant, Donald Snyder, Jr., appeals from the judgment of sentence imposed following his guilty plea to two counts each of indecent assault—person less than 13 years of age,¹ corruption of minors,² dissemination of sexual materials to minors,³ endangering welfare of children,⁴ and one count of intimidation of witnesses.⁵ We affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 3126(a)(7).

² 18 Pa.C.S.A. § 6301(a)(1)(ii).

³ 18 Pa.C.S.A. § 5903(c)(1).

⁴ 18 Pa.C.S.A. § 4304(b).

⁵ 18 Pa.C.S.A. § 4952(b)(5).

In September 2011, four juveniles, ages ten, eleven, thirteen and fifteen, reported to the Pennsylvania State Police that several sexual incidents involving Appellant had occurred from July 2011 through September 2011 in a tent in Appellant's backyard. (**See** Affidavit of Probable Cause, 9/12/11, at 1-2). Police interviewed Appellant and he admitted that he had been "camping out" with some of the neighborhood children in a tent that he purchased in July 2011, and that he engaged in sexual acts with the children and showed them pornographic videos during the encounters in his tent. (**Id.** at 3).

On February 29, 2012, Appellant entered a guilty plea to the above-mentioned charges and the trial court ordered him to undergo an evaluation by the Sexual Offender's Assessment Board (SOAB) prior to sentencing. On May 23, 2012, following a hearing, the trial court imposed the following sentence: a term of no less than eight nor more than sixteen months' incarceration for each indecent assault count (to run consecutively); a consecutive term of no less than five nor more than twelve months' incarceration for each corruption of minors count; a consecutive term of no less than five nor more than twelve months' incarceration for each dissemination of sexual materials to minors count; a concurrent term of no less than six nor more than twelve months' incarceration for each endangering welfare of children count; and a concurrent term of no less than

six nor more than twelve months' incarceration for the intimidation of witnesses count.⁶ On May 30, 2012, Appellant filed a petition to modify sentence, which the trial court denied on June 4, 2012 without a hearing. This timely appeal followed.⁷

Appellant raises one issue for our review:

Did a [trial] court justify an aggravated sentence where [Appellant] who had no prior sexual offense history, rehabilitated himself while incarcerated, had a strong family support system, and had no adverse victim statements?

(Appellant's Brief, at 3).

Appellant's issue challenges the discretionary aspects of his sentence.

Accordingly, the following standard of review applies:

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 claim is not absolute. When challenging the discretionary aspects of the sentence imposed, an appellant must present a substantial question as to the inappropriateness of the sentence. Two requirements must be met before we will review this challenge on its merits. First, an appellant must set

⁶ We note that the sentence results in an aggregate term of no less than thirty-six nor more than eighty months' incarceration. We also note that at the sentencing hearing, the trial court made a determination that Appellant is not a sexually violent predator. (**See** N.T. Sentencing Hearing, 5/23/12, at 1-2).

⁷ The trial court did not order Appellant to file a concise statement of errors complained of on appeal. **See** Pa.R.A.P. 1925(b). On October 23, 2012, the court issued an "Order Pursuant to Pennsylvania Rule of Appellate Procedure 1925[(a)]," designating the record of the May 23, 2012 sentencing hearing as the reason for its order giving rise to this appeal. **See** Pa.R.A.P. 1925(a).

forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. Second, the appellant must show that there is a substantial question that the sentence imposed is not appropriate under the Sentencing Code. That is, 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. We examine an appellant's Rule 2119(f) statement to determine whether a substantial question exists. 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.

Commonwealth v. Ahmad, 961 A.2d 884, 886-87 (Pa. Super. 2008) (case citations, quotation marks, and footnotes omitted) (emphases in original).

Appellant's brief includes a Rule 2119(f) statement in which he argues that a sentence outside the standard range is not appropriate given the circumstances of his case, and that the trial court failed to consider his "background, current or future situations" in violation of the general standard set forth in 42 Pa.C.S.A. § 9721(b) in imposing its sentence.⁸

⁸ Section 9721(b) states in pertinent part:

[T]he 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[.]

42 Pa.C.S.A. § 9721(b).

(Appellant's Brief, at 6; *see also id.* at 6-7). Because a claim that the sentencing court erred by imposing an aggravated range sentence without consideration of mitigating circumstances raises a substantial question, we will review Appellant's sentencing challenge on the merits. **See *Commonwealth v. Bowen***, 55 A.3d 1254, 1263 (Pa. Super. 2012) (concluding that appellant raised a substantial question where he argued that his sentence was too harsh considering his acceptance of responsibility, his expression of remorse, and his amenability to rehabilitation).

Our standard of review of a sentencing challenge is well-settled:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Glass, 50 A.3d 720, 727 (Pa. Super. 2012), *appeal denied*, 2013 Pa. Lexis 274 (Pa. Feb. 14, 2013) (case citation omitted).

Further, 42 Pa.C.S.A. § 9781(c) specifically defines three instances in which the appellate court should vacate the sentence and remand:

- (1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
- (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
- (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.

42 Pa.C.S.A. § 9781(c); *see also Glass, supra* at 727.

In his sole issue on appeal, Appellant argues that his aggravated-range sentence is inappropriate because the trial court failed to consider several factors relevant to this case, including his expression of remorse, his participation in counseling, his strong family and community support system, and his various health issues. (*See* Appellant's Brief, at 8-10). We disagree.

First, Appellant's contention that he was sentenced in the aggravated range is belied by the record, which indicates that he was sentenced in the standard range for each offense to which he pleaded guilty. (*See* Trial Court Sentence Guideline Form, 5/30/12, at 1-9). Moreover, at the sentencing hearing, the trial court specified its rationale for Appellant's sentence and stated that it considered Appellant's case; reviewed all information available to it, including the SOAB report and sentencing materials; and thought about what would be an appropriate sentence over the course of two days. (*See* N.T. Sentencing Hearing, 5/23/12, at 1, 7, 13). The court acknowledged that Appellant has "a very compassionate, charitable side to him" and indicated that it understood Appellant's "limitations." (*Id.* at 13). However, the court also recognized that Appellant engaged in serious criminal acts with young children and noted its concern that "he was able to do some pretty sophisticated plotting and planning [] to entice these children to be involved with him." (*Id.*). Given this record, we cannot conclude that the

trial court failed to consider Appellant's background and relevant circumstances when formulating his standard range sentence. ***See Glass, supra*** at 727. Accordingly, this issue lacks merit.

Judgment of sentence affirmed.