

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
MATTHEW MURPHY,		
Appellant		No. 1640 EDA 2011

Appeal from the Judgment of Sentence April 18, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000045-2011, CP-51-CR-0000046-
2011, CP-51-CR-0003595-2011, CP-51-CR-0008026-2009, CP-51-CR-
0010339-2010, CP-51-CR-0011690-2010

BEFORE: STEVENS, P.J., BOWES, J., and PLATT, J.*

MEMORANDUM BY STEVENS, P.J.

Filed: January 3, 2013

This is an appeal from the judgment of sentence imposed on April 18, 2011, following Appellant's plea agreement in the Court of Common Pleas of Philadelphia County. Appellant pleaded guilty to three counts of burglary¹; two counts of attempted burglary²; two counts of theft³; two counts of receiving stolen property⁴; attempted theft⁵; acquiring or obtaining a controlled substance by misrepresentation, fraud, forgery, deception or

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. 3502.

² 18 Pa.C.S. 901.

³ 18 Pa.C.S. 3921.

⁴ 18 Pa.C.S. 3925.

⁵ 18 Pa.C.S. 901.

subterfuge⁶; three counts of criminal trespass⁷, attempted criminal trespass; two counts of criminal mischief⁸; and forgery⁹. The trial court imposed an aggregate sentence of 7 to 30 years' imprisonment. Appellant raises one issue on appeal, contending that the trial court miscalculated the Sentencing Guidelines by applying the wrong offense gravity score (OGS) to Appellant's attempted burglary conviction. We affirm.

In June of 2010, Appellant broke into or attempted to break into five different homes in Philadelphia. N.T. 4/18/2011 at 14-19. Appellant pleaded guilty to the charges listed above and was given an aggregate sentence of 7 to 30 years' imprisonment. Appellant questions the sentence imposed on only one of his convictions, an attempted burglary.

There is no absolute right to appeal when challenging the discretionary aspect of a sentence. *Commonwealth v. Ahmad*, 961 A.2d 884, 886 (Pa.Super. 2008). This Court must first determine if Appellant has raised a substantial question that the sentence was not appropriate under the Sentencing Code. *Id.* at 886. An appellant must include a 2119(f) statement alleging the manner in which the sentence violates a specific provision of the sentencing scheme set forth in the Sentencing Code or a

⁶ 35 Pa.C.S. 780-113(A12).

⁷ 18 Pa.C.S. 3503.

⁸ 18 Pa.C.S. 3304.

⁹ 18 Pa.C.S. 410 (A1).

particular fundamental norm underlying the sentencing process. ***Commonwealth v. Mouzon***, 571 Pa. 419, 435, 812 A.2d 617, 628 (2002).

Appellant contends that the trial court miscalculated the Sentencing Guidelines by applying the wrong offense gravity score to his attempted burglary conviction. This Court has found that “any misapplication of the Sentencing Guidelines constitutes a challenge to the discretionary aspects of sentence. A claim that the sentencing court misapplied the Guidelines presents a substantial question.” ***Commonwealth v. Archer***, 722 A.2d 203, 211 (Pa.Super. 1998).

Though Appellant raises a substantial question, he has failed to support it with a meritorious argument, as he offers no evidence that the trial court actually applied the wrong offense gravity score. At the sentencing hearing, the Commonwealth stated that the offense gravity score of Appellant’s attempted burglary conviction was a score of nine, making the standard sentencing minimum 12 to 24 months. Appellant’s counsel objected, stating that the offense gravity score of this conviction is eight, making the standard sentencing minimum 9 to 16 months. N.T. 4/18/2011 at 56. The judge ultimately sentenced Appellant to 12 to 60 months for this attempted burglary conviction.

Appellant argues that the trial judge erroneously applied an offense gravity score of nine, thereby miscalculating Appellant’s sentence for this conviction. This argument is without merit, as the record does not indicate

that the judge applied an OGS of nine instead of eight. After Appellant's objection to the prosecution's statement, the judge stated, "Let the record reflect your opposition." N.T. 4/18/2011 at 59.

The judge later sentenced Appellant to 12 to 60 months for the attempted burglary conviction, without stating which OGS was used to calculate the sentence. In fact, a 12-month minimum is well within the Sentencing Guidelines for an OGS of eight. "If the court sentences within the guidelines' suggested ranges, there is no need for the sentencing court to otherwise manifest on the record that it considered the guidelines." *Commonwealth v. Adams*, 694 A.2d 353, 354. (Pa.Super 1997). Instantly, because the sentence given falls within the Sentencing Guidelines of an OGS of eight, we conclude that the trial court properly considered the guidelines.

Judgment affirmed.

PLATT, J. CONCURS IN RESULT.