

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

YOUNG WILLIAMS

Appellant

No. 1719 MDA 2012

Appeal from the Judgment of Sentence August 10, 2012  
In the Court of Common Pleas of Luzerne County  
Criminal Division at No(s): CP-40-CR-0003178-2011

BEFORE: SHOGAN, J., MUNDY, J., and COLVILLE, J.\*

MEMORANDUM BY MUNDY, J.:

**FILED MAY 15, 2013**

Appellant, Young Williams, appeals from the August 10, 2012 judgment of sentence of 30 to 60 months' imprisonment, imposed after he pled guilty to one count of criminal conspiracy - use or possession of electronic incapacitation device.<sup>1</sup> After careful review, we affirm the judgment of sentence.

The relevant facts and procedural history of this case may be summarized as follows.

[O]n or about December 30th, 2010, into  
December 31st, 2010, [the victim] was in a

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. § 903(c) (to commit 18 Pa.C.S.A. § 908.1).

residence located at 38 Monroe Street, Wilkes-Barre, Luzerne County, Pennsylvania.

While in that residence, she was slapped and punched in the face, punched in the side, burned with boiling water and stunned with an electronic incapacitation device numerous times.

The victim suffered serious bodily injury, including but not limited to facial injury and burns to her feet requiring skin grafts.

[Appellant] and/or [co-defendants] conspired [] and agreed that they, or one or more of them, would engage in the conduct constituting the crime of use of an electronic incapacitation device.

N.T., 4/16/12, at 8-9.

On December 27, 2011, Appellant was charged with, *inter alia*, criminal conspiracy in connection with the aforementioned assault. Thereafter, on April 16, 2012, Appellant entered an open guilty plea to one count of criminal conspiracy.<sup>2</sup> The trial court accepted the plea and deferred

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<sup>2</sup> Although the Commonwealth states that the guilty plea “provided for an agreed upon sentence of incarceration not to exceed ten (10) years in state confinement and/or a fine not to exceed \$25,000,” our review of the record indicates that the plea agreement did not provide for a specific sentence. **See** Commonwealth’s Brief at 2; N.T., 4/16/12, at 2-3. Specifically, at the guilty plea hearing the Commonwealth explained the plea agreement as follows.

Your Honor, the Defendant shall plead guilty to Count 13, criminal conspiracy, use of an electronic incapacitation device, an F-2, with a possible maximum penalty of ten years and/or \$25,000 fine.

(Footnote Continued Next Page)

sentencing pending preparation of a pre-sentence investigation report (PSI). Subsequently, on August 10, 2012, Appellant was sentenced to 30 to 60 months' imprisonment. On August 16, 2012, Appellant filed a timely post-sentence motion seeking reconsideration of his sentence and asserting that the sentencing court failed to state sufficient reasons on the record for sentencing the defendant in the aggravated range. The sentencing court denied said motion on August 31, 2012. This timely appeal followed.<sup>3</sup>

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

1. Whether the [sentencing] court abused its discretion in sentencing [Appellant] to an aggravated range sentence of thirty (30) to sixty (60) months [imprisonment]?

Appellant's Brief at 4.

In reviewing discretionary aspects of sentencing, we are guided by the following standard of review.

*(Footnote Continued)* \_\_\_\_\_

The Commonwealth would move to withdraw all remaining counts.

The Defendant to pay costs of prosecution.

There is no contact, either directly or indirectly with [the victim] and/or her extended family members. And sentencing is at the Court's discretion.

N.T., 4/16/12, at 2-3.

<sup>3</sup> Appellant and the sentencing court have complied with Pa.R.A.P. 1925.

[I]t is well-established in this Commonwealth that appeals of discretionary aspects of a sentence are not reviewable as a matter of right. Our standard of review when an appellant challenges the discretionary aspects of his or her sentence is very narrow:

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. Holiday***, 954 A.2d 6, 9 (Pa. Super. 2008) (citations omitted), *appeal denied*, 972 A.2d 520 (Pa. 2009).

Prior to reaching the merits of a discretionary sentencing issue,

we conduct a four part analysis to determine: (1) whether [the] appellant has filed a timely notice of appeal; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (3) whether [the] appellant's brief has a fatal defect; and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code.

***Commonwealth v. Glass***, 50 A.3d 720, 726 (Pa. Super. 2012) (citations omitted).

Applying the four-factor test to the present matter, we conclude Appellant has complied with the first three requirements. Specifically, Appellant filed a timely notice of appeal, preserved his issues below by filing

a motion for reconsideration of his sentence, and has included a Rule 2119(f) statement in his brief. Accordingly, we proceed to consider whether Appellant has presented a substantial question for our review. “A substantial question will be found where the defendant advances a colorable argument that the sentence imposed is either inconsistent with a specific provision of the [sentencing] code or is contrary to the fundamental norms which underlie the sentencing process.” **Commonwealth v. Booze**, 953 A.2d 1263, 1278 (Pa. Super. 2008) (citation omitted), *appeal denied*, 13 A.3d 474 (Pa. 2010).

Herein, Appellant avers that the sentencing court failed to give sufficient reasons for imposing an aggravated sentence of 30 to 60 months’ imprisonment. Specifically, Appellant opines that the sentencing court “did not mention, much less consider[,] the rehabilitative needs of [Appellant] as required by [42 Pa.C.S.A.] § 9721(b).”<sup>4</sup> Appellant’s Brief at 6. Appellant

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<sup>4</sup> Section 9721(b) provides, in pertinent part, as follows.

[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 ... In every case in which the court imposes a sentence for a felony or misdemeanor, modifies a sentence, [or] resentsences an offender ... the court shall make as a part of the record, and

*(Footnote Continued Next Page)*

further asserts that the sentencing court did not give adequate consideration to his limited involvement in the assault. ***Id.***

Upon review, we conclude that Appellant's claims present a substantial question for our review. ***See Commonwealth v. Rhoades***, 8 A.3d 912, 919 n.12 (Pa. Super. 2010) (stating, "a substantial question exists when a sentencing court imposed a sentence **in the aggravated range** without considering mitigating factors[.]") (citation omitted; emphasis in original), *appeal denied*, 25 A.3d 328 (Pa. 2011), *cert. denied*, ***Rhoades v. Pennsylvania***, 132 S. Ct. 1746 (2012); ***Commonwealth v. Fullin***, 892 A.2d 843, 847 (Pa. Super. 2006) (holding that a claim the trial court failed to consider the factors set forth in 42 Pa.C.S.A. § 9721(b) raises a substantial question). Accordingly, we proceed to review the merits of Appellant's argument.

Three well-settled principles guide our review of this issue.

First, a sentencing judge may consider any legal factor in deciding whether a defendant should be sentenced within the aggravated range. Second, in order to be adequate, the sentencing judge's reasons for sentencing within the aggravated range must reflect this consideration. Finally, the sentencing

(Footnote Continued) \_\_\_\_\_

disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. .... Failure to comply shall be grounds for vacating the sentence or resentence and resentencing the defendant.

42 Pa.C.S.A. § 9721(b).

judge's decision regarding the aggravation of a sentence will not be disturbed absent a manifest abuse of discretion.

**Commonwealth v. Duffy**, 491 A.2d 230, 233 (Pa. Super. 1985). Further, when reviewing sentencing matters, “[w]e must accord the sentencing court great weight as it is in the best position to view the defendant’s character, displays of remorse, defiance or indifference, and the overall effect and nature of the crime.” **Commonwealth v. Miller**, 965 A.2d 276, 277 (Pa. Super. 2009) (citation omitted), *appeal denied*, 981 A.2d 218 (Pa. 2009), *cert. denied*, **Miller v. Pennsylvania**, 130 S. Ct. 1068 (2010). In addition, where, as here, “the sentencing court had the benefit of a [PSI], we can assume the sentencing court was aware of relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.” **Rhodes, supra** at 919 (internal quotation marks and citation omitted). As this Court has previously noted with regard to sentencing, “[i]t would be foolish, indeed, to take the position that if a court is in possession of the facts, it will fail to apply them to the case at hand.” **Commonwealth v. Macias**, 968 A.2d 773, 778 (Pa. Super. 2009), *quoting Commonwealth v. Devers*, 546 A.2d 12, 18 (Pa. 1988).

Appellant’s claim is belied by the record, which reveals the sentencing court gave adequate consideration to the factors listed at 42 Pa.C.S.A. § 9721(b) and stated its reasoning for sentencing Appellant in the aggravated range. **See** N.T., 8/10/12. Specifically, the sentencing court

considered the PSI and sentencing guidelines, which prescribe a standard sentence of 18 to 24 months' imprisonment and an aggravated sentence of 27 to 33 months' imprisonment in accordance with the offense gravity score of 8 and Appellant's prior record score of 3.<sup>5</sup> N.T., 8/10/12, at 16-17; **see also** 204 Pa. Code §§ 303.15, 303.16. The sentencing court also considered the facts underlying the offense, including Appellant's purported limited involvement in the assault, and the gravity of the offense in relation to its impact on the victim who testified that she continues to be fearful of leaving her home and has difficulty sleeping at night. N.T., 8/10/12, at 12-17.

After considering all of the aforementioned factors, the sentencing court determined that a standard-range sentence would be inconsistent with the gravity of the offense. **Id.** at 17. Accordingly, we discern no abuse of the sentencing court's discretion in imposing a sentence of 30 to 60 months' imprisonment, which falls within the aggravated guideline range of 27 to 33 months' imprisonment.

Based on the foregoing, we conclude that Appellant's claim is without merit. Accordingly, we affirm the August 10, 2012 judgment of sentence.

Judgment of sentence affirmed.

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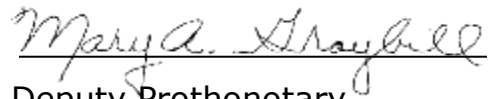
<sup>5</sup> We note that the guideline range refers to Appellant's **minimum** sentence. **See Commonwealth v. Yeomans**, 24 A.3d 1044, 1049 (Pa. Super. 2011), citing **Commonwealth v. Boyer**, 856 A.2d 149, 152 (Pa. Super. 2004) (stating that "the sentencing guidelines provide for minimum and not maximum sentences"). Accordingly, Appellant's minimum sentence of 30 month's imprisonment is within the aggravated guideline range.



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Judge Colville concurs in the result.

Judgment Entered.

  
Deputy Prothonotary

Date: 5/15/2013