NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. MELVIN MCGEE, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1791 MDA 2012

Appeal from the Judgment of Sentence entered July 16, 2012,
in the Court of Common Pleas of Berks County,
Criminal Division, at No(s): CP-06-CR-0003269-2011

BEFORE: PANELLA, ALLEN, and COLVILLE,* JJ.

MEMORANDUM BY ALLEN, J.: **FILED JUNE 04, 2013**

Melvin McGee ("Appellant") appeals from the judgment of sentence imposed after he was convicted of delivery of a controlled substance, possession of a controlled substance with intent to deliver, and possession of a controlled substance.[1] We affirm.

The trial court summarized the pertinent facts and procedural history as follows:

> On July 3, 2011, at approximately 10:30 p.m., Sergeant David Liggett of the Reading Police Department was standing at the southeast corner of North 11th Street and Oley Street in full uniform. Sgt. Liggett was on foot in patrol in the area to assist

---

[1] 35 P.S. § 780-113(a)(30) and (16).

*Retired Senior Judge assigned to the Superior Court.

other officers with an unrelated matter nearby. Sgt. Liggett testified that in his experience as a fourteen year veteran of the Reading Police Department, the area of 11th and Oley Streets in the city of Reading, is known as an area of high crime, high drug and high gang activity.

While standing at the intersection, under a street lamp, Sgt. Liggett noticed a gray Subaru SUV, heading north on 11th Street, stop at the steady red light. The Subaru was in the right lane, closest to the sidewalk, and stopped within five or six feet of Sgt. Liggett. Sgt. Liggett testified that the driver of the Subaru, later identified as Matthew Hoffman, began "[d]eliberately looking around. It was different than just kind of looking at your surroundings. He was deliberately shifting his head, shifting his eyes, looking to see if somebody was watching him." As Sgt. Liggett continued to watch, the driver began making furtive movements inside the vehicle by ducking his head forward towards the center console. These actions attracted Sgt. Liggett's interest because "It's not something that I observe as normal people waiting at a red light [who are] just driv[ing] on the street do." Sgt. Liggett testified that he observed additional suspicious behavior by Mr. Hoffman, who appeared to be handling something small with his right hand.

As the traffic light turned green, the vehicle did not move, and Sgt. Liggett decided to approach the Subaru. Sgt. Liggett approached the passenger side, as it was nearest to him and the window was down, and illuminated the inside of the vehicle with his flashlight. The passenger, later identified as [Appellant], Melvin McGee, began to tremble and appeared very nervous. Hoffman was also nervous at Sgt. Liggett's approach and quickly clenched his right hand and thrust it between his legs. As Sgt. Liggett told Hoffman not to move, Hoffman began to drive the vehicle forward while Sgt. Liggett was holding onto the passenger door. Sgt. Liggett warned Hoffman not to move the vehicle and told Hoffman to place the vehicle in park. Concerned for his safety because of Hoffman's earlier movement within the Subaru, Sgt. Liggett ordered both occupants to place their hands where he could see them. [Appellant] and Hoffman both complied.

Sgt. Liggett radioed for assistance and additional Reading Police Officers arrived moments later. Sgt. Liggett approached the driver's side of the vehicle with Officer Brian Errington. Sgt.

Liggett testified that he observed Officer Errington open the driver's side door and instruct Hoffman to open his right hand, which was still clenched in a fist. When Hoffman opened his hand, a small clear glassine bag containing a substance that later tested positive as cocaine fell onto the ground. A second small glassine baggie, similar in appearance to the one Hoffman dropped outside of the Subaru, was found laying on the driver's side floor. The substance in this baggie also later tested positive as cocaine.

Hoffman was placed under arrest and searched. In the search incident to arrest, Sgt. Liggett recovered a silver pipe, or bowl, and a baggie containing a small amount of green leafy material that was later tested and found to be marijuana. Sgt. Liggett informed Hoffman of his ***Miranda*** rights, which the sergeant read from a standard card. Hoffman waived those rights and spoke with officers on the scene. Sgt. Liggett asked Hoffman if [Appellant] sold him the baggie of crack cocaine that night and Hoffman responded in the affirmative.

While Sgt. Liggett and Officer Errington were engaged with Hoffman, Officer Christopher Cortazzo approached the passenger side of the vehicle upon his arrival to provide assistance. Initially, Officer Cortazzo was acting as the "cover" officer while the other officers dealt with Hoffman. In this capacity, Officer Cortazzo testified that he instructed [Appellant] to keep his hands on the dashboard, and remain still. [Appellant] appeared nervous and scared to Officer Cortazzo, but remained compliant. Officer Cortazzo asked [Appellant] if he knew the driver and [Appellant] stated that he did not and was just getting a ride home. Officer Cortazzo inquired where [Appellant] lived and [Appellant] indicated he was staying at 629 North 11th Street, which was approximately 75 feet *behind* where the vehicle stop occurred. Officer Cortazzo testified that 11th Street is one-way northbound. When Sgt. Liggett stopped the Subaru, it was traveling north on 11th Street, in the opposite direction of [Appellant's] intended location.

After Hoffman was taken out of the vehicle and the baggies of crack cocaine were found, Officer Cortazzo opened the passenger's side door to remove [Appellant] from the Subaru. Upon doing so, Officer Cortazzo observed a large clear plastic bag containing several smaller baggies of apparent crack cocaine (eighty-nine baggies total) from the floor of the vehicle

> between [Appellant's] right foot and the door. Before Officer Cortazzo asked any questions, [Appellant] stated that the drugs were not his. [Appellant] was then taken into custody. All items seized were turned over to and secured by Sgt. Liggett for testing and analysis.
>
> Criminal investigator John Lackner testified as an expert witness for the Commonwealth. C.I. Lackner stated that in his opinion, the 89 packets were possessed by [Appellant] for "distribution not for mere possession." Lackner found it significant that the product was packaged for street sale in small units.
>
> [Appellant] testified on his own behalf and averred that he contacted Matthew Hoffman on July 3, 2011 to purchase two bags of crack. [Appellant] testified that when Hoffman saw Sgt. Liggett approach the Subaru, Hoffman tossed the large bag containing the 89 packets of crack cocaine toward [Appellant's] side of the vehicle. [Appellant] stated that the two bags of crack found on Hoffman were the drugs that Hoffman was going to sell to [Appellant].

Trial Court Opinion, 1/11/13, at 3-6 (footnotes and citations to notes of testimony omitted).

Appellant was arrested and charged with the aforementioned crimes. On October 4, 2011, Appellant filed a pre-trial suppression motion. The trial court conducted a hearing on Appellant's motion on November 4, 2011, and issued an order denying Appellant's motion on December 2, 2011. A jury trial commenced on April 12, 2012, at the conclusion of which the jury returned its guilty verdicts. On July 16, 2012, the trial court sentenced Appellant to twelve to thirty months of imprisonment, followed by five years of probation.

Appellant filed a timely post-sentence motion, which the trial court denied on September 12, 2012. This appeal followed. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant raises the following issues for our review:

1. WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE AND STATEMENTS WHEN THE OFFICER DID NOT HAVE REASONABLE SUSPICION OR A WARRANT TO STOP THE VEHICLE APPELLANT WAS IN?

2. WHETHER THE VERDICTS OF GUILTY OF DELIVERY OF A CONTROLLED SUBSTANCE AND POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE WAS [sic] CONTRARY TO THE WEIGHT OF THE EVIDENCE PRESENTED AT TRIAL?

3. WHETHER THE EVIDENCE ADDUCED AT TRIAL WAS INSUFFICIENT TO SUSTAIN THE CONVICTIONS FOR DELIVERY OF A CONTROLLED SUBSTANCE AND POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE?

4. THE SENTENCING COURT ABUSED ITS DISCRETION BY SENTENCING APPELLANT TO A CONSECUTIVE SENTENCE THAT WAS MANIFESTLY EXCESSIVE AND CLEARLY UNREASONABLE, WHERE THE SENTENCE WAS CONTRARY TO THE FUNDAMENTAL NORMS UNDERLYING THE SENTENCING PROCESS, IN THAT THE PROTECTION OF THE PUBLIC, THE GRAVITY OF THE OFFENSE AS IT RELATES TO THE IMPACT ON THE LIFE OF THE VICTIM AND THE COMMUNITY, AND APPELLANT'S INDIVIDUAL REHABILITATIVE NEEDS AND MITIGATING CIRCUMSTANCES WERE NOT CONSIDERED, AND WHERE THE SENTENCE WAS WITHIN THE SENTENCING GUIDELINES BUT THE APPLICATION OF THE GUIDELINES WOULD BE CLEARLY UNREASONABLE.

Appellant's Brief at 8.

In his first issue, Appellant challenges the trial court's denial of his suppression motion. Appellant's Brief at 15-23. Our scope and standard of review of this claim is well settled:

> An appellate court's standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. [Because] the prosecution prevailed in the suppression court, we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Reese, 31 A.3d 708, 721 (Pa. Super. 2011) (citations omitted).

Here, Appellant argues that Sergeant Liggett did not have reasonable suspicion to stop the vehicle in which Appellant and Mr. Hoffman were travelling, and that evidence obtained as a result of the stop should have been suppressed. Appellant's Brief at 15-23. Before we address Appellant's claim that the grant of suppression was improper, we must determine whether Appellant had standing to suppress the search, and a reasonable expectation of privacy in the vehicle. ***Commonwealth v. Caban***, 60 A.3d 120, 126 (Pa. Super. 2012).

"[U]nder Pennsylvania law, a defendant charged with a possessory offense has standing to challenge a search." ***Id***. ***quoting Commonwealth***

v. Perea, 791 A.2d 427, 429 (Pa. Super. 2002). Thus, Appellant, who was charged with possession and possession with intent to deliver, had standing to raise a suppression challenge. However, "[a] defendant must separately establish a legitimate expectation of privacy in the area searched or thing seized." ***Commonwealth v. Burton***, 973 A.2d 428, 435 (Pa. Super. 2009). "[U]nder both our state and the federal constitutions, a defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests." ***Commonwealth v. Powell***, 994 A.2d 1096, 1108 (Pa. Super. 2010) ***quoting Commonwealth v. Millner***, 888 A.2d 680, 692 (Pa. 2005). "The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all of the surrounding circumstances." ***Caban***, 60 A.3d at 126. Thus, in order to succeed on his suppression challenge, Appellant was required to demonstrate that he had a reasonable expectation of privacy in the vehicle. Moreover, this Court has held that "an ordinary passenger in an automobile does not by his mere presence have a legitimate expectation of privacy in the entire passenger compartment of that vehicle." ***Commonwealth v. Viall***, 890 A.2d 419, 423 (Pa. Super. 2005). "While passengers in an automobile may maintain a reasonable expectation of privacy in the contents of luggage they placed inside an

automobile … it would be unreasonable to maintain a subjective expectation of privacy in locations of common access to all occupants." ***Id***.

At the suppression hearing, Officer Cortazzo testified that Appellant stated that he "didn't know the driver, [Mr. Hoffman]," and "was just getting a ride." N.T., (suppression transcript), 11/4/11, at 30. Appellant did not present any evidence as to who the registered owner of the vehicle was, or that he occupied the vehicle with the authorization or permission of the registered owner.[2] Nor did Appellant demonstrate that he had any ownership interest in the vehicle. Additionally, Appellant stated to police that the bag containing the 89 packets of cocaine did not belong to him. N.T., 4/12/12, at 100.

We reiterate that "[a] defendant moving to suppress evidence has the preliminary burden of establishing standing and a legitimate expectation of privacy. … The determination [as to] whether [a] defendant has met this burden is made upon evaluation of the evidence presented by the Commonwealth and the defendant." ***Powell***, 994 A.2d at 1103-1104 ***quoting Commonwealth v. Burton,*** 973 A.2d 428, 435 (Pa. Super. 2009) (*en banc*). Given the deficit of any evidence that Appellant had a legitimate expectation of privacy in the vehicle or the contents of the bag containing

---

[2] At trial, Mr. Hoffman testified that the car belonged to his mother. N.T., 4/12/12, at 41.

the 89 packets of cocaine, we conclude that Appellant lacked standing to seek suppression of the evidence. Appellant's challenge to the trial court's denial of his suppression motion is therefore without merit.[3]

In his second issue, Appellant argues that the verdicts were against the weight of the evidence. Appellant's Brief at 23-29. It is well settled that the finding of the trial court as to whether the verdict is against the weight of evidence may not be disturbed absent an abuse of discretion. ***Commonwealth v. Marks***, 704 A.2d 1095, 1098 (Pa. Super. 1997) (internal quotations and citations omitted). "This determination requires the court to assess the credibility of the testimony offered by the Commonwealth. However, generally [t]he weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. As such, this Court may not reverse the verdict unless it is so contrary to the evidence as to shock one's sense of justice." ***Id***.

Appellant argues that Mr. Hoffman's testimony that Appellant supplied him with drugs, was contradicted by Appellant and could not be relied upon

---

[3] The trial court denied Appellant's suppress motion on grounds that Sergeant Liggett possessed reasonable suspicion to conduct an investigatory detention. However, "[t]his [C]ourt may affirm [the lower court] for any reason, including such reasons not considered by the lower court." ***Commonwealth v. Truong***, 36 A.3d 592, 593 n. 2 (Pa. Super. 2012) (*en banc*).

to support the guilty verdicts. *Id*. at 23-26. Additionally, Appellant claims that while Mr. Hoffman testified that Appellant sold him cocaine, this testimony was not corroborated by any of the investigating police officers. *Id*. Moreover, Appellant asserts that Mr. Hoffman's testimony contained inconsistencies with regard to the location of the drugs (Mr. Hoffman testified he was holding the drugs in his left hand, while police officers testified that the drugs were in his right hand), and inconsistences with regard to the number of times Mr. Hoffman had previously encountered Appellant. *Id*. Additionally, Appellant challenges the credibility of Mr. Lackner, the Commonwealth's expert on drug packaging and distribution. *Id*. at 27-29. Specifically, Appellant claims that Mr. Lackner's opinion that the drugs were intended for distribution was based on speculation, and contained discrepancies. *Id*. Accordingly, Appellant claims that the testimony of Mr. Hoffman and Mr. Lackner was not credible, and could not be relied upon to support his guilty verdicts. *Id*. at 23-29.

We find no merit to Appellant's assertion that the verdicts were against the weight of the evidence. Any minor inconsistencies in the testimony of the Commonwealth's witnesses did not affect the determination of the jury that Appellant sold drugs to Mr. Hoffman, and that Appellant possessed drugs with intent to deliver. ***See Commonwealth v. Galloway***, 434 A.2d 1220, 1222 (Pa. 1981) ("[v]ariances in testimony … go to the credibility of the witnesses [and] it is the function of the factfinder to pass upon the

credibility of witnesses and the weight to be accorded the evidence[;] [t]he mere existence of conflict in the prosecution's evidence is not fatal to its case because the Commonwealth is not bound by everything its witnesses say and the jury can believe all, part or none of the testimony"). Rather, the jury, within its province, found credible the testimony of Mr. Hoffman that Appellant sold him two packets of crack cocaine, and rejected Appellant's assertion that Mr. Hoffman sold him cocaine and that the 89 packets of cocaine found in the vehicle belonged to Mr. Hoffman. ***See Commonwealth v. Zewe***, 663 A.2d 195, 199 (Pa. Super. 1995) (where evidence is conflicting, the credibility of the witnesses is solely for the jury and, if its finding is supported by the record, the verdict will not be disturbed). Additionally, the jury, as fact-finder, found credible the testimony of Mr. Lackner, who testified to his extensive experience in the field of drug trafficking, and opined that the drugs found at Appellant's feet were packaged for sale. This Court cannot substitute its judgment for that of the finder of fact. ***Snyder, supra.*** Based on our review of the record, we find no abuse of the trial court's discretion in refusing to award a new trial based on the weight of the evidence.

Appellant next argues that the evidence was insufficient to support his convictions for delivery and possession with intent to deliver. Our standard of review is as follows:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light 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. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. 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. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] 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.

Commonwealth v. Snyder, 60 A.3d 165, 175 (Pa. Super. 2013) ***quoting Commonwealth v. Devine***, 26 A.3d 1139, 1145 (Pa. Super. 2011).

To sustain convictions for possession with intent to deliver where the controlled substance is not found on the defendant's person, the Commonwealth must demonstrate the defendant's knowing or intentional possession by proof of constructive possession. ***Commonwealth v. Valette***, 613 A.2d 548, 549-550 (Pa. 1992) (citations omitted). Constructive possession is "the ability to exercise a conscious dominion over the illegal substance: the power to control the contraband and the intent to exercise that control. Constructive possession may be found in one or more actors where the item at issue is in an area of joint control and equal access." ***Id***. "An intent to maintain a conscious dominion may be inferred

from the totality of the circumstances and circumstantial evidence may be used to establish a defendant's possession of drugs or contraband." ***Id***. Additionally, the Commonwealth must prove that the defendant had the intent to deliver the controlled substance. The facts and circumstances surrounding possession are relevant in making a determination of whether contraband was possessed with intent to deliver. ***Commonwealth v. Lee***, 956 A.2d 1024, 1028 (Pa. Super. 2008) (citations omitted).

To sustain a conviction for delivery of a controlled substance, the Commonwealth must demonstrate that a defendant unlawfully delivered controlled substances. 35 P.S. 780-113(a)(30). Delivery is defined as "the actual, constructive, or attempted transfer from one person to another of a controlled substance, other drug, device or cosmetic, whether or not there is an agency relationship." 35 P.S. § 780-102.

In the present case, the evidence of record supports Appellant's convictions. Mr. Hoffman testified at trial that he contacted Appellant to purchase cocaine. N.T., 4/12/12, at 42. Mr. Hoffman then drove to North 11th Street to meet Appellant. Upon arriving, Appellant entered Mr. Hoffman's vehicle and as Mr. Hoffman was driving around the block, he gave Appellant twenty dollars in exchange for two bags of cocaine. *Id*. at 42-45.

Sergeant Liggett, who was standing on 11th street, testified that he approached the vehicle after observing Mr. Hoffman make furtive movements at a red light. *Id*. at 61-66. Upon approaching the vehicle,

Sergeant Liggett observed Mr. Hoffman attempt to hide his right hand between his legs. *Id*. Both Mr. Hoffman and Appellant appeared nervous and scared. *Id*. at 67, 97. When Mr. Hoffman was removed from the vehicle, he dropped two bags of crack cocaine from his hand onto the ground. *Id*. at 70. A marijuana pipe and a bag of marijuana were recovered from Mr. Hoffman. However, no money was recovered from Mr. Hoffman. *Id*. at 76. Sergeant Liggett asked Mr. Hoffman if Appellant had sold him cocaine, and Mr. Hoffman responded affirmatively. *Id*. at 83.

Officer Cortazzo, who arrived on the scene to provide assistance, testified that he removed Appellant from the vehicle, and when he did so, he observed a clear plastic bag, which contained 89 smaller packets of crack cocaine, on the floor between Appellant's right foot and the door. *Id*. at 99. Although Appellant testified that Mr. Hoffman threw the clear plastic bag at Appellant's feet when Sergeant Liggett approached, Sergeant Liggett testified that he did not see Mr. Hoffman throw anything. *Id*. at 67, 129.

Mr. Lackner, the Commonwealth's expert on drug packaging and distribution, testified that in his opinion, the 89 packets of crack cocaine were possessed with intent to deliver, given the manner in which they were packaged. N.T., 4/12/12, at 111-115. Additionally, Mr. Lackner testified that the fact that no paraphernalia used for ingesting crack cocaine was found on Appellant, further indicated that the drugs were possessed with intent to deliver. *Id*.

Viewing the foregoing evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that the testimony of the Commonwealth's witnesses, which the trial court found credible, was sufficient to establish that Appellant sold cocaine to Mr. Hoffman, and that the bag containing the 89 packets of cocaine belonged to Appellant. This evidence was sufficient to sustain Appellant's convictions for possession of controlled substances with an intent to deliver and delivery of controlled substances.

Appellant next asserts that the trial court abused its sentencing discretion. Appellant's Brief at 37-39. When an appellant challenges a discretionary aspect of sentencing, we must conduct a four-part analysis before we reach the merits of the appellant's claim. ***Commonwealth v. Martin***, 611 A.2d 731, 735 (Pa. Super. 1992). In this analysis, we must determine: (1) whether the present appeal is timely; (2) whether the issue raised on appeal was properly preserved; (3) whether the appellant has filed a statement pursuant to Pa.R.A.P. 2119(f); and (4) whether the appellant has raised a substantial question that his sentence is not appropriate under the Sentencing Code. ***Id.***

In the present case, the appeal is timely and Appellant preserved his issue in a post-sentence motion. Further, Appellant has filed a statement pursuant to Pa.R.A.P. 2119(f). *See* Appellant's Brief at 6. We must

determine, therefore, whether Appellant has raised a substantial question for our review.

Appellant claims that the trial court failed to consider the requisite statutory factors set forth in 42 Pa.C.S.A. § 9721(b). Specifically, Appellant claims that the trial court imposed a manifestly excessive sentence that was not consistent with the protection of the public, the gravity of the offense, and Appellant's rehabilitative needs. Appellant's Brief at 6. Appellant asserts that the trial court failed to consider his history of drug addiction, his criminal history, the fact that Appellant did not attempt to flee from police at the scene of the crime, and the fact that other than Mr. Hoffman, no other members of the public were exposed to his criminal conduct. *Id*. at 6, 37-39. Given the foregoing, Appellant argues that his conduct did not justify imposition of consecutive sentences of twelve to thirty months of imprisonment plus five years of probation. Appellant's Brief at 37-39.[4]

---

[4] With respect to Count 1 (delivery), the guideline sentence recommendation was 6 to 14 months in the standard range, plus or minus 6 months for the aggravated and mitigated ranges. The trial court sentenced Appellant to five years of probation at Count 1.

With respect to Count 2, 18 Pa.C.S.A. § 7508 sets forth a mandatory sentence of one year and a fine of $5,000 where, as here, the aggregate weight of the drugs was between two and ten grams. The guideline sentence recommendation was 9 to 16 months in the standard range, plus or minus 6 months for the aggravated and mitigated ranges at Count 2. N.T., 7/16/12, at 1. The trial court sentenced Appellant to one year to 30 months of imprisonment at Count 2 (PWID).

(Footnote Continued Next Page)

Appellant essentially argues that the trial court failed to consider various mitigating factors in imposing its sentence. Such claims do not raise a substantial question for a review. Therefore, we may not review the discretionary aspects of Appellant's sentence. ***See Commonwealth v. Griffin***, --- A.3d ----, 2013 WL 1313089 at 3 (Pa. Super. 2013) (a defendant's allegation that his sentence failed to take into account his rehabilitative needs under 42 Pa.C.S.A. § 9721(b) and is thus manifestly excessive entitles him to no relief even if properly preserved via post-sentence motion; such a claim does not raise a substantial question for our review); ***Commonwealth v. Ratushny***, 17 A.3d 1269, 1273 (Pa. Super. 2011) ("An argument that the sentencing court failed to adequately consider mitigating factors in favor of a lesser sentence does not present a substantial question appropriate for our review"); ***Commonwealth v. Dunphy***, 20 A.3d 1215, 1222 (Pa. Super. 2011) ("[a]n allegation that the sentencing court 'failed to consider' or 'did not adequately consider' various factors does not raise a substantial question that the sentence was inappropriate"); ***Commonwealth v. Johnson***, 961 A.2d 877, 880 (Pa. Super. 2008) ("A challenge to the imposition of consecutive rather than

(Footnote Continued) ———————————

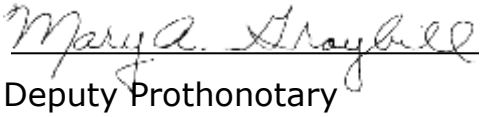
The trial court explained at sentencing that "to the extent that some may interpret Count 1 as being a sentence below the guidelines, the reason for that sentence is the entire sentencing scheme, the same overall sentence could have been achieved within the guidelines with a split sentence." N.T., 7/16/12, at 9.

concurrent sentences does not present a substantial question regarding the discretionary aspects of sentence").

For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Deputy Prothonotary

Date: 6/4/2013