

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RAYMOND J. MEBANE,	:	
	:	
Appellant	:	No. 182 WDA 2012

Appeal from the Order entered on December 30, 2011
in the Court of Common Pleas of Allegheny County,
Criminal Division, No. CP-02-CR-0003731-2009

BEFORE: STEVENS, P.J., MUSMANNO and ALLEN, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: February 21, 2013

Raymond J. Mebane ("Mebane") appeals from the dismissal of his first Petition for relief pursuant to the Post Conviction Relief Act ("PCRA"). **See** 42 Pa.C.S.A. §§ 9541-9546. We affirm.

Mebane was charged with 18 counts of violating the Controlled Substance, Drug, Device and Cosmetic Act: 8 counts of violating 35 P.S. § 780-113(a)(30); 8 counts of violating section 780-113(a)(16); 1 count of violating section 780-113(a)(31); and 1 count of violating section 780-113(a)(32). Mebane was also charged with person not to possess a firearm, 18 Pa.C.S.A. § 6105; and receiving stolen property, 18 Pa.C.S.A. § 3925(a).¹ On July 1, 2010, Mebane entered a general plea of guilty to the

¹ Mebane was originally charged with criminal conspiracy. **See** 18 Pa.C.S.A. § 903. However, this charge was later withdrawn.

above charges.² Thereafter, the trial court ordered a pre-sentence investigation report. On September 30, 2010, the trial court sentenced Mebane to an aggregate sentence of 12 to 28 years in prison.

Mebane filed a timely PCRA Petition on October 20, 2011.³ The Commonwealth filed an answer to the Petition. Thereafter, the PCRA court issued a Notice of intent to dismiss the PCRA Petition without a hearing. The PCRA court dismissed the Petition on December 30, 2011.

Mebane filed a timely Notice of appeal. The PCRA court ordered Mebane to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Mebane filed a timely Concise Statement and the PCRA court issued an Opinion.

On appeal, Mebane raises the following questions for our review:

² The underlying facts of this case, as summarized at the guilty plea hearing, indicate that the police conducted two controlled drug purchases from Mebane at his residence in February 2009. The police then obtained and executed a search warrant on Mebane's residence. The police recovered over 12 grams of cocaine, 18½ grams of marijuana, 1.03 grams of heroin, 1.1 grams of LSD, ½ a gram of Benzylpiperazine, 2.17 grams of methylenedioxymethamphetamine, 1 gram of Oxycodone and 3 grams of methadone. The drugs, due to the nature and quantity of the substances as well as the packaging, demonstrated an intent to deliver. The police also recovered a loaded firearm and over \$17,000 in cash.

³ Herein, the September 30, 2010 judgment of sentence became final on November 1, 2010, since October 30, 2010, or thirty days after the entry of the sentence, fell on a Saturday. **See** 42 Pa.C.S.A. § 9545(b)(3) (stating that a judgment of sentence becomes final at the conclusion of direct review or the expiration of the time for seeking the review); **Commonwealth v. Cappello**, 823 A.2d 936, 939 (Pa. Super. 2003); **see also** Pa.R.A.P. 903 (stating that the notice of appeal shall be filed within thirty days after entry of the order from which appeal is taken). Thus, Mebane timely filed his PCRA Petition. **See** 42 Pa.C.S.A. § 9545(b)(1).

- I. Was counsel ineffective for failing to challenge the discretionary aspects of the sentence in a post sentence motion and on direct appeal, specifically, that the trial court erred in imposing a sentence that was manifestly excessive, unreasonable, and an abuse of discretion when the trial court did not state adequate reasons for ordering the applicable mandatory sentences, each of which far exceeded the aggravated range of the guidelines, to run consecutively, by focusing exclusively on [] Mebane's prior record, without considering all relevant factors, including the nature and circumstances of the offenses, [] Mebane's serious medical problems, his rehabilitative needs, and his willingness to accept responsibility by entering a guilty plea?
- II. Did the lower court err by dismissing the PCRA Petition, as amended, without a hearing insofar as ... Mebane[] is eligible for relief under the PCRA, and he presented meritorious issues and facts which, if proven, would entitle him to relief?

Brief for Appellant at 9 (capitalization omitted).

This Court's standard of review regarding a PCRA court's order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. Great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record. Moreover, a PCRA court may decline to hold a hearing on the petition if the PCRA court determines that a petitioner's claim is patently frivolous and is without a trace of support in either the record or from other evidence.

Commonwealth v. Carter, 21 A.3d 680, 682 (Pa. Super. 2011) (citations and quotation marks omitted).

In his first claim, Mebane contends that his counsel was ineffective for failing to pursue a discretionary aspects of sentence claim either through a post-sentence motion or on appeal. Brief for Appellant at 18. Mebane argues that his underlying claim has merit as he has raised a substantial

question. *Id.* at 20. Mebane specifically argues that the sentencing court did not consider all of the relevant sentencing factors, did not place adequate reasons for the sentence on the record, did not consider mitigating factors, did not account for his rehabilitative needs, and only focused on the nature of his crimes in imposing the sentence. *Id.* at 20-21, 22. Mebane asserts that the sentencing court did not make any reference to the pre-sentence investigation reports during sentencing, even though the reports were prepared. *Id.* at 20. Mebane claims that his counsel did not have a reasonable basis for failing to challenge the sentence and that Mebane was prejudiced by this failure. *Id.* at 23.

To succeed on an ineffectiveness claim, Mebane must demonstrate by the preponderance of the evidence that

(1) [the] underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different.

Commonwealth v. Ali, 10 A.3d 282, 291 (Pa. 2010). A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim.

Commonwealth v. Martin, 5 A.3d 177, 183 (Pa. 2010). Counsel is presumed to be effective and the burden is on the appellant to prove otherwise. ***Commonwealth v. Hanible***, 30 A.3d 426, 439 (Pa. 2011).

Challenges to the discretionary aspects of sentencing do not entitle an appellant to an appeal as of right. Prior to reaching the merits of a discretionary sentencing issue:

[W]e conduct a four part analysis to determine: (1) whether appellant has filed a timely notice of appeal, **see** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, **see** Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

When appealing the discretionary aspects of a sentence, an appellant must invoke the appellate court's jurisdiction by including in his brief a separate concise statement demonstrating that there is a substantial question as to the appropriateness of the sentence under the Sentencing Code. Pa.R.A.P. 2119(f). The requirement that an appellant separately set forth the reasons relied upon for allowance of appeal furthers the purpose evident in the Sentencing Code as a whole of limiting any challenges to the trial court's evaluation of the multitude of factors impinging on the sentencing decision to exceptional cases.

The determination of what constitutes a substantial question must be evaluated on a case-by-case basis. A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process.

Commonwealth v. Glass, 50 A.3d 720, 726-27 (Pa. Super. 2012) (citation and quotation marks omitted).

In this case, Mebane's claim would have raised a substantial question. ***See id.*** at 727 (stating that a claim that the sentencing court focused on the seriousness of the crimes in imposing an excessive sentence raises a substantial question); ***see also Commonwealth v. Riggs***, 2012 PA Super 187, *5 (Pa. Super. 2012) (stating that a claim that the sentencing court failed to consider relevant sentencing criteria, including rehabilitative needs,

raises a substantial question). However, Mebane has not demonstrated that the sentencing court abused its discretion in imposing his sentence.

Here, the sentencing court indicated that the sentence was fashioned “after listening to all the testimony and reviewing the pre-sentence investigation report,” and listening to defense counsel, the assistant district attorney, and Mebane. **See** Trial Court Opinion, 4/23/12, at 3; N.T., 9/30/10, at 9-10; **see also** *Commonwealth v. Ventura*, 975 A.2d 1128, 1135 (Pa. Super. 2009) (stating that where the sentencing judge had the benefit of a presentence investigation report, it will be presumed that he or she was aware of the relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.”) (citation omitted). The sentencing court referred to the nature and circumstances of the crimes in this matter, including the fact that Mebane “was essentially running a free-for-all pharmacy out of his house,” that Mebane admitted that he had “been selling drugs for a very long time,” and that Mebane was an intelligent and articulate man. **See** N.T., 9/30/10, at 7, 8; **see also** Trial Court Opinion, 4/23/12, at 4 (stating that Mebane had a long history of selling drugs and that drugs, guns, and over \$17,000 were found in his house). The sentencing court also observed that Mebane had been through the criminal system before and knew the consequences of his actions. **See** Trial Court Opinion, 4/23/12, at 4; N.T., 9/30/10, at 8. The sentencing court found no reason to depart from the standard range of

sentencing guidelines and discussed the range of sentences available. **See** Trial Court Opinion, 4/23/12, at 4; N.T., 9/30/10, at 8-9. Finally, the sentencing court noted that Mebane's health condition should be evaluated in placing him in an appropriate facility and set forth its reasons for running some of the sentences consecutive to each other. **See** Trial Court Opinion, 4/23/12, at 4; N.T., 9/30/10, at 5, 8-9; **see also Commonwealth v. Johnson**, 961 A.2d 877, 880 (Pa. Super. 2008) (stating that "the imposition of consecutive rather than concurrent sentences lies within the sound discretion of the sentencing court."). Based upon the foregoing, the sentencing court adequately set forth the reasons for its sentence and did not abuse its discretion in imposing the sentence. **See Ventura**, 975 A.2d at 1135 (stating that a "sentencing judge can satisfy the requirement that reasons for imposing sentence be placed on the record by indicating that he or she has been informed by the pre-sentencing report; thus properly considering and weighing all relevant factors.") (citation omitted); **see also Commonwealth v. Shugars**, 895 A.2d 1270, 1275 (Pa. Super. 2006) (stating that a sentence should not be disturbed absent a manifest abuse of discretion). Accordingly, because Mebane's underlying claim that the sentence was harsh and excessive is without arguable merit, his ineffectiveness claim was properly rejected by the PCRA court. **See Commonwealth v. Watson**, 835 A.2d 786, 799 (Pa. Super. 2003)

(concluding that appellant's ineffectiveness claim fails where his underlying discretionary aspects of sentencing claim is without merit).

In his second claim, Mebane contends that the PCRA court erred in dismissing his Petition without holding a hearing. Brief for Appellant at 24-25.

As noted above, "a PCRA court may decline to hold a hearing on the petition if the PCRA court determines that a petitioner's claim is patently frivolous and is without a trace of support in either the record or from other evidence." **Carter**, 21 A.3d at 682.

It is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing.

Commonwealth v. Khalifah, 852 A.2d 1238, 1240 (Pa. Super. 2004).

Here, Mebane's sole claim regarding the ineffective assistance of counsel for failing to raise a discretionary aspects of sentencing claim did not have any support in the record or from other evidence. Thus, we conclude that the PCRA court did not err in dismissing Mebane's Petition without a hearing. **See Carter, supra**.

Order affirmed.