NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. BRENT CHRISTOPHER, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1453 EDA 2013

Appeal from the Judgment of Sentence April 16, 2013
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0003313-2012, CP-39-CR-0003975-2012, Nos. CP-39-CR-0003258-2012

BEFORE: BOWES, SHOGAN, and MUSMANNO, JJ.

MEMORANDUM BY BOWES, J.: **FILED JUNE 19, 2014**

Brent H. Christopher appeals from the April 16, 2013 judgment of sentence of twenty to forty years imprisonment, which was imposed after he pled guilty to four counts of burglary and one count of attempted burglary, all first-degree felonies. He challenges the denial of his post-sentence motion to withdraw his guilty plea and the discretionary aspects of his sentence. We affirm.

The facts giving rise to the charges were summarized as follows by the trial court:

> On June 16, 2012, members of the Whitehall Police Department responded to reports of burglaries and/or attempted burglaries at various locations in Whitehall Township, Lehigh County, Pennsylvania, including 1777 Peachtree Circle, 808 Jefferson Street, and 1240 California Avenue.

Joseph McDevitt, of 1777 Peachtree Circle, reported that he was on his computer when a male entered his room. Mr. McDevitt described the actor as white, wearing a red T-shirt with a big graphic on the front, and possibly wearing blue jean shorts. After Mr. McDevitt confronted him, the actor fled. Mr. McDevitt's neighbor, Mr. Hilbert reported that he observed the actor running from 1777 Peachtree Circle wearing the described clothing. Damage to the rear bathroom window screen and pry marks at the point of entry were noted.

Officers next responded to the location of 808 Jefferson Street for a report of an attempted burglary. When the homeowners returned to their property from being away, they discovered that the rear kitchen window had been pried open and the window glass was broken. They also ascertained that their alarm system had been activated by a motion detector. None of their property had been taken.

On that same day, Frank and Claire Silfies of 1240 California Avenue reported that they returned home to find that their sliding glass door at the rear of their home had been pried open and the frame was broken. It was determined that a wicker sewing basket, containing over $200.00 in loose change, was taken from the residence. A six pack of insulin syringes, a Visa credit card, and a Discover credit card in the name of Claire Silfies was also stolen. Frank Silfies contacted the credit card companies and found that the Discover card had been used at the Whitehall Shell gas station and the Whitehall Giant Supermarket [the "Giant"] at approximately 1:38 p.m. Officer Shawn McHugh from the Whitehall Township Police Department viewed surveillance video from the Giant, which showed the suspect using the card in question. The suspect was identified as a white male who appeared to be in his forties with short hair, wearing a red T-shirt with an American flag on it, and a pair of jean shorts. The suspect bought $137.49 worth of cigarettes from the tobacco counter of the grocery store and was observed carrying a sewing basket to the counter and then proceeding to a change machine and depositing the change in exchange for paper currency. The suspect was then observed leaving the scene in a white Chevrolet Express 2500 van, which was parked in the parking lot of the Giant.

Detective James Lucas of the Whitehall Police Department was able to identify the Appellant, Brent Christopher, as the

actor in the Giant video. Through investigation, it was determined that the Appellant was under supervision by the Pennsylvania Board of Probation and Parole (hereinafter "State Parole"). The video was shown to the Appellant's State Parole agent, who positively identified Appellant as the suspect in the Giant video.

At a later date, Officer Andrew Artim of the Lehigh County Drug Task Force observed the Appellant operating the white Chevrolet Express van seen in the Giant supermarket surveillance video, although the van bore a different registration plate than the one that was supposed to be on the vehicle. A vehicle stop ensued and the Appellant was apprehended after attempting to flee the police officer. When he was taken into custody, the Appellant had $659.79 on his person. Inside of the van, police officers observed multiple jewelry boxes, a credit card, a bag of change and jewelry items in the front passenger area.

After the Appellant was taken into custody, members of the Whitehall Police Department responded to a burglary call at 5478 Prospect Street. The homeowners were on vacation and a neighbor discovered that the back door had been pried open by removing a sliding glass panel. Money and jewelry was stolen from the residence.

A search warrant was conducted on the white Chevrolet Express 2500 van and numerous items that had been previously reported as being stolen during the burglaries were located during the search, including items missing from 5478 Prospect Street.

On June 19th of 2012, Berks-Lehigh Patrolman Stephen Marshall responded to a report of a burglary at a private residence located at 10213 Ziegels Church Road, Upper Macungie Township, Lehigh County, owned by Eleanor Reynard. The victim reported that the side garage door had been forced open, causing several hundred dollars' worth of damage to the door and the frame. Ms. Reynard indicated that large amounts of jewelry, Euros, and other household items valued at approximately $5,000.00 had been removed from her residence. On June 21st of 2012, Ms. Reynard went to Allentown Pawn, located at 929 Hamilton Street in the City of Allentown and spoke with management about the burglary. The pawn shop

> staff advised that the Appellant in this case had been at their store on June 19th and sold a total of seven rings. The rings were shown to Ms. Reynard who identified them as being hers. The Appellant had also inquired as to where he could cash in the Euros in his possession. He was advised that the PNC Bank did that type of transaction.
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> Inquiry was made of the PNC Bank located at 4602 Broadway, South Whitehall Township, Lehigh County. It was determined that on the same date, June 19th, 2012, the Appellant had cashed in Euros valued at $563.56.

Trial Court Opinion, 9/9/13, at 3-6.

Appellant was subsequently arrested and charged with four counts of burglary and one count of attempted burglary, and he entered a guilty plea to all charges on March 5, 2013. ***See*** N.T. Guilty Plea, 3/5/13, at 18-19. At the plea colloquy, Appellant was informed that all counts were felonies of the first degree, each carrying a maximum penalty of twenty years in prison. ***Id***. at 7. The court explained that Appellant's total maximum sentence could be one hundred years imprisonment. ***Id***.

On April 16, 2013, the case proceeded to sentencing. The court had the benefit of the sentencing guidelines and a pre-sentence investigation ("PSI") report. In addition, the victims of the burglaries testified regarding the impact of the crimes on their lives, and Appellant and his family members elaborated on Appellant's serious drug addiction and attempts at rehabilitation. ***See*** N.T., 4/16/13, at 4, 28-34, 36-47. The court imposed consecutive standard-range sentences, resulting in an aggregate sentence of twenty to forty years imprisonment. ***Id***. at 54.

On April 26, 2013, Appellant filed a motion to withdraw his guilty plea and a motion for reconsideration of his sentence. Both motions were denied on May 1, 2013, and Appellant timely appealed. He complied with the trial court's order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and now presents two issues for our review:

> I. Did the court err in denying the defendant's request to withdraw his guilty plea, filed post sentence, when the defendant received total sentence[s] beyond that which he expected or believed he was advised were possible?
>
> II. Did the trial court err in imposing a manifestly excessive sentence when the court, through multiple consecutive sentences, rendered an aggregate sentence which was excessive comparison to the defendant's criminal conduct and past history?

Appellant's brief at 7.[1]

Appellant complains that the trial court erred in denying his post-sentence request to withdraw his guilty plea. We note that Appellant complied with Pa.R.Crim.P. 720, which required the filing of a motion to withdraw the plea within ten days of sentencing in order to preserve the issue. In reviewing the trial court's denial of a post-sentence request to withdraw a guilty plea, we will not disturb the decision of the trial court absent an abuse of discretion. ***Commonwealth v. Mobley***, 581 A.2d 949 (Pa.Super. 1990); ***Commonwealth v. Jones***, 566 A.2d 893, 895

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[1] Since a reversal of the order denying Appellant's request to withdraw his guilty plea would result in a trial and render moot any objections to his sentence, we have reordered the issues.

(Pa.Super. 1989). A defendant attempting to withdraw a guilty plea after sentencing must "demonstrate prejudice on the order of manifest injustice before withdrawal is justified." ***Commonwealth v. Lincoln***, 72 A.3d 606, 610 (Pa.Super. 2013). "A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently." ***Id***. at 611.

Appellant first contends that his guilty plea was not entered knowingly, intelligently, and voluntarily because he received total sentences that exceeded what he expected or was advised were possible. ***See*** Appellant's brief at 15. The record refutes Appellant's contention. Prior to sentencing, Appellant completed a written guilty plea colloquy form. The form was signed by both Appellant and his counsel, and Appellant acknowledged therein that his attorney or someone else had advised him as to what sentences he could receive for the crimes charged. ***See*** Guilty Plea Colloquy, 3/5/13, at 7. At sentencing, the court orally advised Appellant of his rights and the potential ramifications of a guilty plea. The court informed Appellant of the nature of the charges against him and the maximum penalties associated with those crimes. ***See*** N.T. Guilty Plea, 3/5/13, at 6. The following colloquy took place:

> COURT: So, at this moment in time the absolute worst case scenario for you, if I were to, as they saw, throw the book at you, would be a sentence of not less than fifty nor more than a hundred years in the state correctional facility. Do you understand?
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> [APPELLANT]: Yes.

Id. at 6-7. The trial court asked Appellant whether anyone, including his attorney, had made any promises to him as to what his sentence would be, and whether anyone had threatened or forced him to enter the guilty plea. ***Id***. at 10-11. Appellant answered in the negative.

Pennsylvania law "does not require that appellant be pleased with the outcome of his decision to enter a plea of guilty: All that is required is that his decision to plead guilty be knowingly, voluntarily, and intelligently made." ***Commonwealth v. Anderson***, 995 A.2d 1184, 1192 (Pa.Super. 2010). It is clear from the written and oral colloquies that Appellant was made completely aware of the potential ramifications of his plea and the maximum sentence that could be imposed, and he was afforded ample time to review the options with his counsel. Therefore, we find no abuse of discretion in the trial court's finding that the plea was knowing, intelligent, and voluntary, and that no manifest injustice occurred.

Next, Appellant challenges his sentence as excessive. This is a challenge to the discretionary aspects of his sentence, and before it can be addressed, we must first determine whether Appellant raises a substantial question for review. "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. Austin,*** 66 A.3d 798, 808 (Pa.Super. 2013)

(citing ***Commonwealth v. Griffin,*** 65 A.3d 932, 935 (Pa.Super. 2013)). Also, "[t]he determination of what constitutes a substantial question must be evaluated on a case-by-case basis." ***Commonwealth v. Clarke,*** 70 A.3d 1281, 1286 (Pa.Super. 2013).

Appellant filed a timely post-sentence motion. He also included a Pa.R.A.P. 2119(f) statement in his brief that sets forth the reasons why his appeal should be granted. He claims that the sentencing court failed to take into consideration "his mitigating factors," and "his rehabilitative needs," which are factors identified in 42 Pa.C.S. § 9721(b) ("the 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."). ***See*** Appellant's brief at 10. In addition, Appellant avers that his sentence violates the fundamental norms of sentencing because it is not proportional to the criminal conduct and effectively results in a life sentence for him. In that regard, Appellant directs our attention to ***Commonwealth v. Dodge***, 77 A.3d 1263, 1268 (Pa.Super. 2013), holding that the appellant's assertion that his sentence was a "virtual life sentence" for non-violent crimes raised a substantial question. Appellant raises these issues not in a boilerplate claim, but "cite[s] pertinent legal authority that can be read to support his assertion

that a substantial question that the sentence was not appropriate under our Sentencing Code exists." ***Id***.

In ***Commonwealth v. Cartrette***, 83 A.3d 1030, 1038 (Pa.Super. 2013), we held that "[a] claim that a sentence is manifestly excessive such that it constitutes too severe a punishment raises a substantial question." Furthermore, since Appellant has averred that the court failed to consider one or more of the required factors identified in § 9721(b), he has raised a substantial question and we will review the claim. ***See Commonwealth v. Bricker***, 41 A.3d 872, 875 (Pa.Super. 2012).

Where, as here, Appellant presents a challenge to the discretionary aspects of his sentence, the sentence "will not be disturbed on appeal absent a manifest abuse of discretion." ***Commonwealth v. Griffin***, 65 A.3d 932, 937 (Pa.Super. 2013). To prove that there was such an abuse of discretion, Appellant must meet a higher standard than merely showing 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." ***Id***.

Furthermore, we note preliminarily that all of Appellant's sentences fall within the standard range. It has been held by our Supreme Court that standard-range sentences may only be reversed if, when viewed in light of the factors outlined in 42 Pa.C.S. § 9781(c) and (d), the sentence is clearly

unreasonable. ***Commonwealth v. Walls***, 926 A.2d 957 (Pa. 2007). The ***Walls*** Court noted that the term "unreasonable", while not defined in the Sentencing Code, generally means a decision that is either irrational or not guided by sound judgment. ***Id***. The court also stated, "rejection of a sentencing court's imposition of sentence on unreasonableness grounds [should] occur infrequently, whether the sentence is above or below the guidelines range." ***Id***. at 964. Furthermore, a sentence "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. 42 Pa.C.S. § 9721(b). ***See Walls***, ***supra*** at 963. The ***Walls*** Court concluded that a sentence can be deemed unreasonable after review of the elements of section 9781(c) and (d), or if the factors of section 9721(b) have not been taken into consideration.

Mindful of that standard, we turn now to the merits of Appellant's claims. He contends that his sentence is manifestly excessive in light of his criminal conduct and history. The crux of Appellant's claim is that the trial court's decision to sentence him to consecutive terms, resulting in an aggregate sentence of twenty to forty years of incarceration, was manifestly excessive and unjustified in its length and severity based on his conduct. ***See*** Appellant's brief at 12.

It has been long recognized that sentencing courts enjoy considerable discretion in determining whether to run sentences concurrently or consecutively. In ***Commonwealth v. Klueber***, 904 A.2d 911 (Pa. 2006), the defendant was convicted of 134 counts of sexual abuse of children and sentenced to consecutive standard-range sentences totaling thirty-three and one-half to sixty-seven years imprisonment. In upholding the sentence, the Supreme Court granted deference to the trial court's finding that, due to defendant's prior criminal history, he was at high risk to re-offend, and thus was a danger to the public. Since ***Klueber***, ***supra***, our High Court has employed similar reasoning in cases involving the imposition of consecutive standard-range sentences. ***See Commonwealth v. Dodge***, 935 A.2d 1290 (Pa. 2007); ***Commonwealth v. Caraballo***, 933 A.2d 650 (Pa. 2007).

In the present case, the trial court prefaced its remarks at sentencing with the statement that it had reviewed the PSI and sentencing guidelines prepared by the Lehigh County Adult Probation and Parole Department. It was aware that Appellant received his GED, and it had the results of a drug and alcohol evaluation. N.T., 4/16/13, at 4. Additionally, the court heard testimony from Appellant's victims, parents, and Appellant. The PSI indicated that the Appellant had eleven prior adult arrests and nine convictions over a period of three decades, and that he had attempted and failed at drug rehabilitation at least eight times. ***Id***. at 43-44. The PSI recommended an aggravated range sentence of fifty to one hundred years

due to the fact that Appellant was an absconder from state parole when he committed the instant offenses.

The sentencing court found the victims' testimony to be compelling evidence of the gravity of these crimes. The victims indicated that they experienced feelings of confusion and disarray upon discovering the burglaries, as well as persistent feelings of fear, all of which continued to affect their present-day activities. ***See*** N.T., 4/16/13, at 9-15, 17-18, 23-24. The victims also indicated that several of the stolen items had sentimental value and were irreplaceable. ***Id***. at 17, 22-23. In some instances, the victims' homes were damaged. ***Id***. at 14, 17, 21. Most disturbing to the sentencing court was one victim's testimony that her grandchildren are afraid to enter her home since the burglary. ***Id***. at 10-12. Appellant and his parents described Appellant's past and current struggles with addiction. ***Id***. at 27-38. Great emphasis was placed on the assertion that Appellant committed the burglaries to fund his extreme drug addiction. ***Id***. at 38-42.

At sentencing, the trial court concluded:

> You're not ripping businesses off, you're not doing something impersonal, this is very personal. I don't give a discount for quantity, so quite frankly, it doesn't matter to me that you've been sentenced in Bucks County. There are one, two, three, four, five different people that you victimized here and you will be punished separately for each of them. I have heard this before in other cases. [Defense Counsel] is right, [The Assistant District Attorney] is right, that I'm sure other judges along the line have heard exactly the same things that I am hearing today, but for me it's interesting that there's always

> a new twist. So, I've heard victims come in before and talk about how they feel violated, how things have been stolen from them, how the things have sentimental value and no value to anyone else and those are things that can't be replaced. I've heard people complain about the fact that they've had damage to their homes, that it's been expensive for them to have to fix their homes up, replace things, put in a security system, that they've had to lose time at work, lose time coming into the courthouse, lose time going to the police department, lose time dealing with their insurance company. I have, I've heard it all, but it's interesting that there's always something different that I didn't hear, that almost like shakes me in my chair, to remind me, again, of the human aspect of this. When Ms. Drake [the victim of the burglary at 5478 Prospect Street] talked about the fact that her grandchildren, who weren't even victimized, they weren't there, it wasn't their home, they're afraid because they had to be taken out in the night, because their dad was called, that the grandparents' home was burglarized. And they go over and they see the damage and they see the rubble and now they're afraid. It's like it just keeps oozing out, the people that you hurt. And I can't continue. You are not a person who is safe to return to the community. And I am going to sentence you in a way that, quite frankly, I don't expect you to return to the community until you're too old to carry anything out of anyone's home. It's the only thing that I can do. It's what these people deserve. I am sorry that you're an addict, there's nothing more I can do about it until you do something about it, there's nothing more I can do about it.

N.T. Sentencing, 4/16/13, at 48-50.

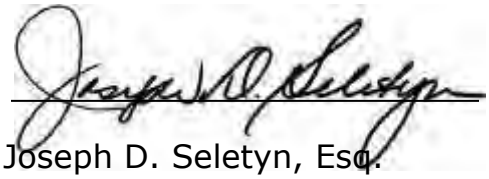
The court clearly indicated on the record that it utilized the sentencing guidelines and the PSI. In addition, the court considered mitigating factors, such as Appellant's serious battle with drug addiction and other hardships. ***See*** N.T. Sentencing, 4/16/13, at 48; ***see also*** Trial Court Opinion, 9/9/13, at 11 ("Further testimony and argument presented to the Court demonstrated that the Appellant is a serious heroin abuser and that several attempts at rehabilitation have been futile.") The court weighed those

mitigating factors against Appellant's extensive criminal history, including fourteen prior burglary convictions, his repeated unsuccessful attempts at rehabilitation, the effects of his crimes on his victims and the larger community, as well as the likelihood that he would re-offend.

We find that the sentencing court satisfied the requirements imposed by 42 Pa.C.S. § 9721(b) and 42 Pa.C.S. § 9781(c) and (d). As indicated in ***Klueber*** and ***Dodge***, the trial court is given broad discretion in sentencing, particularly in deciding to impose consecutive sentences. The sentencing court clearly articulated its reasons for imposing consecutive sentences, reasons analogous to those of the sentencing court in ***Klueber***, subsequently approved by the Supreme Court on appeal, and we find no abuse of discretion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/19/2014