NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. TERRY LEE HARGET Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1705 MDA 2013

Appeal from the Judgment of Sentence August 19, 2013
In the Court of Common Pleas of Adams County
Criminal Division at No(s): CP-01-CR-0000868-2012

BEFORE: PANELLA, J., WECHT, J., and STRASSBURGER, J.*

MEMORANDUM BY PANELLA, J. **FILED JULY 02, 2014**

Appellant, Terry Lee Harget, appeals from the judgment of sentence entered on August 19, 2013, by the Honorable Michael A. George, Court of Common Pleas of Adams County. After careful review, we affirm.

As we write exclusively for the parties, who are familiar with the factual context and legal history of this case, we set forth only so much of the facts and procedural history as necessary to our analysis.

On August 4, 2012, while his girlfriend was away, Harget remained at her house and supervised her two children, K.B., age 12, and S.B., age 8. ***See*** N.T., Non-Jury Trial, 4/24/2013, at 52, 54, 61. At approximately 1:30

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* Retired Senior Judge assigned to the Superior Court.

a.m., while watching television on the couch, Harget angrily lifted K.B. and carried her into her mother's bedroom. ***See id***., at 17, 62-64. Harget then threatened K.B. and forced her to remove her clothing. ***See id***., at 18, 20. Thereafter, Harget forced himself upon K.B. and performed oral sex on her, digitally penetrated her vagina and anus, engaged in vaginal and anal intercourse with her, and forced her to perform oral sex on him. ***See id***., at 20-25.

After this incident, K.B. and Harget returned to the couch to talk about what happened. ***See id***., at 26. After a short time, Harget took K.B. back to the bedroom where the initial assault occurred. ***See id***. At that time, K.B.'s younger brother S.B. awoke and Harget forced him to lock himself in the bathroom of the bedroom. ***See id***. Harget then assaulted K.B. again, in the same manner as the first incident. ***See id***. During this time, S.B. was locked in the bathroom and thus forced to listen to the assault of his sister. ***See id***. Around 9 a.m., K.B. contacted her sister, who then called the police, and took K.B. to the hospital. ***See id***., at 27. Around 3 p.m. that afternoon, police officers arrested Harget at his girlfriend's home. ***See id***., at 43-44. At that time, Harget confessed to raping K.B. ***See id***., at 45. However, Harget claimed he was under demonic influence during the assault of K.B. ***See id***., at 63-64, 69-70.

Following a bench trial on April 24, 2013, the trial court convicted Harget of two counts of rape a child; four counts of involuntary deviate

sexual intercourse; one count of kidnapping; four counts of aggravated indecent assault; one count of false imprisonment; one count of corruption of minors; and one count of indecent assault. Prior to sentencing, following an evaluation by the Sexual Offenders Assessment Board, the trial court classified Harget as a sexually violent predator and required him to register as such.

On August 19, 2013, the Court sentenced Harget as follows: 20 to 40 years for each count of rape; 20 to 40 years for each count of involuntary deviate sexual intercourse; 4 to 10 years for one count of kidnapping; 4 to 10 years for each count of aggravated indecent assault; 1 to 5 years for one count of false imprisonment; 3 to 24 months for one count of corruption of minors; and 3 to 24 months for one count of indecent assault. ***See*** Order, 8/19/13, at 2-4. The trial court ran several of the sentences consecutively. ***See id***., at 4. Taken together, Harget received a sentence of 45 to 95 years' incarceration. ***See id***. The trial court denied Harget's post-sentence motions and his timely appeal followed.

Harget first challenges the discretionary aspect of his sentence. Specifically, he argues that, viewed as a whole, the aggregate sentence resulted in an unreasonably punitive sentence. He further claims the trial court failed to adequately consider his rehabilitative needs, education, criminal history, and regret for his actions.

Issues challenging the discretionary aspect of a sentence must first be raised by post sentence motion or by presentation to the trial court during the sentencing proceedings, otherwise the challenge is waived. ***See Commonwealth v. Shugars***, 895 A.2d 1270, 1275 (Pa. Super. 2006). Harget timely filed post sentence motions, which preserved the claims now raised on appeal.

"The right to appeal the discretionary aspects of a sentence is not absolute." ***Id***., at 1274. Therefore, "when challenging the discretionary aspects of the sentence imposed, an appellant must present a substantial question as to the inappropriateness of the sentence." ***Id***. ***See also*** Pa.R.A.P. 2119(f). Specifically, an appellant must articulate the manner in which the sentence is inconsistent with a provision of the sentencing code or is contrary to a fundamental norm of the sentencing process. ***See Commonwealth v. Austin***, 66 A.3d 798, 808 (Pa. Super. 2013).

Harget first claims that his aggregate sentence was manifestly excessive and unreasonable. Harget claims that the imposition the consecutive sentences created an unreasonable sentence in the aggregate.

"Pennsylvania law affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed." ***Commonwealth v. Austin***, 66 A.3d 798, 808 (Pa. Super. 2013). Generally, "[a]ny challenge to the exercise of this discretion ordinarily does not raise a substantial

question." ***Commonwealth v. Prisk***, 13 A.3d 526, 533 (Pa. Super. 2011) (citations omitted). However, "imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment." ***Commonwealth v. Lamonda***, 52 A.3d 365, 372 (Pa. Super. 2012) *(en banc)* (citation omitted). ***See also Commonwealth v. Dodge***, 77 A.3d 1263, 1273 (Pa. Super. 2013).

For instance, in ***Dodge***, this Court found that 58½ to 124 years' incarceration for receiving stolen property, a non-violent crime, is unreasonable. However, in this case, Harget violently and repeatedly sexually assaulted a young girl and forced her younger brother to listen to the assault. We do not find this sentence "unduly harsh" or unreasonable. Therefore, this claim does not raise a substantial question.

Harget next claims that the trial court failed to consider his education, rehabilitation needs, criminal history, and remorse[1]—in other words that the trial court failed to consider mitigating factors.

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[1] We fail to see in the record where Harget expressed remorse. At sentencing, the trial court provided Harget with a right of allocution. Harget stated, in total, the following: "Your Honor, you have already made up your mind and denied me a lot of my rights, and I'm filing an appeal to a higher Court." N.T., Sentencing, 8/19/13, at 4.

"[A]rguments that the sentencing court failed to consider the factors proffered in 42 Pa.C.S. § 9721 does present a substantial question whereas a statement that the court failed to consider facts of record, though necessarily encompassing the factors of § 9721, has been rejected." ***Commonwealth v. Dodge***, 77 A.3d 1263, 1272 n.8 (Pa. Super. 2013).

A review of the record reveals that the mitigating factors were of record. For instance, Harget quotes in his Rule 2119(f) statement the trial court's discussion of his rehabilitative needs. ***See*** Appellant's Brief, at 8. Furthermore, the court had the benefit of a pre-sentence investigation report. As such, there is a presumption that the court was aware of information relating to the defendant's character, and considered that information along with the mitigating statutory factors. ***See Commonwealth v. Tirado***, 870 A.2d 362, 368 (Pa. Super. 2005); ***Commonwealth v. Boyer***, 856 A.2d 149, 154 (Pa. Super. 2004), ***aff'd,*** 891 A.2d 1265 (Pa. 2006). This was not a sentence based solely on the seriousness of the underlying offenses, but instead reflected a careful consideration of the relevant factors as set forth in 42 PA.CONS.STAT.ANN. § 9721(b).

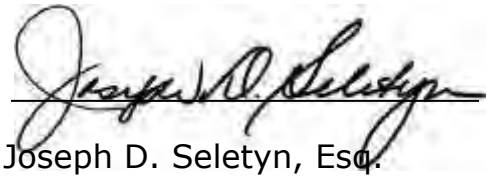
Harget's final issue on appeal involves the pre-trial denial of his motion *in limine*, in which he sought to admit evidence of demonic possession to negate the *mens rea* component of his crimes. Harget claims that he should have been permitted to raise a defense of demonic possession. "It is well

settled that the argument portion of an appellate brief must be developed with pertinent discussion of the issue, which includes citations to relevant authority." ***Commonwealth v. Knox***, 50 A.3d 732, 748 (Pa. Super. 2012). ***See also*** Pa.R.A.P. 2119(a). When an appellant fails to cite any legal authority, the issue is waived. ***See Commonwealth v. B.D.G.***, A.2d 362, 371-72 (Pa. Super. 2008).

Here, Harget failed to cite any legal authority in his four-sentence argument. As such, he has waived consideration of this patently absurd claim. ***See*** Appellant's Brief, at 18.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/2/2014