NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
LAMONT CAESAR,	:	No. 1813 EDA 2009
Appellant	:	

Appeal from the Judgment of Sentence, March 29, 2006,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0300183-2005

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS AND PLATT,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED JUNE 23, 2014**

Lamont Caesar appeals from the judgment of sentence of March 29, 2006. We affirm.

On January 20, 2006, appellant entered open guilty pleas to numerous offenses relating to a crime spree which took place over three days in October 2004. At case number 0503-0018, appellant pled guilty to one count of attempted murder, two counts of robbery, two counts of aggravated assault, one count of criminal conspiracy, and a violation of the Uniform Firearms Act ("VUFA"). At case number 0503-0019, appellant pled guilty to two counts of robbery, criminal conspiracy, and VUFA. At case number 0509-0072, appellant pled guilty to one count of attempted murder, three counts of robbery, two counts of aggravated assault, criminal conspiracy, and two counts of VUFA. On March 29, 2006, appellant

* Retired Senior Judge assigned to the Superior Court.

appeared before the Honorable William J. Mazzola for sentencing. The sentencing court heard from several witnesses on appellant's behalf, as well as appellant, who exercised his right of allocution. The court also reviewed victim impact statements and a pre-sentence investigation ("PSI") report, and took the testimony of Steven Spielberger, one of the victims who was shot in the neck, chest, and arm by appellant. (Notes of testimony, 3/29/06 at 50.) The court imposed an aggregate sentence of 20 to 48 years' imprisonment. Appellant filed a ***pro se*** motion for reconsideration of sentence which was denied. Appellant's subsequent direct appeal, in which he raised a challenge to the discretionary aspects of sentencing, was quashed for failure to include the requisite Rule 2119(f)[1] statement in his brief. ***Commonwealth v. Caesar***, No. 1472 EDA 2006, unpublished memorandum (Pa.Super. filed April 29, 2008).

On August 26, 2008, appellant filed a timely PCRA[2] petition seeking restoration of his direct appeal rights due to ineffective assistance of appellate counsel. New counsel was appointed, and on May 29, 2009, appellant's direct appeal rights were reinstated ***nunc pro tunc***. This timely appeal followed on June 18, 2009.[3] On August 31, 2009, appellant was

[1] Pa.R.A.P., Rule 2119(f), 42 Pa.C.S.A.

[2] Post-Conviction Relief Act, 42 Pa.C.S.A. §§ 9541-9546.

[3] The appeal of appellant's co-defendant, Craig Carter, is currently pending before this court at docket number 2190 EDA 2008.

ordered to file a concise statement of errors complained of on appeal within 21 days pursuant to Pa.R.A.P. 1925(b); appellant timely complied on September 14, 2009, raising a single issue for appeal: "Whether [appellant]'s aggregate sentence of 20 to 40 [sic] years was harsh and excessive because the sentencing judge failed to adequately consider [appellant]'s drug addiction and that he had a prior record score of zero[?]" On November 6, 2009, Judge Mazzola issued a Rule 1925(a) opinion addressing the discretionary aspects of appellant's sentence.

On March 31, 2010, this court granted appellant's application for remand to obtain the notes of testimony from the January 2006 guilty plea hearing. On February 2, 2011, the trial court ordered appellant to provide the transcript from the guilty plea hearing or, if unavailable, a statement pursuant to Pa.R.A.P. 1923.[4] Apparently the notes of testimony could not be located; and on June 14, 2011, after contacting plea counsel and reviewing

[4] **Rule 1923. Statement in Absence of Transcript**

> If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within ten days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the lower court for settlement and approval and as settled and approved shall be included by the clerk of the lower court in the record on appeal.

the trial court's handwritten notes from the proceedings, appellant filed a "proposed statement of the record in absence of the guilty plea hearing notes of testimony pursuant to Pa.R.A.P. 1923." On June 24, 2011, the trial court filed a supplemental opinion. On July 6, 2011, the Commonwealth filed a "motion for reconsideration of trial court's approval of defendant's proposed statement of the record in absence of notes of testimony under Pa.R.A.P. 1923," complaining that it was not afforded an opportunity to respond. On July 7, 2011, the trial court granted the motion, withdrawing its June 24, 2011 supplemental opinion and giving the Commonwealth 21 days to file a response to appellant's proposed statement of the record in absence of a transcript. On August 16, 2011, the Commonwealth filed its response, and on July 18, 2012, the trial court filed a second supplemental opinion. Briefs have been filed, and this matter is now ripe for disposition.[5]

Appellant has raised the following issue for this court's review:

> 1. Whether [appellant]'s aggregate sentence of 20 to 48 years was harsh and excessive because the sentencing judge failed to adequately consider [appellant]'s drug addiction and that he had a prior record score of zero[?]

Appellant's brief at 5.

[5] We agree with the trial court that, as the only issue raised on appeal pertains to the discretionary aspects of sentencing, the notes of testimony of the guilty plea hearing are unnecessary. (Second supplemental opinion, 7/18/12 at 2 n.2.) Appellant's motion for remand has caused this case to be delayed for four years.

> A challenge to the discretionary aspects of sentencing is not automatically reviewable as a matter of right. ***Commonwealth v. Hunter***, 768 A.2d 1136 (Pa.Super.2001)[,] ***appeal denied***, 568 Pa. 695, 796 A.2d 979 (2001). When challenging 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. ***Commonwealth v. Mouzon***, 571 Pa. 419, 812 A.2d 617 (2002); ***Commonwealth v. Tuladziecki***, 513 Pa. 508, 522 A.2d 17 (1987); 42 Pa.C.S.A. § 9781(b); 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.'" ***Commonwealth v. Williams***, 386 Pa.Super. 322, 562 A.2d 1385, 1387 (1989) (***en banc***) (emphasis in original).

Commonwealth v. McNear, 852 A.2d 401, 407-408 (Pa.Super. 2004).

Instantly, appellant has complied with Rule 2119(f) by including the requisite statement in his brief. (Appellant's brief at 2-4.) However, we find that appellant does not raise a substantial question for our review. In his Rule 1925(b) statement and again in his statement of questions involved, appellant alleges only that the trial court failed to adequately consider his drug addiction and his prior record score of zero. An argument that the sentencing court failed to consider mitigating factors in favor of a lesser sentence does not present a substantial question appropriate for our review; as such, we need not address it. ***Commonwealth v. Hanson***, 856 A.2d

1254, 1257-1258 (Pa.Super. 2004), citing ***Commonwealth v. McNabb***, 819 A.2d 54, 57 (Pa.Super. 2003). ***See also Commonwealth v. Griffin***, 804 A.2d 1, 9 (Pa.Super. 2002), ***appeal denied***, 868 A.2d 1198 (Pa. 2005), ***cert. denied***, 545 U.S. 1148 (2005), citing ***Williams***, ***supra*** (an allegation that the sentencing court did not adequately consider various factors is, in effect, a request that this court substitute its judgment for that of the lower court in fashioning a defendant's sentence).

In addition, the court had the benefit of a PSI report. "Our Supreme Court has ruled that where pre-sentence reports exist, the presumption will stand that the sentencing judge was both aware of and appropriately weighed all relevant information contained therein." ***Griffin***, ***supra*** at 8, citing ***Commonwealth v. Devers***, 546 A.2d 12, 18 (Pa. 1988).

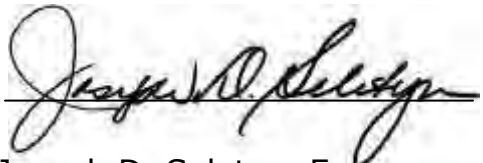
At any rate, we note that there was extensive discussion concerning appellant's drug problem and that he was allegedly abusing Xanax and marijuana at the time of the incidents. (Notes of testimony, 3/29/06 at 9.) The trial court considered this testimony as well as other mitigating evidence offered by the defense, including from appellant's family members. Certainly the trial court was well aware of appellant's lack of a criminal history. (***Id.*** at 5-6.) The trial court noted that it could have imposed a far longer sentence, but was swayed by the testimony of appellant's family. (***Id.*** at 68-69.) The trial court did state as an aggravating factor that appellant victimized some of the same people twice during his three-day

crime spree. (***Id.*** at 69.) In short, there is simply nothing to support appellant's baseless argument that the trial court did not weigh mitigating evidence together with all other factors in fashioning appellant's sentence. There is nothing to review here.

To the extent appellant alleges in his Rule 2119(f) statement that the trial court failed to state on the record the guideline ranges for the offenses, and failed to state adequate reasons for those sentences which exceeded the standard range of the guidelines, these claims were not raised in appellant's Rule 1925(b) statement or in his statement of the questions involved. Therefore, they are waived. Pa.R.A.P. 1925(b)(4)(vii); Pa.R.A.P. 2116.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/23/2014