

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellee :
v. :
ERNIE SANJURO MOJICA, :
Appellant : No. 1903 MDA 2013

Appeal from the Judgment of Sentence October 1, 2013,
Court of Common Pleas, Berks County,
Criminal Division at No. CP-06-CR-0000651-2013

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ERNIE SANJURO MOJICA, :
Appellant : No. 1904 MDA 2013

Appeal from the Judgment of Sentence October 1, 2013,
Court of Common Pleas, Berks County,
Criminal Division at No. CP-06-CR-0000646-2013

BEFORE: DONOHUE, WECHT and STRASSBURGER*, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JUNE 17, 2014

Ernie Sanjuro Mojica (“Mojica”) appeals from the judgment of sentence entered on October 1, 2013 by the Court of Common Pleas, Berks County, following his convictions for two counts each of burglary,¹ conspiracy to

¹ 18 Pa.C.S.A. § 3502(a)(1).

*Retired Senior Judge assigned to the Superior Court.

commit burglary,² criminal trespass,³ conspiracy to commit criminal trespass,⁴ theft by unlawful taking or disposition,⁵ conspiracy to commit theft by unlawful taking or disposition,⁶ receiving stolen property,⁷ conspiracy to commit receiving stolen property.⁸ We affirm Mojica's convictions, but vacate the judgment of sentence and remand for resentencing.

The trial court summarized the factual history of this case as follows:

On the evening of December 8, 2012, two residential burglaries were reported in the Reading, Pennsylvania metropolitan area. Police received the first report around 7:30 p.m. Chester Daniel Hartz ["Hartz"], of 1626 Gregg Avenue, Cumru Township, reported to police that he had just returned home and discovered that his house had been broken into. Hartz told police he saw a dark-colored Cadillac sedan at the rear [of] the property, and that he had taken note of the vehicle's license plate number before it was driven away.

A description of the vehicle was sent over the police radio. Officer Robert Kelly ["Officer Kelly"], who was on patrol nearby, saw a vehicle matching that

² 18 Pa.C.S.A. § 903(a)(1); 18 Pa.C.S.A. § 3502(a)(1).

³ 18 Pa.C.S.A. § 3503(a)(1)(ii).

⁴ 18 Pa.C.S.A. § 903(a)(1); 18 Pa.C.S.A. § 3503(a)(1)(ii).

⁵ 18 Pa.C.S.A. § 3921(a).

⁶ 18 Pa.C.S.A. § 903(a)(1); 18 Pa.C.S.A. § 3921(a).

⁷ 18 Pa.C.S.A. § 3925(a).

⁸ 18 Pa.C.S.A. § 903(a)(1); 18 Pa.C.S.A. § 3925(a).

description drive past him. He began pursuit, activating his emergency lights, and pulled behind the suspect vehicle. The vehicle came to a stop, and [Officer] Kelly instructed both the driver and the passenger to remain in the vehicle with their hands visible. The passenger attempted to flee on foot. [Officer] Kelly pursued him on foot for approximately 50 feet until he caught and detained him. Officer Kelly searched the passenger, whom he identified at trial as [Mojica], and the following items were found on his person[]: cigarettes, a lighter, a Samsung Galaxy cell phone, a black LG television remote control, a black and silver bracelet, a silver bracelet with diamonds, and a silver and black arrowhead necklace.

Meanwhile, the driver also left the scene, driving a few blocks before fleeing on foot. The driver was apprehended shortly thereafter, and the vehicle was searched. Inside, police found a laptop computer and packaging, two computer power cords, an MP3 player, two knives, two watches, a video game [console], a large-screen LG plasma television (model no. 42PQ30-UA), and an LG television remote control. In addition, police later recovered a firearm from the location where the vehicle was first stopped.

Around 10:30 p.m., another home burglary was reported to police. David Regan ["Regan"] and Jennifer Foschia ["Foschia"], of 601 March Street, Borough of Shillington, reported that [Foschia] had arrived home to find their home had apparently been burglarized. [She] immediately noticed that certain items were missing, including[,] a large-screen LG television, [a] video game console[], laptop computers, and a firearm. [] Hartz, the victim of the first burglary in Cumru Township also reported missing items from his home, including an LG

television^[9] and remote, a Fossil brand watch, cologne, an arrowhead necklace, and two bracelets.

At trial, the victims of the burglaries at 1626 Gregg Avenue and at 601 March Street testified and identified the items recovered by police as the same belongings which they had discovered to be missing after the apparent burglaries.

Trial Court Opinion, 1/31/14, at 2-3.

The Commonwealth charged Mojica with the above-referenced crimes. After Mojica's trial on September 4 and 5, 2013, the jury found him guilty of all charges. On October 1, 2013, the trial court sentenced Mojica to a total of 15 to 60 years of incarceration. On October 2, 2013, Mojica filed a post-sentence motion to modify sentence, which the trial court denied that same day. This timely appeal followed.

On appeal, Mojica raises the following four issues for our review:

1. Whether the evidence presented at trial was sufficient to establish each element of Burglary, Criminal Conspiracy to Commit Burglary, Criminal Trespass, Criminal Conspiracy to Commit Criminal Trespass, Theft by Unlawful Taking, Criminal Conspiracy to Commit Theft by Unlawful Taking, Receiving Stolen Property, and Criminal Conspiracy to Commit Receiving Stolen Property?
2. Whether the jury verdicts of guilty to Burglary, Criminal Conspiracy to Commit Burglary, Criminal Trespass, Criminal Conspiracy to Commit Criminal Trespass, Theft by Unlawful Taking, Criminal Conspiracy to Commit Theft by Unlawful Taking, Receiving Stolen Property, and Criminal

^[9] At trial, Hartz testified that the model of the LG television was "a 42-inch PQ30."

Conspiracy to Commit Receiving Stolen Property are contrary to the weight of the evidence?

3. Whether the Trial Judge committed reversible error when [h]e questioned victim/witness David Regan by asking him if his television worked “prior to these folks breaking into your house?”
4. Whether the Sentencing Court abused its discretionary aspects of sentencing by sentencing [] Mojica to a term of imprisonment equaling fifteen (15) years to sixty (60) years of incarceration for his convictions.

Mojica’s Brief at 10.¹⁰

Mojica argues that the Commonwealth did not provide sufficient evidence to prove beyond a reasonable doubt each element for every crime of which he was convicted. *Id.* at 25-30. Our standard of review for challenges to the sufficiency of the evidence is well settled:

The standard we apply in reviewing the sufficiency of 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 that of 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

¹⁰ We have opted to discuss Mojica’s discretionary aspects of sentence claim last for ease of review.

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 trier 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. Helsel, 53 A.3d 906, 917-18 (Pa. Super. 2012), *appeal denied*, 63 A.3d 1244 (Pa. 2013) (quoting ***Commonwealth v. Bricker***, 41 A.3d 872, 877 (Pa. Super. 2012)). We conclude that the evidence is sufficient to sustain each of Mojica's convictions.

Mojica first challenges the sufficiency of the evidence for his burglary convictions. Mojica's Brief at 27. A person commits the crime of burglary "if, with the intent to commit a crime therein, the person ... enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person is present[.]" 18 Pa.C.S.A. § 3502(a)(2). In this case, each of the victims testified that they returned home on the night in question to find that some of their property was missing. N.T., 9/4/13, at 81-86, 134-36. For example, Hartz stated that he returned home to find his flat-screen television, watch, and jewelry missing. ***Id.*** at 81-86. Likewise, Regan and Foschia reported that they were missing, *inter alia*, their flat-screen television, video-game console, and laptop computers. ***Id.*** at 134-36. Shortly after finding his property missing, Hartz testified that he discovered

a suspicious vehicle in the alleyway behind his home. **Id.** at 68-70. Hartz said that he forwarded the vehicle's information to police, who, within minutes, located, and stopped the vehicle. **Id.** at 70. When authorities stopped the vehicle, Officer Kelly stated that Mojica fled from him, but that he was able to catch up with him only seconds later. **Id.** at 148-49. Once police had detained both Mojica and the vehicle, they found on Mojica's person as well as in the vehicle, the same items that were missing from the victims' homes. **Id.** at 169-70, 181-85. As a result, the evidence indicates that Mojica entered the victims' homes with the intent of committing a crime therein by taking their property. **See** 18 Pa.C.S.A. § 3502(a)(2). Viewing the evidence in the light most favorable to the Commonwealth, we find that there was sufficient evidence to sustain Mojica's burglary convictions.

Mojica also challenges the sufficiency of the evidence for his two convictions for criminal trespass. Mojica's Brief at 27-28. A person commits the offense of criminal trespass when, "knowing that he is not licensed or privileged to do so, he ... breaks into any building or occupied structure or separately secured or occupied portion thereof." 18 Pa.C.S.A. § 3503(a)(1)(ii). A breaking occurs when the perpetrator "gain[s] entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access." 18 Pa.C.S.A. § 3503(a)(3). In this case, Mojica was not licensed or privileged to enter the victims' homes. **See** 18 Pa.C.S.A. § 3503(a)(1)(ii). During Mojica's trial, Hartz, Regan, and

Foschia each testified that they had not given Mojica permission to enter their homes. N.T., 9/4/13, at 104, 126, 141. Additionally, the evidence indicates that Mojica committed a breaking when he entered the victims' homes. At trial, Hartz stated that in addition to finding his property missing, he also found the window to his back door was broken. ***Id.*** at 71-72. Likewise, Officer Gregory Shober testified that he believed Mojica's point of entry into Regan and Foschia's home was through a window next to the rear door because that window was two inches ajar when police were examining the home. ***Id.*** at 197. Thus, based on this evidence and the aforementioned evidence supporting his burglary convictions, we find there is sufficient evidence to uphold Mojica's convictions for criminal trespass. ***See*** pp. 6-7, ***supra***.

Next, Mojica challenges the sufficiency of the evidence for his convictions for theft by unlawful taking or disposition and receiving stolen property. Mojica's Brief at 28-29. "A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." 18 Pa.C.S.A. § 3921(a). Additionally, "[a] person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." 18 Pa.C.S.A. § 3925(a). The same evidence sufficient to prove that Mojica committed burglary also

serves as ample evidence to prove that he committed these two crimes. **See** pp. 6-7, *supra*. The victims testified that they each returned to their homes to find their property missing. N.T., 9/4/13, at 81-86, 134-36. One of the victims, Hartz, stated that he spotted a suspicious vehicle in the alley behind his house shortly after he returned home to find his property missing. **Id.** at 68-70. Not long thereafter, police stopped the vehicle and detained Mojica, who was a passenger in the vehicle. **Id.** at 148-49. Police found, both in the vehicle and on Mojica's person, the property that was missing from the victims' homes. **Id.** at 169-70, 181-85. Thus, the evidence shows that Mojica exercised unlawful control over the victims' property with the intent to deprive them of that property and retained the property with no intent to restore it to the proper owner. **See** 18 Pa.C.S.A. § 3921(a); 18 Pa.C.S.A. § 3925(a). Therefore, we find that the evidence is sufficient to sustain Mojica's convictions for theft by unlawful taking or disposition and receiving stolen property.

Mojica also challenges the sufficiency of the evidence for each of his convictions for conspiracy to commit burglary, criminal trespass, theft by unlawful taking or disposition, and receiving stolen property. Mojica's Brief at 29-30. To prove conspiracy, the Commonwealth must establish that: (1) the defendant intended to commit or aid in the commission of the criminal act; (2) the defendant entered into an agreement with another to engage in the crime; and (3) the defendant or one or more of the other co-conspirators

committed an overt act in furtherance of the agreed upon crime. ***Commonwealth v. Montalvo***, 956 A.2d 926, 932 (Pa. 2008) (citation omitted); ***see also*** 18 Pa.C.S.A. § 903(a). Conspiracy is almost always proven through circumstantial evidence, ***Commonwealth v. Figueroa***, 859 A.2d 793, 798 (Pa. Super. 2004), and can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode, ***Commonwealth v. Schoff***, 911 A.2d 147, 160 (Pa. Super. 2006).

Once again, the same evidence demonstrating that Mojica committed burglary also establishes that Mojica engaged in a conspiracy. ***See*** pp. 6-7, ***supra***. Mojica was a passenger in the vehicle Hartz spotted behind his house. ***Id.*** at 68-70, 148-49. When police stopped that vehicle and eventually detained Mojica, police found the property missing from the victims' homes both in the vehicle and on Mojica's person. ***Id.*** at 148-49, 169-70, 181-85. Based on this evidence, a jury could have concluded that Mojica intended to commit a crime, that he entered into an agreement with the driver of the vehicle to commit the crime, and that he made an overt act in furtherance of the crime by entering the victims' homes and the taking their property. ***See Montalvo***, 956 A.2d at 932; ***see also*** 18 Pa.C.S.A. § 903(a). Accordingly, we find that the evidence was sufficient to uphold Mojica's conspiracy convictions.

Next, Mojica argues that the jury's verdict was against the weight of the evidence. Mojica's Brief at 31-33. Our standard of review when presented with a weight of the evidence claim is different from that applied by the trial court:

Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence.

Commonwealth v. Antidormi, 84 A.3d 736, 758 (Pa. Super. 2014). Therefore, "an appellate court reviews the exercise of the trial court's discretion; it does not answer for itself whether the verdict was against the weight of the evidence." ***Commonwealth v. Houser***, 18 A.3d 1128, 1135-36 (Pa. 2011). Importantly, "a new trial based on a weight of the evidence claim is only warranted where the jury's verdict is so contrary to the evidence that it shocks one's sense of justice." ***Id.***

We conclude that Mojica has waived his weight of the evidence claim. Pennsylvania Rule of Criminal Procedure 607(a) states:

(A) A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial:

- (1) orally, on the record, at any time before sentencing;
- (2) by written motion at any time before sentencing; or
- (3) in a post-sentence motion.

Pa.R.Crim.P. 607(a). Our Court has repeatedly held that the “[f]ailure to challenge the weight of the evidence presented at trial in an oral or written motion prior to sentencing or in a post-sentence motion will result in waiver of the claim.” **Commonwealth v. Bryant**, 57 A.3d 191, 196 (Pa. Super. Ct. 2012) (citing **Commonwealth v. Bond**, 985 A.2d 810, 820 (Pa. 2009)). Furthermore, our Supreme Court has explained,

Appellant’s failure to challenge the weight of the evidence before the trial court deprived that court of an opportunity to exercise discretion on the question of whether to grant a new trial. Because ‘appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence,’ **Commonwealth v. Widmer**, 560 Pa. 308, 744 A.2d 745, 753 (2000), this Court has nothing to review on appeal.

Commonwealth v. Sherwood, 982 A.2d 483, 494 (Pa. 2009). Therefore, because the certified record indicates Mojica failed to raise his weight of the evidence claim prior to sentencing or in a post-sentence motion, we find that he has waived his weight of the evidence claim on appeal.

Mojica next argues that the trial court committed reversible error when it questioned David Regan, one of the Commonwealth's witnesses. Mojica's Brief at 33-36. Specifically, Mojica takes issues to the following:

Q Okay. I don't have any other questions.

The Court: I just have one. I'm a little bit confused here. The TV that you're talking about that's in your basement now, prior to these folks breaking into your house, did that TV work?

The Witness: Yes.

The Court: All right. It wasn't clear to me when it was broken from the questioning.

I'm sorry, Mr. Thren. Proceed.

N.T., 9/4/13, at 131-32. Mojica argued that by stating, "prior to these folks breaking into your house," that the trial court had prejudiced the jury against him. Mojica's Brief at 34-36.

We conclude that Mojica has waived this issue on appeal. In order to preserve a claim or error for appellate review, "a party must make a timely and specific objection before the trial court at the appropriate stage of the proceedings; the failure to do so will result in waiver of the issue." **Commonwealth v. Olsen**, 82 A.3d 1041, 1050 (Pa. Super. 2013) (quoting **Kaufman v. Campos**, 827 A.2d 1209, 1212 (Pa. Super. 2003)); **see also** Pa.R.A.P. 302(a). The above-referenced portion of the trial transcript shows

that Mojica never objected to the questioning by the trial court. Accordingly, Mojica has waived this issue on appeal.

Finally, Mojica challenges the discretionary aspects of his sentence. Mojica's Brief at 20-24. An appellant must raise a challenge to the discretionary aspects of his or her sentence "in a post-sentence motion or by presenting the claim to the trial court during the sentencing proceedings." ***Commonwealth v. Shugars***, 895 A.2d 1270, 1273-74 (Pa. Super. 2006). Without any such action, an appellant waives his or her objection to the discretionary aspects of a sentence. ***Id.*** at 1274. Here, the certified record shows that Mojica filed a post-sentence motion challenging the discretionary aspects of his sentence.

This Court has stated the following in regards to a challenge to the discretionary aspects of a sentence:

A challenge to the discretionary aspects of a sentence must be considered a petition for permission to appeal, as the right to pursue such a claim is not absolute. When challenging the discretionary aspects of the sentence imposed, an appellant must present a substantial question as to the inappropriateness of the sentence. Two requirements must be met before we will review this challenge on its merits. First, an appellant must set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. Second, the appellant must show that there is a substantial question that the sentence imposed is not appropriate under the Sentencing Code. That is, the sentence violates either a specific provision of the sentencing scheme set forth in the Sentencing Code

or a particular fundamental norm underlying the sentencing process.

Commonwealth v. Lamonda, 52 A.3d 365, 371 (Pa. Super. 2012) (*en banc*), *appeal denied*, 75 A.3d 1281 (Pa. 2013) (internal quotations and citations omitted).

In this case, Mojica's appellate brief contains the requisite 2119(f) concise statement. **See** Mojica's Brief at 15-16. In his 2119(f) concise statement, Mojica asserts that the trial court misapplied the sentencing guidelines. ***Id.*** at 16. "A claim that the sentencing court misapplied the [s]entencing [g]uidelines presents a substantial question." ***Commonwealth v. Cook***, 393, 941 A.2d 7, 11 (Pa. Super. 2007) (citing ***Commonwealth v. Medley***, 725 A.2d 1225, 1228 (Pa. Super. 1999)). Additionally, Mojica's 2119(f) concise statement also contends that his sentence violated the fundamental norms of sentencing because it does not "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." Mojica's Brief at 16. A claim that a sentence violates these fundamental norms of sentencing raises a substantial question for our review. ***Commonwealth v. Riggs***, 63 A.3d 780, 786 (Pa. Super. 2012), *appeal denied*, 63 A.3d 776 (Pa. 2013). Because Mojica has complied with the technical requirements for

consideration of a challenge to the discretionary aspects of a sentence, we will consider his claim on its merits.

Our standard of review when considering sentencing claims is as follows:

Sentencing is a matter vested in the sound discretion of the sentencing judge. The standard employed when reviewing the discretionary aspects of sentencing is very narrow. We may reverse only if the sentencing court abused its discretion or committed an error of law. A sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by 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. We must accord the sentencing court's decision great weight because it was in the best position to review the defendant's character, defiance or indifference, and the overall effect and nature of the crime.

Cook, 941 A.2d 7, 11-12 (Pa. Super. 2007) (internal quotations and citations omitted).

We conclude that the trial court erred in sentencing Mojica. Mojica asserts that the trial court sentenced him outside the standard sentencing range based on a misapplication of the sentencing guidelines. Mojica's Brief at 21-23. Our Court has stated the following regarding sentences outside of the guidelines:

Although a sentencing court has no obligation to sentence within the guidelines, the trial court must

necessarily correctly apply the guidelines and reach the correct point of departure before sentencing outside of the guidelines. As applied here, the sentencing court must correctly ascertain the offense gravity score in order to reach the proper sentence recommendation provided by the Sentencing Guidelines.

When the Sentencing Guidelines are properly applied, the judge may then exercise his or her discretion to sentence outside the Guidelines. An improper calculation of the offense gravity score affects the outcome of the sentencing recommendations, resulting in an improper recommendation, thereby compromising the fundamental norms which underlie the sentencing process.

Commonwealth v. Archer, 722 A.2d 203, 210-11 (Pa. Super. 1998) (*en banc*) (citations omitted). This Court has also provided that,

The sentencing court must ***consider*** the sentencing guidelines, and the consideration must be more than mere fluff. While the guidelines are advisory and nonbinding, a sentencing court must ascertain the correct guideline ranges before deciding that a departure is in order. A sentencing judge must demonstrate an awareness of the guideline sentencing ranges so that the appellate court can analyze whether the reasons for a departure from the guideline ranges are adequate.

Commonwealth v. Scassera, 965 A.2d 247, 250 (Pa. Super. 2009) (emphasis in original; quotations and citations omitted).

In this case, the trial court sentenced Mojica to concurrent five (5) to twenty (20) year sentences for his two conspiracy to commit burglary convictions. The offense gravity score for conspiracy to commit burglary is

six (6) and the standard sentencing range is twenty-seven (27) to forty (40) months of incarceration with an aggravated/mitigated range of plus or minus six months. **See** 204 Pa. Code §§ 303.3, 303.15, and 303.16a. Thus, Mojica's concurrent sentences of five (5) to twenty (20) years for his two convictions for conspiracy to commit burglary were outside both the standard and aggravated ranges.

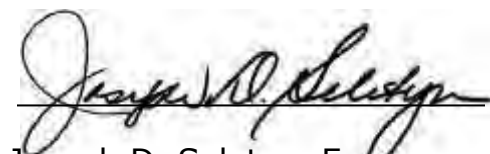
However, during Mojica's sentencing hearing, the attorney for the Commonwealth told the trial court that the offense gravity score for conspiracy to commit burglary was seven (7) and that the standard sentencing range was thirty-five (35) to forty-five (45) months of incarceration with an aggravated/mitigated range of plus or minus six months. N.T., 10/1/13, at 3. Thus, the trial court had an incorrect understanding of the offense gravity score and sentencing guidelines for Mojica's conspiracy to commit burglary convictions. **See id.** Indeed, the Commonwealth concedes that its attorney incorrectly informed the trial court of this information. **See** Commonwealth's Brief at 21-22. As a result, the trial court did not "reach the correct point of departure before sentencing outside of the guidelines." **See Archer**, 722 A.2d at 210; 204 Pa. Code §§ 303.3, 303.15; N.T., 10/1/13, at 3.

Although the sentencing court had the discretion to depart from the suggested standard range, it did not in this case have the benefit of the correct starting point. **See Archer**, 722 A.2d at 210-11. Our Court has

held that “when a sentencing court was not cognizant of the correct guideline sentence ranges before imposing sentence, the sentence must be vacated and the appellant resentenced.” ***Commonwealth v. Henry***, 681 A.2d 791, 792 (Pa. Super. 1996). Without knowledge of the correct sentencing guidelines, the trial court did not have the ability to impose an informed sentence. Thus, we cannot be certain how the trial court would have sentenced Mojica had it been aware of the correct sentencing guidelines or if it would have imposed a less severe sentence if it had departed from a lower standard sentencing range starting point. Therefore, we conclude that the trial court erred when it sentenced Mojica without the correct understanding of the sentencing guidelines for conspiracy to commit burglary. Accordingly, we vacate the judgment of sentence and remand for resentencing.

Convictions affirmed. Judgment of sentence vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/17/2014