NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. JOSEPH TEMPLETON Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1928 EDA 2013

Appeal from the Judgment of Sentence April 10, 2013
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-00007949-2012

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY OTT, J.: **FILED JULY 14, 2014**

Joseph Templeton appeals from the judgment of sentence imposed on April 10, 2013, in the Court of Common Pleas of Bucks County, following his conviction on charges of burglary, criminal trespass, harassment, and criminal mischief.[1] Templeton received an aggregate sentence of 15 to 30 years' incarceration. In this timely appeal, Templeton raises three claims: (1) the trial erred in failing to properly instruct the jury on the charge of burglary, (2) there was insufficient evidence to sustain the verdict on criminal trespass, and (3) the trial court abused its discretion imposing a separate consecutive maximum sentence on the charge of criminal

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S. §§ 3502(a)(1), 3503(a)(1)(ii), 2709(a)(4), and 3304(a)(2), respectively.

trespass.[2] After a thorough review of the submissions by the parties, the certified record, and relevant law, we affirm.

The following evidence was presented at trial:

On November 11, 2012, at approximately 5:30 p.m. Templeton went to the home of victim, Romaine Burnett, his estranged paramour and mother of his child. N.T. Trial, 3/20/2013, at 37, 33, 29. The locks on Burnett's apartment had been changed, so Burnett had only one set of keys; Templeton did not have his own set of keys. ***Id***. at 38. An argument began because Templeton wanted access to Burnett's apartment and car but she would not allow it. ***Id***. at 37-38. Burnett followed Templeton around the block, trying to get her property back. ***Id***. at 37-39. They were yelling and screaming at each other. ***Id***. at 38. As Burnett started to return to her apartment to phone the police, Templeton punched her in the back. ***Id***. at 39. Neighbors who witnessed the confrontation phoned the police. ***Id***. at 39, 122. The police arrived and Burnett told the police that she did not want Templeton around her apartment and asked the police to inform him he was not to come back. ***Id***. at 40-41. Burnett went back into her apartment and locked both the door to the apartment entrance as well as her apartment door. ***Id***. at 41-42. Warrington Township Police Officer Frank Paranteau testified he informed Templeton he was no longer welcome at Burnett's

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[2] We have reordered Templeton's claims.

apartment and that he was to leave. N.T. Trial, 3/21/2013, at 25. He also told Templeton that if he wanted to get any belongings from Burnett's apartment, they would do a "domestic standby" in which the police would accompany Templeton to the residence, so he could obtain his property. ***Id***. at 26. Officer Paranteau testified Templeton told him he had no property at Burnett's apartment and that he would leave and go over to a friend's house where he would wait for a ride. ***Id***.

Approximately two hours later, Burnett heard a loud bang that shook the windows of her apartment. N.T. Trial, 3/20/2013, at 43. The noise was caused by Templeton kicking in the front door to the apartment building. ***Id***. Burnett heard Templeton coming up the stairs to her apartment, threatening to kill her. ***Id***. at 44. As Burnett went to phone the police, Templeton kicked in the door to her apartment. ***Id***. Once inside the apartment, he picked up a hammer and a knife from the kitchen and threatened Burnett with them. ***Id***. 46-47. Burnett asked to let the children outside.[3] Templeton agreed and as she escorted the children outside, Templeton put down the hammer and knife, but picked up a metal jack handle, approximately two feet[4] in length. ***Id***. 48-50. As they all went

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[3] Burnett has two other children in addition to the child with Templeton.

[4] The notes of testimony contain an error here, indicating the jack handle was 22.5 feet, rather than inches, long. The handle is part of the official record and measures 21¼ inches long.

outside, Templeton spoke, *sotto voce*, telling Burnett he would beat her with the jack handle in front of her children. ***Id***. at 48.

Once outside, Burnett was able to put the children in her car. ***Id***. at 51. Once the children were safely in the car, she returned to the hallway of the apartment building. ***Id***. at 52. While there, she talked to Templeton and attempted to convince him to get help. ***Id***. at 53. Eventually, she saw a neighbor from across the street start their car. ***Id***. at 54. She broke away from Templeton and ran across the street. ***Id***. Templeton chased after her, at one point hitting her, making her drop her cell phone. ***Id***. However, the neighbor distracted Templeton long enough for Burnett to pick up her phone and call the police. ***Id***. The police arrived shortly thereafter and arrested Templeton. ***Id***. at 56, Criminal Complaint.

Police Officer Michael Neipp testified that he had issued Templeton a traffic citation on October 20, 2012, approximately three weeks prior to this incident, and official PennDOT records indicated Templeton lived at an address in Philadelphia and not with Burnett in Warrington.

In his first issue, Templeton claims the trial court erred in failing to properly instruct the jury on the charge of burglary. Our standard of review regarding a challenge to the trial court's jury instructions is as follows:

> [W]hen evaluating the propriety of jury instructions, this Court will look to the instructions as a whole, and not simply isolated portions, to determine if the instructions were improper. We further note that, it is an unquestionable maxim of law in this Commonwealth that a trial court has broad discretion in phrasing its instructions, and may choose its own wording so long as the

> law is clearly, adequately, and accurately presented to the jury for its consideration. Only where there is an abuse of discretion or an inaccurate statement of the law is there reversible error.

Commonwealth v. Antidormi, 84 A.3d 736, 754 (Pa. Super. 2014) (citation omitted).

Here, Templeton argues that in charging the jury, the trial court incorrectly informed the jury that, regarding burglary, it did not matter if Templeton was aware of the fact that he was not licensed or privileged to enter Burnett's apartment. Templeton bases this claim on the definition of burglary, which states:

> A person is guilty of burglary if he enters a building or occupied structure or separately secured or occupied portion thereof, with the intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.

18 Pa.C.S. § 3502(a).

The resolution of this issue is time specific. The incident underlying the charges against Templeton took place on November 11, 2012. On September 4, 2012, approximately two months prior to Templeton's actions, an amendment to Section 3502 took effect that altered the definition of burglary. Relevant to this matter, the crime of burglary was defined as:

> A person commits the offense of burglary if, with the intent to commit a crime therein, the person:
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> > (1) 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 any person is present.

18 Pa.C.S. § 3502(a)(1).

The question of license or privilege to enter the building was concurrently made into an affirmative defense.

> It is a defense to prosecution for burglary if any of the following exists at the time of the commission of the offense:
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> . . .
>
> (3) The actor is licensed or privileged to enter.

18 Pa.C.S. § 3502(b)(3).

Thus, at the time of the offense, and subsequent trial, the absence of license of privilege to enter the building was no longer an element of the crime. Because the Commonwealth had no burden to disprove license or privilege, the trial court correctly informed the jury that it did not matter if Templeton knew he was not allowed into the premises.

We note that even if the charge regarding burglary were in error, in the context of the charge as a whole, such error would be harmless.[5] The jury also found Templeton guilty of criminal trespass, a crime that required proof the actor knew that he was not licensed or privileged to enter the premises as an element of that offense. ***See*** 18 Pa.C.S. § 3503. Regardless of the instruction on burglary, the Commonwealth demonstrably proved Templeton knew he was not licensed or privileged to enter Burnett's

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[5] ***See Commonwealth v. Miskovitch***, 64 A.3d 672, 684-84 (Pa. Super. 2013), for a discussion of harmless error and jury instructions. ***See also***, ***Commonwealth v. Burwell***, 58 A.3d 790, 795 (Pa. Super. 2012) (even if jury instruction were in error, overwhelming evidence would render error harmless).

apartment through the conviction of criminal trespass, as we shall discuss, infra.

Because the trial court committed no error regarding the jury instruction for burglary, Templeton in not entitled to relief on this issue.

Secondly, Templeton argues that there was insufficient evidence to support his conviction of criminal trespass because the Commonwealth did not establish beyond a reasonable doubt that he knew that he was not licensed or privileged to enter Burnett's apartment. Specifically, Templeton claims the evidence demonstrated that he would frequently visit the home to help with the children, he and Burnett had been in a romantic relationship, he had spent the night at the apartment, and he had the benefit of the use of apartment keys in the past. Additionally, he claims that when he was told to leave after the first confrontation, he was not told he could never return. This argument is unavailing.

Our standard of review for a challenge to the sufficiency of the evidence is well settled.

> The standard we apply when reviewing the sufficiency of the 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 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 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. Furthermore, when reviewing a sufficiency claim, our Court is required to give the prosecution the benefit of all reasonable inferences to be drawn from the evidence.
>
> However, the inferences must flow from facts and circumstances proven in the record, and must be of such volume and quality as to overcome the presumption of innocence and satisfy the jury of an accused's guilt beyond a reasonable doubt. The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fail even under the limited scrutiny of appellate review.

Commonwealth v. Slocum, 86 A.3d 272, 275-76 (Pa. Super. 2014) (citation omitted).

It is undisputed that Templeton and Burnett had been in a romantic relationship, in the past. and that Templeton had been allowed into the apartment to help care for both his child and Burnett's other children.

The facts demonstrate that Templeton did not currently possess keys to Burnett's apartment and that the romantic relationship between the two had ended. Neither was there any evidence that Burnett asked for or required Templeton's help that night with the children. At 5:00 p.m. on November 11, 2012, neighbors had to call the police because Templeton was physically assaulting Burnett outside the apartment. This confrontation was occasioned by Burnett's refusal to give Templeton keys to the apartment.

When the police arrived, he was told to leave and that he was not welcome at Burnett's apartment.

Approximately two hours later, without any evidence that Burnett had rescinded her ejection of Templeton, he returned to her residence. He did not phone her apartment or otherwise seek permission to enter the apartment in order to try to talk things out. Rather, he kicked in the front door to the apartment building, went up the stairs and kicked in the front door to the apartment. He immediately went into the kitchen and obtained two weapons, a knife and a hammer, and threatened to kill Burnett, telling her he had nothing to lose. Based upon this evidence we see no error in the jury's conclusion that Templeton knew that he no longer had permission to be in Burnett's apartment.

In his final issue, Templeton claims the trial court abused its discretion "by imposing a separate, consecutive, maximum sentence for the offense of criminal trespass."[6] Templeton's Brief at 11. Templeton claims the trial court abused its discretion for failing to state the guideline ranges on the

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[6] Although the statement gives the impression that merger is an aspect of the claim, it is not. We note that pursuant to ***Commonwealth v. Quintua***, 56 A.3d 399 (Pa. Super. 2012), criminal trespass and burglary do not merge for sentencing purposes.

record [7] and by failing to state adequate reasons on the record for sentencing him outside the sentencing guidelines for criminal trespass.[8]

We note that this claim presents a challenge to the discretionary aspects of his sentence and therefore we must determine whether the claim raises a substantial question before we can reach the merits of the claim. ***See Commonwealth v. Tuladziecki***, 522 A.2d 17, 19 (Pa. 1987).[9] The claim that the trial court failed to state adequate reasons on the record, as required by 42 Pa.C.S. § 9721(b), presents a substantial question and may be reviewed on appeal. ***See Commonwealth v. Ventura***, 975 A.2d 1128, 1133 (Pa. Super. 2009).

We begin by noting that the statute does not require the trial court to state the guideline ranges on the record. ***See*** 42 Pa.C.S. § 9721(b). "[W]here the record has reflected that the court acted on a sound understanding of the sentencing range and imposed sentence accurately, we

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[7] ***See Commonwealth v. Gibson***, 716 A.2d 1275, 1277 (Pa. Super. 1998) ("The statute requires a trial judge who intends to sentence a defendant outside the guidelines to demonstrate on the record, as a proper starting point, his awareness of the sentencing guidelines."), *cited* in Templeton's Brief at 12-13.

[8] This appeal addresses only the sentence for criminal trespass. Templeton does not challenge the mandatory minimum sentence, required by his prior rape conviction, imposed on him for the burglary conviction.

[9] ***Tuladziecki*** also reiterates the necessity to include a Pa.R.A.P. 2119(f) statement when challenging the discretionary aspects of a sentence. Templeton has complied with the Rule 2119(f) requirements.

have affirmed the judgment of sentence even in the absence of a guidelines recitation." ***Commonwealth v. Twitty***, 876 A.2d 433, 438 (Pa. Super. 2005) (citation omitted). Although the trial judge did not specifically state the standard range sentence for criminal trespass on the record, our review of the notes of testimony from the sentencing hearing demonstrates the trial judge possessed the requisite understanding of the guidelines and the totality of the sentencing circumstances.

During the sentencing hearing, the Commonwealth presented, without objection by Templeton, certified copies of Templeton's prior record, including details of his conviction for rape, his use of an alias, a criminal history dating back to 1988, as well as violations of probation and parole. The trial judge considered the various progress reports from programs Templeton participated in while incarcerated, as well as four letters from the Bucks County Correctional Facility supporting Templeton. Finally, the trial judge heard and considered Templeton's allocution, ***see*** N.T. Sentencing. 4/10/2013, at 18-41, in which Templeton acknowledged his significant criminal history.[10]

These facts, in conjunction with the trial judge specifically commenting on how his criminal history affected the sentencing guidelines, convince us

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[10] Relevant to the next aspect of Templeton's argument, we note these also are all relevant factors the trial judge considered in sentencing him outside of the guidelines.

that the trial court was properly cognizant of the parameters of the sentencing guidelines.

Further, case law holds that the sentencing guidelines are not binding, create no sentencing presumptions, and may, but do not necessarily, provide a starting point for sentencing. ***Commonwealth v. Walls***, 926 A.2d 957, 964-65 (Pa. 2007). Therefore, this aspect of Templeton's claim warrants no relief.

Next, we address Templeton's claim that the trial court did not provide sufficient reasoning for sentencing him outside the guidelines. The trial court sentenced Templeton to 60 to 120 months' incarceration, the statutory maximum, for criminal trespass. Templeton asserts that the sentencing guidelines provided a standard range of 9-16 months' incarceration.[11] An aggravated range sentence would provide a minimum sentence of up to 19 months' incarceration. The trial court's imposition of a 60-month minimum sentence is, accordingly, well beyond a guideline sentence.

Section 9721(b) of the Sentencing Code requires the sentencing court to provide a contemporaneous statement of reasons when sentencing a defendant beyond the guidelines. Templeton asserts the trial court merely stated:

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[11] The guideline range is based upon a prior record score of five. While the certified record includes the Sentencing Order, the sentencing guidelines form, which includes other standard sentencing information, such as prior record scores and offense gravity scores is missing.

> The prior record score that is reflected in the Sentencing Guidelines doesn't, first of all, show the probation violations. They don't show the consistency of the criminal record, the fact that it involves such violence, the fact that it involves so many felonies[. I]t doesn't demonstrate the fact that you [have] victimized women in the past and you have done so again[, t]hat you have victimized children or a child. And you have a crime [of] corrupting the morals of a minor and th[en] you have done so again.

Templeton's Brief at 13, quoting N.T. Sentencing, 4/10/13, at 55-56.

Our review of the notes of testimony from the sentencing hearing disproves Templeton's assertion and reveals far more explanation than the paragraph cited. In addition to the reference to the prior record score and guidelines cited by Templeton, the notes of testimony reflect 16 pages of reasoning, from page 47 to page 63, for the imposition of sentence. The reasoning demonstrates the trial court considered the letters Templeton submitted as well as his statement to the court asking for mercy. The trial court noted the lies and fabrications in his submissions. The court also noted the fact he attempted to manipulate his child and the victim's other children into helping him contact Burnett. In doing so, Templeton was attempting to skirt his prohibition from contacting Burnett. The trial court further noted Templeton's abject failure in accepting responsibility for his current actions as well his criminal history, by attempting to blame his prior lawyers for his pleading guilty to crimes he did not commit, including a rape charge in which he was caught in the act. The trial court considered these facts and more, and rightfully concluded that Templeton posed an ongoing

threat of violent criminal activity to both society in general and Burnett in particular.

Additionally, the trial court stated:

> Of particular concern in this case – and I take into account the extreme violence that was involved in this case, that you kicked in the door to a residence that was not your own. I take into account that you did so knowing that you were not allowed in there. And the reason you knew is not only what was said by Miss Burnett, but the intervention of the police department.
>
> I find the fact that you did this violent offense, subjecting her to that violence, subjecting the children to that violence, subjecting your child to that violence, and it occurred after there was police intervention.
>
> That means that no one is safe with you because the fact that the police were there didn't stop you at all. So supervision, intervention of law enforcement, parole, probation, armed police officers are going to have no impact on you whatsoever.
>
> So I find this crime establishes in connection with your very significant criminal history that you are a danger to the community. You are specifically a danger to Miss Burnett. You are a danger to your children.
>
> You are not only a danger, but either one of two things occurred: You have -- either completely do not appreciate the nature of your crimes and the nature of your conduct, or you are so manipulative that you have devised an entire persona to justify what it is you do. I am not sure which one it is.
>
> But either way, it is clear to me that there is not a likelihood, but it is a certainty that you will continue to engage in criminal conduct unless you are removed from the community.
>
> It is also very clear to me that you have shown and will never show any remorse for the crime that you have committed here and the crimes you have committed in the past. A person who is not – feels no remorse or sadness or guilt for violence against children and violence against women and violence against a

> community where your friends live after police intervention is a person who will continue to engage in violent behavior.
>
> You are, as you said, 50 years old. At the time you said that you were – this occurred you were in your late 40's. This is never going to stop. The only way I can prevent you from hurting anybody outside of an institution is to incarcerate you for an extended period of time.

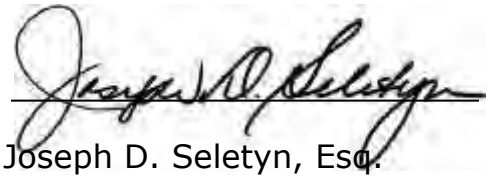
N.T. Sentencing, 4/10/2013, at 56-58.

Our review of the certified record confirms the trial court provided more than sufficient reasoning for imposing the five to ten year statutory maximum sentence for criminal trespass. Accordingly, Templeton is entitled to no relief on this issue.

Because Templeton has demonstrated no abuse of discretion or error of law on the part of the trial court, he is entitled to no relief regarding this appeal.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/14/2014