NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JACQUELINE M. HATHAWAY, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2089 MDA 2013

Appeal from the Judgment of Sentence Entered July 1, 2013
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0005136-2011

BEFORE: BENDER, P.J.E. MUNDY, J., and JENKINS, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED JUNE 24, 2014**

Appellant, Jacqueline M. Hathaway, appeals from the judgment of sentence of four years' ten months' to seventeen years' imprisonment. Appellant challenges the discretionary aspects of her sentence. After careful review, we affirm.

On May 6, 2013, Appellant entered a plea of no contest to homicide by vehicle while driving under the influence, and a plea of guilty to homicide by vehicle, driving under the influence, and three summary traffic offenses. At Appellant's plea hearing, the Commonwealth stated that the following facts would have been established at trial:

> On October 28, 2010, Appellant was under the influence of alcohol and decided to operate a motor vehicle. While driving, Appellant crossed over into the on-coming lane and struck a vehicle driven by Angela Orday. Ms. Orday and her passenger, Deanna Winemiller, lost their lives as a result of the injuries sustained in the collision.

Trial Court Opinion (TCO), 1/27/14, at 1. Appellant admitted to the police that she had consumed alcohol prior to the incident. N.T., 5/6/13, at 5. Police also recovered marijuana and a glass smoking device from Appellant's vehicle. Commonwealth's brief at Appendix A (unnumbered pages). In addition to having a blood alcohol content of 0.156%, Appellant's blood contained detectable amounts of amphetamines and THC (the principal psychoactive constituent of marijuana). ***Id.***

On July 1, 2012, Appellant was sentenced to an aggregate term of four years' ten months' to seventeen years' incarceration. She filed a timely notice of appeal, as well as a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

Appellant now presents the following question for our review:

> [1.] **Individualized Sentencing.** The sentencing process controlling norm is that sentencing courts must formulate sentences individualized to the particular case and the particular defendant. Here, this record shows this is [Appellant's] first offense, she has strong community support, and she exhibits the scientifically lowest possible risk to recidivate. The court sentenced "within the guideline range" as to the minimum, but "maxed" her out in terms of the "tail." The court seemingly passed over [Appellant's] particular needs when it sentenced her to 4 years, 10 months, to 17 years for one count [of] Homicide by Vehicle while DUI and one count Homicide by Vehicle. Did the Court err when it imposed a sentence not individualized to [Appellant's] particular needs?

Appellant's brief at 4.

Initially, we note that there is "no absolute right to appellate review of the discretionary aspects of a sentence." ***Commonwealth v. Mouzon***, 812

A.2d 617, 621 (Pa. 2002). An appellant must present a "substantial question" to this Court for review by submission of a statement as required by Pa.R.A.P. 2119(f). ***See id.*** Rule 2119(f) states that an appellant must include in her brief "a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of the sentence." Pa.R.A.P. 2119(f).

> [T]he Rule 2119(f) statement must specify where the sentence falls in relation to the sentencing guidelines and what particular provision of the Code is violated (*e.g.*, the sentence is outside the guidelines and the court did not offer any reasons either on the record or in writing, or double-counted factors already considered). Similarly, the Rule 2119(f) statement must specify what fundamental norm the sentence violates and the manner in which it violates that norm (*e.g.*, the sentence is unreasonable or the result of prejudice because it is 500 percent greater than the extreme end of the aggravated range). If the Rule 2119(f) statement meets these requirements, we can decide whether a substantial question exists.

Commonwealth v. Goggins, 748 A.2d 721, 727 (Pa. Super. 2000). "Generally, 'in order to establish a substantial question, appellant must show actions by the sentencing court inconsistent with the Sentencing Code or contrary to the fundamental norms underlying the sentencing process.'" ***Commonwealth v. Sims***, 728 A.2d 357, 359 (Pa. Super. 1999) (quoting ***Commonwealth v. Gaddis***, 639 A.2d 462, 469 (Pa. Super. 1994)).

In her Rule 2119(f) statement, Appellant alleges that her "particular sentence is manifestly excessive such that it constitutes too severe a punishment as to her particular circumstances," and that her sentence "is inconsistent with her particular rehabilitative needs." Appellant's brief at 15.

Appellant raises a plausible argument that the sentencing court did not follow the directives of 42 Pa.C.S. § 9721. ***See Commonwealth v. Hill***, 66 A.3d 365, 369 (Pa. Super. 2013) ("[C]laims of excessiveness may be justifiable as substantial questions based on the circumstances of the case and the extent to which the appellant's Rule 2119(f) statement suggests the trial court's deviation from sentencing norms"). ***See also Commonwealth v. Dodge***, 77 A.3d 1263, 1268 (Pa. Super. 2013) (holding reviewable the question of "[w]hether the sentencing [c]ourt erred in disregarding factors mandated under the Sentencing Code, such as rehabilitation and the nature and circumstances of the offenses"). As such, Appellant raises a substantial question for our review.

At sentencing, the trial court acknowledged reviewing Appellant's presentence investigation report, and a sentencing memorandum submitted by Appellant. N.T.. 7/1/13, at 1, 16. The trial court was also provided with oral and written victim impact statements. ***Id.*** at 2 – 6. The trial court also heard witness testimony on behalf of Appellant. ***Id.*** at 10 – 11. Appellant's counsel noted that Appellant had the support of her family. ***Id.*** at 14. The trial court stated it "shared some of the concerns stated by the Commonwealth as to whether or not [Appellant] truly appreciates the nature of her conduct," noting that Appellant "still admits to the casual use of marijuana and alcohol." ***Id.*** at 17. The court also declared that it "really would have expected someone who was truly remorseful to … at least get a

professional assessment as to whether … they had drug and alcohol issues that needed to be addressed," yet Appellant had not done so. ***Id.***

Appellant was sentenced to three to ten years' incarceration for the crime of homicide by vehicle while driving under the influence. The three-year term was a mandatory minimum sentence. In addition, Appellant was sentenced to a consecutive term of twenty-two months' to seven years' incarceration for the crime of homicide by vehicle. The standard range of the guidelines for this offense was twenty-two to thirty-six months' incarceration. Appellant's sentence for this crime is at the bottom of the standard range of the sentencing guidelines.

Appellant subsequently filed timely a post-sentence motion seeking reconsideration and "a downward departure" from her sentence on the basis of a recidivism risk assessment performed after sentencing. Supplemental post-sentence motion, 6/12/13, at 1. The trial court denied this motion after an extensive hearing. Appellant now claims that the seventeen-year maximum sentence imposed by the trial court fails to take into account Appellant's particular mitigating circumstances; *inter alia*, the assessment suggesting that she is at low risk to re-offend.

We note that Appellant concedes "both of [her] sentences individually fall within an appropriate range." Appellant's reply brief at 2. The fact that Appellant's aggregate seventeen-year maximum sentence is the result of consecutive sentences does not render that sentence an abuse of discretion, as defendants are not entitled to "volume discounts" for multiple criminal

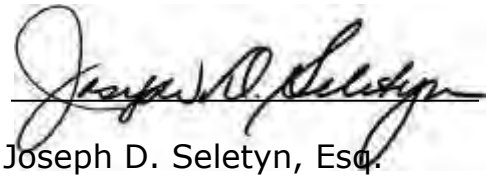
acts by having all sentences run concurrently. ***Commonwealth v. Hoag***, 665 A.2d 1212, 1214 (Pa. Super. 1995). It is well-established that when "imposing sentence, a trial judge has the discretion to determine whether, given the facts of a particular case, a given sentence should be consecutive to, or concurrent with, other sentences being imposed." ***Commonwealth v. Rickabaugh***, 706 A.2d 826, 847 (Pa. Super. 1997). As we have already noted, *supra*, the trial court was presented with ample information about Appellant, the victims, and the crime at the time of sentencing. The record reflects that the trial court carefully considered this information, and detailed its reasons for imposing Appellant's sentence. The trial court subsequently made a record of its extensive consideration of additional evidence submitted by Appellant after sentencing.

As such, we conclude the trial court did not abuse its discretion in imposing Appellant's sentence, and so we may not disturb that sentence.

Judgment of sentence affirmed.

Judge Mundy concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/24/2014