

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

QUINCY JONES,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2179 EDA 2013

Appeal from the Judgment of Sentence of August 31, 2005
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0201121-2004

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STABILE, JJ.

MEMORANDUM BY OLSON, J.:

FILED JULY 08, 2014

Appellant, Quincy Jones, appeals from the judgment of sentence entered on August 31, 2005, following his bench trial convictions for aggravated assault, simple assault, recklessly endangering another person, and possession of an instrument of crime.¹ Upon careful consideration, we affirm the judgment of sentence, but remand for resentencing.

The trial court aptly summarized the facts of this case as follows:

On October 29, 2003, the victim [] and [Appellant] were both incarcerated at the Philadelphia Industrial Correctional Center (PICC). Earlier in the day, some time prior to lockdown at 10:45 p.m., they were involved in a heated verbal exchange. [Appellant] had entered the victim's cell, at which time they argued and eventually the victim insisted that [Appellant] leave. [Appellant] did leave, but he

¹ 18 Pa.C.S.A. §§ 2702(a)(4), 2701(a)(1), 2705, and 907, respectively.

returned about 40 minutes later, just before 10:45 p.m. More words were exchanged, and [Appellant] and [the] victim began to fight. During the fight, [Appellant] pulled out a pen from his waistband, stabbed the victim in the left eye, and fled. Doctors surgically repaired the victim's eye; unfortunately, the victim is now blind in that eye, as a result of [Appellant's] stabbing.

Trial Court Opinion, 12/26/2013, at 2-3 (record citations omitted).

Procedurally, the case advanced as such:

Following a bench trial [] on March 16, 2005, [the trial court convicted Appellant of the aforementioned charges.] [Appellant] was sentenced [] on August 31, 2005, to a term of imprisonment of seven and a half (7½) to fifteen (15) years on the aggravated assault, with no further penalty on the other charges. [Appellant] filed [a] petition [pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546] on September 5, 2006. [...] At a video hearing on July 30, 2013, [the trial court] granted [Appellant's direct] appellate rights *nunc pro tunc*. [Appellant] filed a notice of appeal on July 31, 2013, and [the trial court] issued a [Pa.R.A.P.] 1925(b) order on August 27, 2013. [Appellant] filed his statement of matters [complained of on appeal pursuant to Pa.R.A.P. 1925(b)] on August 27, 2013. [The trial court subsequently issued an opinion pursuant to Pa.R.A.P. 1925(a) on December 26, 2013.]

Id. at 1-2 (superfluous capitalization omitted).

On appeal, Appellant presents the following issues for our review:

- A. Must Appellant's aggravated assault conviction graded as a felony of the second degree be vacated because the trial court lacked subject matter jurisdiction to convict Appellant of that crime?
- B. Was the sentence of seven and one-half to fifteen years' incarceration imposed on Appellant's [second-degree felony] aggravated assault conviction illegal?

Appellant's Brief at 2 (superfluous capitalization omitted).

In his first issue presented, Appellant “submits that his aggravated assault conviction, graded as a felony of the second degree must be vacated because the Commonwealth failed to charge [A]ppellant with that crime and thus, the trial court lacked subject-matter jurisdiction to find him guilty of that offense.” **Id.** at 7 (footnote omitted). He claims “the bill of [criminal] information only charged [A]ppellant with Aggravated Assault- F-1[;] thus, the trial court could not convict [A]ppellant of aggravated assault as defined in 18 Pa.C.S. § 2702(a)(4) given that aggravated assault as defined in 18 Pa.C.S. § 2702(a)(4) is not a lesser included offense of aggravated assault graded as a felony of the first degree [as that offense] requires the use of a weapon in order to [sustain a conviction].” **Id.** at 9.

Initially, we note that Appellant did not raise this precise issue in his Rule 1925(b) statement. However, challenges to the trial court’s subject matter jurisdiction cannot be waived. **See Commonwealth v. [Jeffrey] Jones**, 929 A.2d 205, 210 (Pa. 2007) (“[C]hallenges to subject matter jurisdiction cannot be waived.”). Hence, we will address the merits of Appellant’s claim.

Our standard of review is as follows:

Subject matter jurisdiction speaks to the competency of a court to hear and adjudicate the type of controversy presented. Jurisdiction is purely a question of law; the appellate standard of review is *de novo* and the scope of review is plenary.

Commonwealth v. Elia, 83 A.3d 254, 265 (Pa. Super. 2013) (citations omitted).

Moreover,

There are two requirements for subject matter jurisdiction as it relates to criminal defendants: the competency of the court to hear the case, and the provision of formal notice to the defendant of the crimes charged in compliance with the Sixth Amendment of the United States Constitution and Article I, Section 9, of the Pennsylvania Constitution.

To invoke subject matter jurisdiction it is necessary that the Commonwealth confront the defendant with a formal and specific accusation of the crimes charged. This accusation enables the defendant to prepare any defenses available to him, and to protect himself against further prosecution for the same cause; it also enables the trial court to pass on the sufficiency of the facts alleged in the indictment or information to support a conviction. The right to formal notice of charges, guaranteed by the Sixth Amendment to the Federal Constitution and by Article I, Section 9 of the Pennsylvania Constitution, is so basic to the fairness of subsequent proceedings that it cannot be waived even if the defendant voluntarily submits to the jurisdiction of the court.

Commonwealth v. Serrano, 61 A.3d 279, 287 (Pa. Super. 2013)

(citations, quotations, brackets and ellipsis omitted).

In this case, Appellant seizes upon the fact that the Commonwealth listed the charge of aggravated assault on the bill of criminal information generally under 18 Pa.C.S.A. § 2702(a) and designated the crime as “F1” or a first-degree felony. However, in further describing the crime, the Commonwealth alleged that “on or about [October 30, 2003]” Appellant “attempted to cause or intentionally or knowingly caused bodily injury to another with a deadly weapon.” Bill of Criminal Information #0402 0112 1/1, 2/9/2004, at 2. Appellant was ultimately convicted pursuant to 18

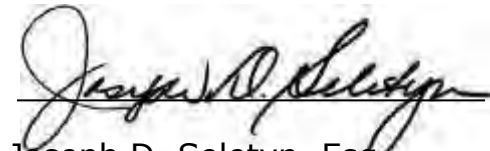
Pa.C.S.A. § 2702(a)(4), which provides: "A person is guilty of aggravated assault if he: ... attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon[.]" 18 Pa.C.S.A. § 2702(a)(4). Based upon the foregoing, we conclude that the Commonwealth confronted Appellant with a formal and specific accusation of the crime charged. Appellant was on formal notice that the Commonwealth intended to prosecute Appellant for assaulting the victim with a deadly weapon, so that Appellant could prepare any defenses available to him and protect himself against further prosecution for the same cause. Accordingly, Appellant's first issue is without merit.

Next, Appellant contends that his "sentence of seven and one-half to fifteen years' incarceration must be vacated because it is clearly illegal as it exceeds the statutory limit for conviction pursuant to 18 Pa.C.S. 2702(a)(4)[.]" Appellant's Brief at 10. Both the trial court and the Commonwealth agree. **See** Trial Court Opinion, 12/26/2013, at 4; Commonwealth's Brief at 7. This Court agrees. Appellant was convicted under 18 Pa.C.S.A. § 2702(a)(4), which is a felony of the second-degree. **See** 18 Pa.C.S.A. § 2702(b). "In the case of a felony of the second degree, [a court may impose] a term [of incarceration] which shall be fixed by the court at not more than ten years." 18 Pa.C.S.A. § 1103. "The Pennsylvania Supreme Court has stated that an illegal sentence is one that exceeds the statutory maximum." **Commonwealth v. Bowen**, 55 A.3d 1254, 1265 (Pa. Super. 2012), *citing* **Commonwealth v. Bradley**, 834 A.2d 1127, 1131 (Pa.

2003). Appellant's maximum sentence of 15 years of imprisonment exceeds the statutory maximum of 10 years of incarceration. Hence, Appellant's sentence for aggravated assault is illegal and must be vacated. However, in light of the fact that the trial court did not sentence Appellant on the other convicted charges, "our disposition upsets the overall sentencing scheme of the trial court, [and, thus,] we must remand so that the court can restructure its sentence plan." ***Commonwealth v. Thur***, 906 A.2d 552, 569 (Pa. Super. 2006). Accordingly, we vacate Appellant's sentence and remand for resentencing.

Conviction affirmed. Judgment of sentence vacated. Case remanded for resentencing. 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: 7/8/2014

