

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHRISTIAN LEE FORD,	:	
	:	
Appellant	:	No. 2233 MDA 2013

Appeal from the Judgment of Sentence entered on September 23, 2013
in the Court of Common Pleas of Lancaster County,
Criminal Division, No(s): CP-36-CR-0001598-2011;
CP-36-CR-0001891-2009; CP-36-CR-0002458-2009;
CP-36-CR-0003103-2012; CP-36-CR-0003847-2009

BEFORE: LAZARUS, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JUNE 30, 2014

Christian Lee Ford (“Ford”) appeals from the judgment of sentence imposed after a finding of several parole/probation violations. We affirm.

The trial court set forth the relevant underlying factual and procedural history in its Opinion, which we adopt for the purpose of this appeal. **See** Trial Court Opinion, 2/19/14, at 1-4.¹

¹ On docket 2458-2009, the trial court revoked Ford’s parole at Count 1 and imposed the maximum unexpired balance of his sentence. The trial court also revoked Ford’s probation and imposed one-year probation terms at Counts 2 and 3, to be served consecutively to Count 1, but concurrently to each other. On docket 3103-2012, the trial court revoked Ford’s parole and imposed the unexpired balance of his sentence. On docket 1891-2009, the trial court revoked Ford’s parole at Count 1 and imposed the unexpired balance of his sentence. On Count 2, the trial court revoked Ford’s probation and sentenced him to 6 to 12 months in prison. On docket 1598-2011, the trial court revoked Ford’s probation and sentenced him 6 to 12 months in prison, to be served concurrently with Count 2 of docket 1891-

On appeal, Ford raises the following questions for review:

I. Whether there was sufficient evidence to sustain a parole violation where the court relied on hearsay testimony?

II. Did the court impose an unreasonable sentence which contravenes the policy underlying the Sentencing Code where the sentence is manifestly unreasonable, focuses solely on the seriousness of the offense without considering any mitigating factors, is not an individualized sentence and appears to be the result of partiality, prejudice, bias, or ill will?

Brief for Appellant at 5.

In his first claim, Ford challenges only the portions of his sentence relating to parole, and contends that the evidence was insufficient to support the court's determination of a parole violation.² *Id.* at 10. Ford argues that the trial court erred in admitting the hearsay testimony of the probation/parole officer without indicating that there was good cause for accepting the testimony. *Id.*

Initially, we note that Ford has failed to indicate which parole violation he is challenging. **See** Pa.R.A.P. 2119(a) (requiring that points of argument be followed by discussion and citation of pertinent authorities). Nevertheless, we will address the merits of his claim.

2009. On docket 3847-2009, the trial court revoked Ford's probation on Count 1 and imposed a one-year probation term, to be served consecutive to Counts 2 and 3 on docket 2458-2009. On Count 2 on docket 3847-2009, the trial court terminated all supervision.

² In his first claim, Ford does not challenge any of the probation revocations.

The Commonwealth has the burden to prove a parole violation by a preponderance of the evidence. **Commonwealth v. Kalichak**, 943 A.2d 285, 291 (Pa. Super. 2008). The decision to revoke parole is subject to the discretion of the trial court. **Id.**

Here, the trial court addressed Ford's first claim and determined that, even without consideration of the hearsay testimony in question, the Commonwealth presented sufficient evidence to find a parole violation. **See** Trial Court Opinion, 2/19/14, at 4-5. Indeed, Ford failed to complete the required drug and alcohol treatment program, and neglected to attend an appointment with his probation/parole officer. N.T., 9/23/13, at 7, 10, 19-20. Thus, we agree with the sound reasoning of the trial court that the Commonwealth satisfied its burden of proof by showing, by a preponderance of the evidence, that Ford violated the terms of his parole. **See** Trial Court Opinion, 2/19/14, at 4-5.

In his second claim, regarding his resentencing due to probation violations, Ford contends that his sentence was unreasonable under the Sentencing Code. Ford's contention implicates the discretionary aspects of sentencing.³ **See Kalichak**, 943 A.2d at 289-90.

³ It is well settled that revocation of parole does not involve the imposition of a new sentence; the only option after revocation is recommitment to serve the remaining time from the original sentence. **Kalichak**, 943 A.2d at 290. Thus, an appellant cannot argue that recommitment implicates the discretionary aspects of sentencing. **Id.** at 291. Here, Ford's discretionary aspects of sentencing claim only implicates his sentences for the probation violation.

Before a reviewing court can consider the merits of a challenge to discretionary aspects of sentencing, the appellant must show the following: (1) that the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (2) a timely notice of appeal was filed; (3) defendant fully complied with Pa.R.A.P. 2119(f); and (4) there was a “substantial question” that the sentence imposed was not appropriate under the Sentencing Code. ***Commonwealth v. Phillips***, 946 A.2d 103, 112 (Pa. Super. 2008).

A determination of what constitutes a substantial question must be evaluated on a case-by-case basis. ***Commonwealth v. Cunningham***, 805 A.2d 566, 574 (Pa. Super. 2002). In order to establish a substantial question, an appellant “must advance a colorable argument that ‘the sentencing judge’s actions were either (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process.’” ***Id.*** (citation omitted).

Ford properly preserved the issue by filing a Post-Sentence Motion to Modify Sentence and by filing a timely Notice of Appeal. He also satisfied the requirements of Pa.R.A.P. 2119(f) by filing a Concise Statement of Matters Complained of on Appeal in his brief.

Ford asserts that he has raised a substantial question because he did not receive a particularized sentence as required by 42 Pa.C.S.A.

§ 9721(b).⁴ **See** Brief for Appellant at 8-9. Ford argues that during the sentencing hearing, the trial court stated that it had “considered all the factors,” but did not specify which factors had been included in its analysis. **Id.** at 9. We conclude that Ford has raised a substantial question. **See** 42 Pa.C.S.A. § 9721(b).

Generally, the trial court has discretion to impose a new sentence after revoking probation, which should not be disturbed on appeal absent an abuse of discretion. **Commonwealth v. Coolbaugh**, 770 A.2d 788, 792 (Pa. Super. 2001). In order to establish abuse of discretion, the appellant must show “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.” **Commonwealth v. Hyland**, 875 A.2d 1175, 1184 (Pa. Super. 2005) (citations omitted).

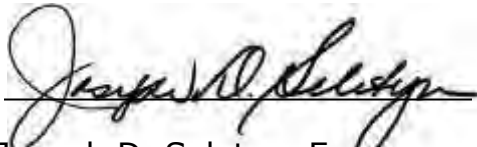
Ford argues that when the sentencing court imposed a sentence of total confinement, the court improperly failed to consider mitigating factors, and instead focused solely on the hearsay testimony of the parole officer. Brief for Appellant at 11-12. Ford asserts that because the trial court did not delineate precisely what factors it used in making its sentencing decision, the sentence was a result of bias. **Id.** at 11.

⁴ 42 Pa.C.S.A. § 9721(b) requires the sentencing court to “disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.”

Here, the trial court analyzed the pertinent sentencing factors and set forth its reasons for the sentence. **See** Trial Court Opinion, 2/19/14, at 7-8; **see also** N.T., 9/23/13, at 7. Given Ford's repeated non-compliance with the terms of his probation, the trial court did not abuse its discretion, and we adopt its analysis for the purposes of this appeal. **See** Trial Court Opinion, 2/19/14, at 7-8.

Judgment of sentence affirmed.

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: 6/30/2014