

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JONATHAN RODRIGUEZ REYES,	:	
	:	
Appellant	:	No. 3154 EDA 2013

Appeal from the Judgment of Sentence September 25, 2013
 In the Court of Common Pleas of Lehigh County
 Criminal Division No(s): CP-39-CR-0000172-2013
 CP-39-CR-0000273-2013
 CP-39-CR-0000275-2013
 CP-39-CR-0000278-2013
 CP-39-CR-0000605-2013

BEFORE: GANTMAN, P.J., JENKINS, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED JUNE 24, 2014

Appellant, Jonathan Rodriguez Reyes, appeals from the judgment of sentence entered in the Lehigh County Court of Common Pleas following his guilty pleas to five counts of robbery¹ and one count of aggravated assault.² On appeal, he challenges the discretionary aspects of his aggregate sentence of ten to twenty years' imprisonment. We affirm.

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 3701(a)(1)(2).

² 18 Pa.C.S. § 2702(a)(1).

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The facts are unnecessary to our disposition. On August 19, 2013, Appellant entered a negotiated guilty plea to the above crimes and the court sentenced him on September 25, 2013, to an aggregate sentence of ten to twenty years' imprisonment. Appellant did not challenge his sentence at the sentencing hearing.

Appellant filed a timely post-sentence motion on Monday, October 7, 2013, arguing only that the court erred by imposing some of his sentences consecutively and that the court should have imposed concurrent sentences such that his aggregate sentence would be five to ten years' imprisonment. Appellant's post-sentence motion did not assert that the trial court failed to state its reasons for or review all the appropriate factors before imposing the sentence. The court denied Appellant's post-sentence motion on October 15, 2013. Appellant timely appealed and timely filed a court-ordered Pa.R.A.P. 1925(b) statement.

Appellant raises the following issue:

Whether the lower court abused its discretion by imposing a sentence which was manifestly unreasonable as the court failed to fully state its reasons for the imposition of the sentence or otherwise failed to review all appropriate factors as required by law?

Appellant's Brief at 7.

This Court has stated that

[c]hallenges to the discretionary aspects of sentencing do not entitle an appellant to appellate review as of right. Prior to reaching the merits of a discretionary sentencing issue:

We conduct a four part analysis to determine: (1) whether appellant has filed a timely notice of appeal, **see** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, **see** Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Objections to the discretionary aspects of a sentence are generally waived if they are not raised at the sentencing hearing or raised in a motion to modify the sentence imposed at that hearing.

Commonwealth v. Evans, 901 A.2d 528, 533-34 (Pa. Super. 2006) (some citations and punctuation omitted).

[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.).

Commonwealth v. Googins, 748 A.2d 721, 727 (Pa. Super. 2000) (*en banc*).

Instantly, Appellant timely appealed and included a short Pa.R.A.P. 2119(f) statement in his brief:

[Appellant] is requesting that the appellate court review the sentence given to [him] based upon his belief that the sentencing court failed to adequately review the appropriate factors that are set forth in the Sentencing Code at Title 42, § 9721(b) and failed to give any meaningful consideration to any factors other than the seriousness of the offenses.

Appellant's Brief at 10 (some capitalization omitted). Although the statement fails to comply with the well-settled requirements of **Googins, supra**, the Commonwealth has not objected to a deficient Rule 2119(f) statement. Thus, we decline to find waiver.

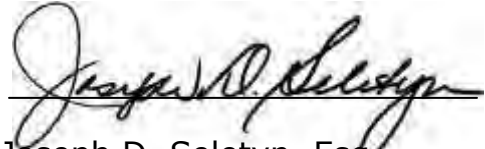
Appellant, however, in his post-sentence motion did not raise the arguments he raises for the first time on appeal. **See** Appellant's Post-Sentence Mot. to Reconsider and Modify Sentence, 10/7/13, at 2. Appellant only asked the court to reconsider imposing consecutive, rather than concurrent, sentences. **See id.** Because Appellant did not preserve the consecutive-sentence claim,³ we need not resolve the substantive merits. **See Evans**, 901 A.2d at 533. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

³ We are aware that generally, a challenge to the trial court's discretion to impose its sentences concurrently or consecutively ordinarily does not raise a substantial question. **Commonwealth v. Mastromarino**, 2 A.3d 581, 586-87 (Pa. Super. 2010). We need not, however, examine whether Appellant's consecutive-sentence claim raises a substantial question because it was not raised before the trial court. **See Evans**, 901 A.2d at 533-34.

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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: 6/24/2014