

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MILO NEWLON,	:	
	:	
Appellant	:	No. 182 WDA 2015

Appeal from the Judgment of Sentence Entered December 19, 2014,
in the Court of Common Pleas of Erie County,
Criminal Division at No(s):
CP-25-CR-0000772-2014
CP-25-CR-0000779-2014

BEFORE: FORD ELLIOTT, P.J.E., BENDER, P.J.E., and STRASSBURGER,* JJ.

CONCURRING MEMORANDUM BY STRASSBURGER, J.: **FILED OCTOBER 19, 2015**

I respectfully concur.

The Majority herein determines that Appellant’s claim fails to raise a substantial question for our review, citing **Commonwealth v. Moury**, 992 A.2d 162, 171 (Pa. Super. 2010), and its progeny, for the proposition that “[a]n allegation that the sentencing court failed to consider certain mitigating factors generally does not necessarily raise a substantial question.” Majority Memorandum at 4. Indeed, **Moury** supports such a proposition. However, as Judge Bowes cogently observed in **Commonwealth v. Dodge**, 77 A.3d 1263, 1272 n.8 (Pa. Super. 2013), “it is apparent that this Court’s determination of whether an appellant has

* Retired Senior Judge assigned to the Superior Court.

presented a substantial question in various cases has been less than a model of clarity and consistency[.]”

Recently, this Court has reiterated several times “that an excessive sentence claim—**in conjunction with an assertion that the court failed to consider mitigating factors**—raises a substantial question.”¹ ***Commonwealth v. Raven***, 97 A.3d 1244, 1253 (Pa. Super. 2014) (emphasis added; citation omitted) (citing ***Commonwealth v. Perry***, 883 A.2d 599, 602 (Pa. Super. 2005)); ***Commonwealth v. Samuel***, 102 A.3d 1001, 1007 (Pa. Super. 2014); ***Commonwealth v. Gonzalez***, 2015 WL 252446, 15 (Pa. Super. 2015); ***Commonwealth v. Caldwell***, 117 A.3d 763 (Pa. Super. 2015).

Here, Appellant appears to argue that the court **failed to consider** certain mitigating factors, such as his age, mental health history, educational background, and lack of a prior criminal record, in fashioning his “excessive” sentence. Appellant’s Brief at 4-7. Accordingly, consistent with recent precedent, I would determine that Appellant’s claim raises a substantial question for this Court’s review. ***See Raven, supra***. However,

¹ However, this Court has made no such determination regarding an excessive sentence claim coupled with an assertion that the sentencing court **failed to consider adequately** mitigating factors. For instance, in ***Commonwealth v. Disalvo***, 70 A.3d 900, 903 (Pa. Super. 2013), DiSalvo generally claimed that “the trial court abused its discretion by issuing a sentence that is manifestly excessive[.]” This Court ultimately concluded that “a claim of **inadequate consideration** of mitigating factors **does not** raise a substantial question for our review.” ***Disalvo***, 70 A.3d at 903 (emphasis added) (quoting ***Commonwealth v. Downing***, 990 A.2d 788, 794 (Pa. Super. 2010)).

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as the learned Majority explains, Appellant's allegations are belied by the record, and I agree that he is not entitled to relief. **See** Majority Memorandum at 5-9.