

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

RYAN HUMMEL

Appellant

No. 1420 EDA 2015

Appeal from the Judgment of Sentence July 26, 2011  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0015986-2010

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

**FILED JANUARY 22, 2016**

Appellant Ryan Hummel appeals from the July 26, 2011 judgment of sentence entered in the Philadelphia County Court of Common Pleas following his guilty plea conviction for aggravated assault. We affirm.

The trial court summarized the factual history as follows:

On 10-30-10[,], at approximately 9:30 [p.m.,] the complainant along with his friend[s] [ ] were walking in the 12000 block of Dunksferry [Road] and two girls later identified as defendant Amanda Fox and Nicole Zambito were standing in front of them blocking the sidewalk. Defendant Fox then stated[,], "You cannot pass unless you tell us your names." Defendant Fox also stated[,], "My name is Amanda Fox.["] The complainant then said his name and gave defendant Fox a weird look. Amanda then stated[,], "Why are you giving me a dirty look?" A white male later identified as [Appellant] approached the complainant and his friends. Defendant Fox then stated[,], "If you give me a dirty look[,], my boyfriend will beat you up." [Appellant] then punched the complainant in the nose with a closed fist[,]. . . the

complainant fell into the street and [Appellant] continued to punch complainant in the face area numerous times.

The complainant's friends then led the complainant to another friend's house where the complainant called his mother.

On October 31, 2010[,] the complainant was taken to Aria Health Torresdale Campus emergency room. The complainant suffered from a broken nose and his hearing was diminished. A large piece of flesh was torn from the complainant's upper left side of his lip. The complainant also suffered from swelling to his head and face. The complainant had surgery on 11-03-10[,] and had two stents placed in his nasal cavity so that he could breathe through his nose. The surgeon advised the complainant's mother that[,] if he didn't have the surgery[,] he would never be able to breathe through his nose again. The bones in the complainant's nose were realigned. The complainant was also scheduled for another surgery on 11-11-10. . . .

**See** Presentence Report, dated July 19, 2011, attached Philadelphia Police Department Arrest Report, DC# 1008046691, Northeast Detective Division.

Opinion, 6/22/2015, at 1-2. On May 20, 2011, Appellant pled guilty to aggravated assault.<sup>1</sup> On July 26, 2011, the trial court sentenced Appellant to 48 to 186 months' incarceration. On August 5, 2011, Appellant filed a post-sentence motion.<sup>2</sup>

---

<sup>1</sup> 18 Pa.C.S. § 2702(a).

<sup>2</sup> This motion would have been denied by operation of law on December 2, 2011. This denial was not entered on the criminal docket. On May 12, 2015, after Appellant filed a *pro se* PCRA petition and counseled amended PCRA petition, the trial court issued an order denying the post-sentence motion by operation of law.

On June 14, 2012, Appellant filed a PCRA petition. On August 19, 2014, appointed counsel filed an amended petition. On May 12, 2015, the PCRA court re-instated Appellant's appellate rights *nunc pro tunc*. Appellant filed a notice of appeal that same day. Both Appellant and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925.

Appellant raises the following issue on appeal:

Whether [Appellant's] sentence of 48 to 186 months was harsh and excessive because [Appellant] was a juvenile at the time of the incident and he was sentenced in the aggravated range of the sentencing guidelines.

Appellant's Brief at 5. Appellant's issue challenges the discretionary aspects of his sentence.

"Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right." ***Commonwealth v. Allen***, 24 A.3d 1058, 1064 (Pa.Super.2011) (citing ***Commonwealth v. Sierra***, 752 A.2d 910, 912 (Pa.Super.2000)). Before this Court can address a discretionary challenge, we must engage in a four-part analysis to determine:

(1) whether the appeal is timely; (2) whether Appellant preserved his issue; (3) whether Appellant's brief includes a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of sentence; and (4) whether the concise statement raises a substantial question that the sentence is appropriate under the sentencing code.

***Commonwealth v. Austin***, 66 A.3d 798, 808 (Pa.Super.2013) (quoting ***Commonwealth v. Malovich***, 903 A.2d 1247, 1250 (Pa.Super.2006)); **see also *Allen***, 24 A.3d at 1064.

Appellant raised the issue in a timely post-sentence motion, filed a timely notice of appeal, and included a statement of reasons relied upon for allowance of appeal pursuant to Rule 2119(f) in his brief. We must, therefore, determine whether his issue presents a substantial question and, if so, review the merits.

“The determination of whether a particular issue raises a substantial question is to be evaluated on a case-by-case basis.” ***Commonwealth v. Dunphy***, 20 A.3d 1215, 1220 (Pa.Super.2011) (quoting ***Commonwealth v. Fiascki***, 886 A.2d 261, 263 (Pa.Super.2005)). A substantial question exists where a defendant raises a “plausible argument that the sentence violates a provision of the sentencing code or is contrary to the fundamental norms of the sentencing process.” ***Commonwealth v. Dodge***, 77 A.3d 1263, 1268 (Pa.Super.2013) (quoting ***Commonwealth v. Naranjo***, 53 A.3d 66, 72 (Pa.Super.2012)).

In his Rule 2119(f) statement, Appellant maintains he raises a substantial question because the sentence imposed is “so disproportionate as to implicate the fundamental norms that underlie the sentencing process.” Appellant’s Brief at 2. He claims his sentence was excessive and contrary to the norms that underlie the sentencing process. ***Id.*** at 2-4. In addition, in his brief’s argument section, he further claims the trial court did

not discuss how the sentence would address Appellant's rehabilitative needs.<sup>3</sup> *Id.* at 12-13.

Appellant failed to raise a substantial question in his Rule 2119(f) statement. Bald allegations of excessiveness, without more, will not raise a substantial question. *See, e.g., Commonwealth v. Caldwell*, 117 A.3d 763, 768 (Pa.Super.2015) (*en banc*) ("An appellant making an excessiveness claim raises a substantial question when he sufficiently articulates the manner in which the sentence violates either a specific provision of the sentencing scheme set forth in the Sentencing Code or a particular fundamental norm underlying the sentencing process."). In his argument section, however, Appellant raises a substantial question when he couples his excessiveness claim with a claim the court did not consider his rehabilitative needs. *Id.* at 770 ("an excessive sentence claim—in conjunction with an assertion that the court failed to consider mitigating

---

<sup>3</sup> Appellant also claims the trial court erred because it failed to consider that Appellant was a juvenile at the time of the offense. Appellant's Brief at 12-13. This Court has stated, however, that the "principles and policies of the juvenile system are no longer applicable where the juvenile court has assessed the potential for the juvenile's rehabilitation; determined that the defendant would not benefit from treatment as a juvenile offender; and transferred the juvenile's case to adult criminal court." *Commonwealth v. Berry*, 785 A.2d 994, 997 (Pa.Super.2001).

factors—raises a substantial question” (quoting **Commonwealth v. Raven**, 97 a.3d 1244, 1253 (Pa.Super.2014))).<sup>4</sup>

“Sentencing is a matter vested within the discretion of the trial court and will not be disturbed absent a manifest abuse of discretion.” **Crump**, 995 A.2d at 1282 (citing **Commonwealth v. Johnson**, 967 A.2d 1001 (Pa.Super.2009)). “An abuse of discretion requires the trial court to have acted with manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.” **Id.** (citing **Commonwealth v. Walls**, 926 A.2d 957 (Pa.2007)).

The trial court thoroughly explained its reasons for imposing the standard range sentence<sup>5</sup> and the court did not abuse its discretion. **See**

---

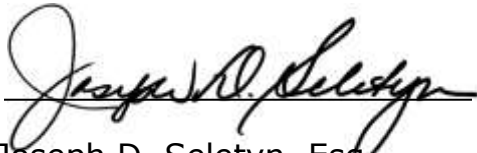
<sup>4</sup> Appellant should have included all reasons a substantial question existed in his Rule 2119(f) statement. **See** Pa.R.A.P. 2119(f) (“An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in a separate section of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence”); **Commonwealth v. Goggins**, 748 A.2d 721, 726 (Pa.Super.2000) (“this Court has reviewed ‘discretionary aspects of a sentence’ where the Rule 2119(f) statement reveals a plausible argument that procedures followed by the sentencing court were either inconsistent with a specific provision of the Sentencing Code or contrary to the fundamental norms underlying the sentencing process”). However, because the trial court opinion contains an analysis and we can discern Appellant’s argument from his brief, we will consider the reasons contained within the argument section of the brief together with the reasons raised in the Rule 2119(f) statement.

<sup>5</sup> Although Appellant maintains his sentence was in the aggravated range, Appellant’s Brief at 6, the trial court imposed a standard range sentence. The sentencing guideline range was 36 to 48 months. The trial court imposed a sentence of 48 to 186 months’ incarceration. Because the  
(Footnote Continued Next Page)

Opinion, 6/22/2015, at 4-9 (explaining it considered mitigating factors, including Appellant's guilty plea and letters submitted on his behalf, and considered aggravating factors, including Appellant's multiple juvenile adjudications, probation violations, and adult conviction, that Appellant was 59 days into a probation imposed for an aggravated assault when he committed the current offense, that Appellant "beat a [fourteen-]year-old boy to a pulp" because "he looked at [Appellant's] girlfriend funny," the severity of the victim's injuries, and Appellant's lack of remorse). Therefore, we affirm on the basis of the trial court opinion.

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: 1/22/2016

*(Footnote Continued)* \_\_\_\_\_

minimum sentence imposed, 48 months' incarceration, was within the sentencing guideline range, the sentence imposed was within the standard range. 204 Pa.Code § 303.16(a)(4) ("All numbers in sentence recommendations suggest months of minimum confinement pursuant to 42 Pa.C.S. 9755(b) and 9756(b).").