

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
RICARDO MENDEZ-ACEVEDO,	:	
	:	
Appellant	:	No. 1654 EDA 2015

Appeal from the Judgment of Sentence April 10, 2015
in the Court of Common Pleas of Northampton County,
Criminal Division, No(s): CP-48-CR-0003861-2014

BEFORE: FORD ELLIOTT, P.J.E., OTT and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED APRIL 19, 2016

Ricardo Mendez-Acevedo (“Mendez-Acevedo”) appeals from the judgment of sentence imposed following his negotiated guilty plea to attempted homicide.¹ We affirm.

Mendez-Acevedo was charged with attempted homicide and two counts of aggravated assault² after shooting Michael Rivera in the face. On February 5, 2015, Mendez-Acevedo entered into a negotiated plea agreement. Mendez-Acevedo pled guilty to attempted homicide, and in exchange, the Commonwealth withdrew the aggravated assault charges. Mendez-Acevedo and the Commonwealth also agreed to a recommended sentence of 9 to 20 years in prison. The trial court deferred sentencing and ordered a pre-sentence investigation report (“PSI”). On April 10, 2015, after

¹ 18 Pa.C.S.A. § 901(a).

² 18 Pa.C.S.A. § 2702(a)(1), (4).

reviewing the PSI, the trial court sentenced Mendez-Acevedo to the agreed-upon prison term.

On April 20, 2015, Mendez-Acevedo filed a Motion for Reconsideration of Sentence, which the trial court denied. Mendez-Acevedo subsequently filed a timely Notice of Appeal.³

On appeal, Mendez-Acevedo raises the following question for our review: “Did the trial [court] abuse [its] discretion by imposing an excessive sentence that failed to consider [Mendez-Acevedo’s] age, [] lack of prior record, family background and [] rehabilitative needs?” Brief for Appellant at 4.

Mendez-Acevedo’s claim challenges the discretionary aspects of his sentence. **See Commonwealth v. Moury**, 992 A.2d 162, 170 (Pa. Super. 2010). “It is well-settled that, with regard to the discretionary aspects of sentencing, there is no automatic right to appeal.” **Commonwealth v. Mastromino**, 2 A.3d 581, 585 (Pa. Super. 2010).

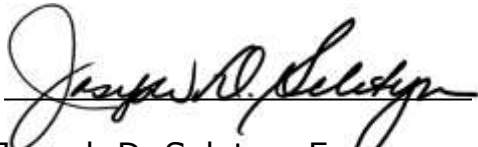
Here, Mendez-Acevedo entered into a negotiated plea agreement. Therefore, he cannot challenge the discretionary aspects of his sentence on appeal. **See Commonwealth v. Reid**, 117 A.3d 777, 784 (Pa. Super.

³ The trial court contends that the appeal is untimely, as the Notice of Appeal was filed over 30 days after the imposition of sentence. Trial Court Opinion, 7/1/15, at 5. However, Mendez-Acevedo filed a timely post-sentence motion. **See** Pa.R.Crim.P. 720 720(A)(1). Mendez-Acevedo had 30 days from the denial of his Motion for Reconsideration of Sentence in which to file his Notice of Appeal. **See** Pa.R.Crim.P. 720(A)(2)(a); **Commonwealth v. Capaldi**, 112 A.3d 1242, 1244 (Pa. Super. 2015). Thus, Mendez-Acevedo’s appeal is timely.

2015) (holding that a challenge to the discretionary aspects of a negotiated sentence is unreviewable); **see also Commonwealth v. Dalberto**, 648 A.2d 16, 21 (Pa. Super. 1994) (stating that “in a negotiated plea agreement, where a sentence of specific duration has been made part of a plea bargain, it would clearly make a sham of the negotiated plea process for courts to allow defendants to later challenge their sentence....”).⁴

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: 4/19/2016

⁴ Furthermore, the trial court considered all relevant factors, and had the benefit of a PSI. Where a sentencing court is informed by a PSI, “it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that where the court has been so informed, its discretion should not be disturbed.” **Commonwealth v. Ventura**, 975 A.2d 1128, 1135 (Pa. Super. 2009).