

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SHAWN C. CONKLIN	:	
	:	
Appellant	:	No. 1979 MDA 2017

Appeal from the Judgment of Sentence November 16, 2017
In the Court of Common Pleas of Wyoming County
Criminal Division at No(s): CP-66-CR-0000472-2015

BEFORE: GANTMAN, P.J., KUNSELMAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED OCTOBER 10, 2018

Appellant, Shawn C. Conklin, appeals from the judgment of sentence entered in the Wyoming County Court of Common Pleas, following his open plea of guilty but mentally ill to attempted third-degree murder and two counts of aggravated assault.¹ We affirm.

In its opinion, the trial court accurately set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.²

Appellant raises one issue for our review:

WAS [APPELLANT'S] RIGHT TO AN INDIVIDUALIZED

¹ 18 Pa.C.S.A. § 901 (section 2502(c) related); 2702(a)(1), respectively.

² On December 19, 2017, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b); Appellant timely complied on January 3, 2018.

SENTENCE VIOLATED WHEN THE RESENTENCING COURT ADMITTEDLY REFUSED TO CONSIDER MITIGATING INFORMATION PRESENTED BY DEFENSE COUNSEL AT THE RESENTENCING?

(Appellant's Brief at x) (internal footnote omitted).

Preliminarily, a challenge to the discretionary aspects of sentencing is not automatically reviewable as a matter of right. **Commonwealth v. Hunter**, 768 A.2d 1136 (Pa.Super. 2001), *appeal denied*, 568 Pa. 695, 796 A.2d 979 (2001). 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).

Commonwealth v. Evans, 901 A.2d 528, 533 (Pa.Super. 2006), *appeal denied*, 589 Pa. 727, 909 A.2d 303 (2006) (internal citations omitted).

Objections to the discretionary aspects of a sentence are waived if they are not raised at the sentencing hearing or in a timely filed post-sentence motion.

Commonwealth v. Griffin, 65 A.3d 932 (Pa.Super. 2013), *appeal denied*, 621 Pa. 682, 76 A.3d 538 (2013).

Instantly, Appellant did not object at sentencing and concedes he did not file a post-sentence motion, following the court's resentencing hearing. Consequently, his challenge to the discretionary aspects of his sentence is

waived.³ **See id.** Further, Appellant's claim fails to raise a substantial question.⁴ **See *Commonwealth v. Cruz-Centeno***, 668 A.2d 536 (Pa.Super. 1995), *appeal denied*, 544 Pa. 653, 676 A.2d 1195 (1996) (explaining general allegation that sentencing court failed to adequately consider certain factors does not raise substantial question).

Moreover, after a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Russell D. Shurtleff, we conclude that even if Appellant had properly preserved his sentencing claim, we would affirm. The trial court opinion comprehensively

³ Appellant insists he is excused from waiver because he was unaware of the particular sentencing claim he wanted to raise on appeal until the court issued its Rule 1925(a) opinion stating it had no obligation to consider any mitigating information that arose between Appellant's original sentencing and the resentencing hearing, such as Appellant's good behavior in prison. Appellant is essentially reiterating the same claim he raised in his Rule 1925(b) statement that the court failed to consider mitigating factors and impose an individualized sentence; Appellant merely adds on appeal a challenge to the court's specific remarks in its opinion. Under these circumstances, Appellant's claim remains waived.

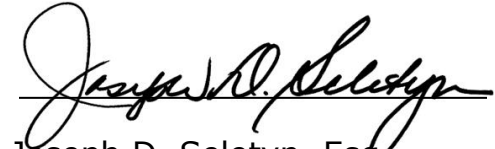
⁴ To support his substantial question analysis, Appellant relies on ***Commonwealth v. Serrano***, 150 A.3d 470 (Pa.Super. 2016) (holding appellant's challenge to court's failure to impose individualized sentence upon resentencing raised substantial question where resentencing judge mechanically re-imposed original sentence entered by different judge without making independent reassessment or reevaluation of sentencing criteria; resentencing judge expressly stated it was not his role to take independent look at case). Unlike ***Serrano***, the facts of this case involved the same judge at the original and resentencing proceedings, and the resentencing hearing was limited to deciding whether Appellant was in need of mental health treatment under 42 Pa.C.S.A. § 9727 (governing dispositions of persons found guilty but mentally ill). Thus, Appellant's reliance on ***Serrano*** is misplaced.

discusses and properly disposes of the question presented. (**See** Trial Court Opinion, filed February 9, 2018, at 10-13) (finding: Appellant challenges court's failure to consider mitigating evidence regarding progress Appellant has made while incarcerated; nevertheless, Section 9727 requires only that court must hold hearing prior to sentencing to decide if Appellant is severely mentally disabled and in need of treatment and permits court to impose any lawful sentence; mental health hearing is not opportunity for court to look to mitigating factors not before court at original sentencing hearing; in fashioning its sentence, court relied on extensive pre-sentence investigation report, victim statements, and three psychiatric reports of Appellant; court imposed consecutive sentences to reflect three victims at issue and all sentences were within guidelines; any lesser sentence would depreciate serious nature of Appellant's actions; due to Dr. Fischbein's testimony at mental health hearing, court included in its re-sentencing orders provision for Appellant to obtain mental health evaluation and treatment while incarcerated to ensure Appellant has access to proper facility and professionals who can determine appropriate treatment and monitoring for Appellant; progress Appellant makes while incarcerated is for parole board to consider). Accordingly, even if Appellant had not waived his issue, we would affirm.

Judgment of sentence affirmed.

J-S56007-18

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: 10/10/2018

IN THE COURT OF COMMON PLEAS OF THE 44TH JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CRIMINAL DIVISION

.....
COMMONWEALTH OF
PENNSYLVANIA

vs.

SHAWN CONKLIN,
Defendant

.....
CRIMINAL ACTION

NO. 2015-CR-472

FILED
PROTHONOTARY
WYOMING COUNTY, PA
2018 FEB -9 A 10:36

.....
OPINION

Shurtleff, P.J.,

AND NOW, this 8th day of February, 2018, this Opinion is in support of this Court's Sentencing Order dated November 16, 2017.

I. BRIEF FACTS

On April 19, 2015 an Affidavit of Probable Cause was filed setting forth that on April 18, 2015 at 10:38pm, a 911 call was received at the Wyoming County 911 Center from a man named Matt Christofferson, stating his uncle was running around the residence stabbing people.

Police and EMS arrived on scene at 10:48pm and were met by multiple people yelling for help. The police were informed that the suspect was inside and may still be stabbing people. Officers entered the residence and announced their presence. The suspect, later identified as Shawn Conklin (hereafter "Defendant") came out from a hallway and surrendered to police and was taken into custody. The police observed blood stains on the clothing of the Defendant as well as blood stains on multiple locations throughout the inside and outside of the residence. The police observed a victim lying in the hallway

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behind the Defendant along with a knife by the victim's head. The knife was a folding hunting knife and was also covered in blood.

On April 19, 2015 at 1:40am, the homeowner Selee Conklin, sister of the Defendant, was interviewed by the Police. She advised there were eleven people in the residence at the time of the incident. Selee was sleeping in the basement at the time the stabbing started and was awoken by people screaming for help and yelling to call 911.

A seventeen year old female, hereinafter referred to as L.C. was interviewed by the police and stated she was in the basement of the residence and when she went upstairs she observed the Defendant stabbing his wife Karen Conklin. Karen was on the couch at the time and the Defendant was behind Karen stabbing her. L.C. then ran outside. When she went back into the residence another seventeen year old female, hereinafter referred to as S.S. was with her. Once in the hallway, L.C. attempted to call 911 but was unsuccessful, when she looked up from her phone she observed the Defendant stab S.S. in the face, shoulders and stomach.

Then L.C.'s father attempted to stop the Defendant from stabbing S.S. As a result of this, S.S. was able to escape and jump out of a bedroom window. L.C. then observed the Defendant stab her father. At this time L.C. was on the phone with 911 and yelling at Defendant to stop stabbing her father. L.C. then ran outside and did not go back into the residence.

At approximately 1:30am, the police conducted a cursory check of the exterior of the residence and observed blood droplets around a vehicle and a large amount of blood on the inside of the passenger side of the vehicle. Matt Christofferson's injuries observed by the

EMS at the scene included multiple stab wounds from his neck to his torso. Injuries were determined to be life threatening.

Defendant was interviewed by the police, wherein his Miranda rights were read to him and Defendant signed a waiver form and consented to be interviewed. Defendant admitted to the police that he repeatedly stabbed his wife, Karen Conklin as she sat on the couch. The Defendant further admitted to stabbing his brother-in-law Harold Christofferson. Additionally, Defendant admitted that he stabbed the "big girl", (referred to as S.S. above) because she jumped on the Defendant's back which prevented him from continuing to stab Harold. The Defendant further stated that "if I had a gun I would have sprayed them all."

On April 22, 2015, the police spoke with Defendant's Wife, Karen Conklin at the Geisinger Wyoming Valley Medical Center regarding the investigation. Karen advised she and the Defendant had an argument early Sunday. She spent the day away from Defendant shopping and upon returning to the residence that evening she sat on the couch and the Defendant sat next to her, so she got up to move. She then sat between her son and her nephew, both minors, so the Defendant could not be near her. The Defendant then went to the back of the couch behind her and proceeding to stab her. Karen advised she did not know she was being stabbed at the time, she thought the Defendant was punching her in the face. Karen stated the Defendant was angry and quiet prior to the attack and the attack came out of nowhere.

The Defendant then stopped stabbing her for unknown reasons and Karen felt blood rushing down her face. She then went out the backdoor of the residence to get away from the Defendant and sat in a van located in the driveway. While leaving the residence Karen observed the Defendant holding someone in the hallway by the bathroom. She related that

the person was pretty bloody. While in the van Karen told her niece and nephew, both minors, to call 911.

While at the hospital, the police observed Karen to have a cut on her right check and chin, along with lacerations on both triceps, left elbow, and her left hand. Karen's right wrist was also bandaged. She related that she was stabbed on both breasts and had a total of ten to eleven stab wounds. She was unable to provide a written statement at that time due to her arms being injured, but related when she was released from the hospital she would provide the police with a written statement and follow up interview.

See Aff. Of Probable Cause

Thereafter, on January 7, 2016 a Criminal Information was filed in the Court of Common Pleas of Wyoming County docket number 472-2015, charging Defendant with the following:

1. Count I: Criminal Attempt/Murder Third Degree
18 Pa. C.S. §901(a)/ 18 Pa. C.S. §2502(c)
2. Count II: Criminal Attempt/Murder Third Degree
18 Pa. C.S. §901(a)/ 18 Pa. C.S. §2502(c)
3. Count III: Criminal Attempt/Murder Third Degree
18 Pa. C.S. §901(a)/ 18 Pa. C.S. §2502(c)
4. Count VI: Criminal Attempt/ Criminal Homicide
18 Pa. C.S. §901(a)/ 18 Pa. C.S. §2501(a)
5. Count V: Criminal Attempt/ Criminal Homicide
18 Pa. C.S. §901(a)/ 18 Pa. C.S. §2501(a)
6. Count VI: Criminal Attempt/ Criminal Homicide
18 Pa. C.S. §901(a)/ 18 Pa. C.S. §2501(a)
7. Count VII: Criminal Attempt/ Voluntary Manslaughter
18 Pa. C.S. §901 (a)/ 18 Pa.C.S. §2503(a)(1)
8. Count VIII: Criminal Attempt/ Voluntary Manslaughter
18 Pa. C.S. §901 (a)/ 18 Pa.C.S. §2503(a)(1)
9. Count IX: Criminal Attempt/ Voluntary Manslaughter
18 Pa. C.S. §901 (a)/ 18 Pa.C.S. §2503(a)(1)
10. Count X: Aggravated Assault
18 Pa. C.S. §2702(a)(1)
11. Count XI: Aggravated Assault
18 Pa. C.S. §2702(a)(1)

12. Count XII: Aggravated Assault
18 Pa. C.S. §2702(a)(1)
13. Count XIII: Aggravated Assault
18 Pa. C.S. §2702(a)(4)
14. Count XIV: Aggravated Assault
18 Pa. C.S. §2702(a)(4)
15. Count XV: Aggravated Assault
18 Pa. C.S. §2702(a)(4)
16. Count XVI: Simple Assault
18 Pa. C.S. §2701(a)(1)
17. Count XVII: Simple Assault
18 Pa. C.S. §2701(a)(1)
18. Count XVIII: Simple Assault
18 Pa. C.S. §2701(a)(1)

Defense Counsel and the Commonwealth each motioned the Court to have a mental evaluation completed on the Defendant to determine if Defendant was competent to stand trial. Said motions were granted and by Order dated August 17, 2015, upon receipt and review of said evaluations performed by Dr. Richard Fischbein and Dr. Brett DiGiovanna for the Pennsylvania Department of Human Services, it was determined Defendant was competent to stand trial. Defendant plead guilty but mentally ill on January 8, 2016 to count one Criminal Attempt/ Murder of the Third Degree, a felony in the first degree, and count ten and count eleven Aggravated Assault, felonies in the first degree. After review of an extensive Pre- Sentence Investigation Report, which included the mental health evaluation, Defendant was sentenced on February 10, 2016 in docket number 2015-472A to pay the costs of prosecution, make restitution in the amount of \$3,122.93, and be committed to the Department of Corrections for confinement to a state institution for a period of not less than two hundred and forty (240) months nor more than four hundred eighty (480) months and shall stand committed until the same is complied with. The Defendant shall not be RRRI eligible due to the nature of the offense. Defendant shall receive credit for prior

confinement in the amount of two hundred ninety-eight (298) days. Defendant shall submit himself for withdrawal of a DNA sample as required by law prior to his release from incarceration.

Regarding docket number 2015-472B Defendant was sentenced to pay the cost of prosecution and be committed to the Department of Corrections for confinement in a state institution for a period of not less than sixty (60) months nor more than one hundred and twenty (120) months and stand committed until same is complied with. Defendant shall not be eligible for RRRI minimum sentence due to the nature of the offense. Defendant shall submit himself for a withdrawal of a sample of DNA analysis as required by law prior to his release from incarceration. This sentence shall be served consecutive to the sentence imposed by this Court for docket number 2015-472A.

Regarding docket number 2015-472C Defendant was sentenced to pay the cost of prosecution and be committed to the Department of Corrections for confinement in a state institution for a period of not less than sixty (60) months nor more than one hundred and twenty (120) months and stand committed until same is complied with. Defendant shall not be eligible for an RRRI minimum sentence due to the nature of the offense. Defendant shall submit himself for a withdrawal of a sample of DNA analysis as required by law prior to his release from incarceration. This sentence shall be served consecutive to the sentence imposed by this Court for docket number 2015-472C. Total aggregate sentence in this matter is three hundred sixty (360) months to seven hundred twenty (720) months in a state correctional facility. The consecutive sentences were imposed due to three separate victims.

On or about February 16, 2016, Defense Counsel filed a Post-Sentence Motion for Reconsideration of Sentence & Motion for Mental Health Determination and to Vacate Sentence. Said motion was denied due to the reports of Richard E. Fischbein, M.D. and the Pennsylvania Department of Human Services reports finding that the Defendant was not severely mentally disabled at the time of sentence.

Defendant filed a pro se PCRA on June 28, 2016. Attorney Timothy Michaels was appointed to represent Defendant in the PCRA and a hearing on same was scheduled for October 28, 2016. On or about October 19, 2016 Defense Counsel filed a Motion to Amend P.C.R.A. Petition requesting to amend Defendant's PCRA Petition and to continue said hearing. Said Motion was granted and the PCRA hearing was held July 25, 2017¹

At the date and time set for hearing, Defense Counsel and the Commonwealth advised that they had reached a stipulation in that at the time of Defendant's original sentencing Defendant was to have a mental health hearing and one did not take place. Therefore they agreed to have the original sentence vacated and have the Defendant re-evaluated and conduct a mental health hearing pursuant to the Mental Health Act prior to re-sentencing. Attorney Michaels advised the only issue raised in Defendant's PCRA which had merit was regarding his sentence and with the concurrence of the Commonwealth requested said issue be granted and the other issues be denied. (H.T. 7/25/2107 p. 5 - p. 6 line 10). This Court then asked Attorney Michaels if he has explained to the Defendant that even with a new assessment probably not a lot regarding Defendant's sentence would change. (H.T.

¹ Said hearing was originally rescheduled for January 20, 2017. On January 12, 2017 upon motion of the Commonwealth the PCRA hearing was continued to April 11, 2017. On March 27, 2017 upon motion of the Commonwealth and concurrence by Defense Counsel, the PCRA hearing was continued to May 26, 2017. Thereafter, due to a change in the Court calendar the PCRA hearing was moved to July 25, 2017.

7/25/2017 p. 6 line 12-15). To which Attorney Michaels informed this Court he did advise same to the Defendant. (H.T. 7/25/2017 p. 6 line 17-18).

On July 31, 2017 Defense Counsel filed a Petition to Appoint Medical Expert. Said Petition was granted and Defendant was ordered to undergo a supplemental evaluation to determine whether the Defendant is severely mentally disabled and is in need of treatment pursuant to the Mental Health Procedures Act. Richard E. Fischbein, M.D. was appointed to conduct the evaluation and provide a written report.

On August 16, 2017, this Court entered an Order finding upon agreement of the Commonwealth and Defendant's PCRA Counsel, the PCRA is granted regarding the issue of Defendant's sentence only. It was further ordered that the Defendant shall be scheduled for resentencing upon the completion of the supplemental Mental Health Evaluation to determine whether the Defendant is severely mentally disabled and in need of treatment pursuant to the Mental Health Procedures Act. A hearing to determine whether the Defendant is severely mentally disabled and in need of treatment was subsequently held November 16, 2017 with re-sentencing occurring immediately following said hearing.

Based upon the testimony of Richard E. Fischbein, M.D. provided at said hearing and concurrence by counsel the Court found the Defendant is severely mentally disabled and in need of treatment. See Order 11/16/2017. Based upon the updated and extensive PSI Report, the Defendant was then re-sentenced to docket number 2015-472A to pay the costs of prosecution, make restitution to the Victim's Compensation Assistance Program in the amount of \$3,122.93 and be committed to the Department of Corrections for confinement in a state institution for a period of not less than two hundred forty (240) months nor more than four hundred eight (480) months and stand committed until the same is complied with.

Defendant shall not be RRRI eligible due to the nature of the offense. Defendant shall receive credit for prior confinement in the amount of nine hundred forty-five (945) days. Defendant shall submit himself for withdrawal of a sample for DNA analysis as required by law prior to his release from incarceration. Defendant shall obtain a drug and alcohol evaluation and a mental health evaluation and shall follow any and all recommended treatment plans until satisfactorily discharged.

Regarding docket number 2015-472B Defendant was re-sentenced to pay the costs of prosecution, pay a fine in the amount of \$500.00 and be committed to the Department of Corrections for confinement in a state institution for a period of not less than sixty (60) months nor more than one hundred twenty (120) months and stand committed until the same is complied with. Defendant shall not be eligible for an RRRI minimum sentence due to the nature of the offense. Defendant shall submit himself for a withdrawal of a sample for DNA analysis as required by law prior to his release from incarceration. Defendant shall obtain a drug and alcohol evaluation and a mental health evaluation and shall follow any and all recommended treatment plans during his period of incarceration. This sentence is served consecutive to the sentence imposed by this Court for docket number 2015-472A.

Regarding docket number 2015-472C Defendant was re-sentenced to pay the costs of prosecution, pay a fine in the amount of \$500.00 and be committed to the Department of Corrections for confinement in a state institution for a period of not less than sixty (60) months nor more than one hundred and twenty (120) months and stand committed until the same is complied with. Defendant shall not be eligible for a RRRI minimum sentence due to the nature of the offense. Defendant shall submit himself for withdrawal of a sample of DNA analysis as required by law prior to his release from incarceration. Defendant shall

obtain a drug and alcohol evaluation and a mental health evaluation and shall follow any and all recommended treatment plans during his period of incarceration. This sentence shall be served consecutive to the sentence imposed by this Court to docket number 2015-472B. Total aggregate sentence in this matter is three hundred sixty (360) months to seven hundred twenty (720) months in a state correctional facility. The consecutive sentences were imposed due to the three separate victims.

Defense Counsel then filed an appeal to the Pennsylvania Superior Court and as such this matter is now ripe for discussion.

II. DISCUSSION

42 Pa. C.S. §9727(a) states in pertinent part:

Imposition of sentence- A defendant found guilty but mentally ill or whose plea of guilty but mentally ill is accepted under the provision of 18 Pa.C.S. §314 may have any sentence imposed on him which may lawfully be imposed on any defendant convicted of the same offense. Before imposing sentence, the court shall hear testimony and make a finding on the issue of whether the defendant at the time of sentencing is severely mentally disabled and in need of treatment pursuant to the provisions of the act of July 9, 1976, known as the "Mental Health Procedures Act."

(emphasis added)

The Supreme Court of Pennsylvania has determined the process of taking testimony and making a finding on the issue of whether a defendant at the time of sentencing is severely mentally disabled is mandatory. Commonwealth v. Davis, 612 A.2d 426,428 (Pa. 1992).

In Davis, the Appellee plead guilty but mentally ill to six counts of official oppression. Davis, 612 A.2d, 427). On October 24, 1985 Appellee was sentenced to ten (10) years' probation, without a hearing as pursuant to 42 Pa.C.S. §9727. Id. Appellee violated his probation on September 29 and September 30, 1988. Id. Appellee's state probation was

revoked based on the federal charges and on July 21, 1989 he was re-sentenced to fifty (50) to one hundred twenty (120) months to run consecutively to any federal sentence. Id. at 428. During the re-sentencing, no hearing was held regarding 42 Pa.C.S. §9727 to determine if Appellee was in need of treatment. Id. The trial judge stated he was incorporating into the re-sentencing proceeding the record of the original sentencing proceedings and made specific reference to the mental health evaluation done on the Appellee while in federal custody. Id. The trial judge then made a finding that the Appellee was not severely mentally disabled and the re-sentence remained unchanged. Id. On appeal the Supreme Court found that the requirement to having a hearing wherein testimony is provided and a finding on the issue of mental disability at the time of sentencing was applicable prior to the re-sentencing of Appellee. Id.

In the case now before the Court, Defense Counsel argues the Defendant's re-sentencing did not change from the court's original sentence, notwithstanding the information provided at the mental health hearing. Defense Counsel is attempting to have mitigating evidence regarding the progress Defendant has made while incarcerated factor into whether at the time of sentencing the Defendant was severely mentally disabled and in need of treatment. 42 Pa.C.S. §9727 clearly states a hearing must be had and a finding must be issued regarding if Defendant is severely mentally disabled and in need of treatment at the time of sentencing. Additionally, it also provides the court may impose any sentence upon the defendant that is lawful. The hearing is not an opportunity for this Court to look to mitigating factors that were not before this Court at time of original sentencing. The Defendant's sentencing was based on the extreme nature of the crimes and not the treatment nor progress Defendant may have completed while incarcerated.

The Superior Court has found when a trial court imposes a sentence, it must consider the factors set forth in 42 Pa.C.S. §9721, including the protection of the public, gravity of offense in relation to impact on the victim and the community and the rehabilitative needs of the defendant. Commonwealth v. Coulverson, 34 A.3d 135, 144 (Pa. Super. 2011). See also Commonwealth v. Fullin, 892 A.2d 843, 847-848 (Pa. Super. 2006). When imposing a sentence for a felony or misdemeanor, the trial court shall make part of the record and disclose in open court, a statement of the reason for the sentence. The trial court is not required to state every factor contained under 42 Pa.C.S. §9721, however, the record as a whole must reflect the reasons and its meaningful consideration of the statutory considerations. Id. at 145.

As was set forth on the record at the time of sentencing, the Court relied on the extensive PSI report which included victim statements and the psychiatric reports dated ~~AUGUST~~ 30, 2015, July 8, 2015 and August 22, 2017. The Court's reasons for imposing sentence in docket 2015-472A was the serious nature of the offense, any lesser sentence would depreciate the serious nature of the Defendant's actions and the recommendation is within the sentence guidelines. (H.T.11/16/17 p. 40 line 9-14) The reasons for imposing sentence in docket 2015-472B is there was a separate victim, the serious nature of the offense and the recommended sentence is within the sentence guidelines. (H.T. 11/16/17 p.41 line 16-22) The reasons for imposing sentence in docket 2015-472C is there was a separate victim, the serious nature of the offense and the recommended sentence is within the sentence guidelines. (H.T. 11/16/17 p.42-43 line 23-25; 1-4) Defense counsel was provided with copies of the PSI report prior to sentencing indicating same.

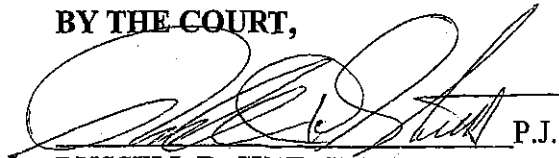
Defendant was sentenced within the sentence guidelines and received proper credit of 943 days. Additionally, due to the testimony provided by Dr. Fischbein during the Mental Health Hearing, this Court included in its sentence for Defendant to obtain a mental health evaluation along with a drug and alcohol evaluation and comply with all treatment plans while incarcerated. This will ensure the Defendant is provided access to the proper facility and professionals who can determine the appropriate treatment for Defendant and can monitor Defendant appropriately.

Due to the heinous crimes of the Defendant stabbing his wife, his brother in law and a minor child the sentence was appropriate. The progress Defendant makes while incarcerated is for the parole board to take into consideration at the time of Defendant's parole, it is not for this Court to take into consideration at the time of re-sentencing.

III. CONCLUSION

A hearing was held prior to Defendant's re-sentencing to determine if Defendant was severally mentally ill at the time of sentencing and in need of mental health treatment. Defendant was sentenced within the sentencing guidelines and based on the testimony provided during the mental health hearing, he was also sentenced to receive a mental health evaluation along with a drug and alcohol evaluation and comply with treatment. It is the opinion of this Court that Defendant's appeal is meritless and should be denied.

BY THE COURT,


P.J.
RUSSELL D. SHURTLEFF,
President Judge