

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
WAYNE TRAVIS HAYDEN,	:	
	:	
Appellee	:	No. 2106 EDA 2012

Appeal from the Judgment of Sentence entered on May 15, 2012,  
in the Court of Common Pleas of Chester County,  
Criminal Division, No(s): CP-15-CR-0000685-2011,  
CP-15-CR-0001346-2011, CP-15-CR-0003764-2011

BEFORE: BENDER, P.J., DONOHUE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

**FILED JANUARY 14, 2014**

The Commonwealth of Pennsylvania appeals from the judgment of sentence imposed on Wayne Travis Hayden (“Hayden”), following his guilty pleas, in three separate cases, to making a materially false statement in connection with the purchase or transfer of a firearm as a third-degree felony, conspiracy to commit retail theft as a first-degree misdemeanor, and theft by unlawful taking as a first-degree misdemeanor.<sup>1</sup> We affirm.

On January 10, 2010, Hayden and Crystal Smola (“Smola”) entered a Sears store in West Whiteland Township. Once inside, Smola carried a Dyson vacuum cleaner, valued at \$599, past all points of sale.

On January 26, 2010, Hayden attempted to purchase a firearm from his cousin. On his application, Hayden indicated that he had never been

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<sup>1</sup> 18 Pa.C.S.A. §§ 6111(g)(4), 903, 3921.

convicted of a crime punishable by imprisonment for a term exceeding one year. However, in 1997, Hayden had been convicted of possession with the intent to deliver controlled substances, a felony.

On April 28, 2011, while the firearms charge was pending, Hayden and Robert Charles Boyd, Jr. ("Boyd") unlawfully loaded scrap metal from property owned by Gary Fairweather, without Fairweather's permission. Boyd and Hayden loaded the scrap metal into a truck. The scrap metal was valued at \$300.

On January 13, 2012, Hayden pled guilty to the above-described charges resulting from the three criminal incidents. The matter proceeded to a sentencing hearing on March 1, 2012. At the hearing, Hayden, through his counsel, agreed to his prior record score of "5". N.T., 3/1/12, at 4. Hayden also agreed to an offense gravity score of "8" for his firearms conviction, an offense gravity score of "3" for his theft by unlawful taking conviction, and an offense gravity score of "2" for his retail theft conviction. ***Id.*** at 4-5. Based upon Hayden's prior record score, his criminal conduct while some of the criminal charges were pending, and the proximity in time of the crimes at issue, the Commonwealth recommended a mitigated range sentence of two and one-half to five years in prison for Hayden's firearms offense. ***Id.*** at 5-6.

During the March 1, 2012, hearing, Hayden's counsel proffered, as a mitigating factor, Hayden's cooperation in an unrelated criminal case.

Because the prosecutor, Brian D. Burack, Esquire ("Mr. Burack"), was unaware of the results of Hayden's cooperation, the sentencing court continued the sentencing hearing. N.T., 3/1/12, at 15-16.

The sentencing hearing resumed on May 15, 2012. At that hearing, Mr. Burack presented the following description of Hayden's cooperation in the unrelated criminal case:

[Hayden's counsel sent] correspondence to [the Assistant District Attorney who] was prosecuting a man by the name of Chad Chalfont ["Chalfont"].

[ ] Chalfont had been arrested for possession of a firearm without a license. He had been stopped in a car with his girlfriend. The gun was found underneath the seat. And what can only be construed as an offer to drop the case, [Hayden's counsel] made clear that his client could state ... three different facts that clearly, if true and if testified to, if proven, would be helpful....

N.T., 5/15/12, at 9. The Commonwealth agreed that Hayden, through his counsel, provided the Commonwealth with information regarding Chalfont's possession of the firearm on different occasions, and the unique nature of the firearm. **Id.** at 11. The Commonwealth also agreed that Chalfont tendered a guilty plea in that case. **Id.** at 12.

Hayden's counsel presented a more detailed description of Hayden's cooperation in the Chalfont case:

There's a girl driving that car with [ ] Chalfont. The car is stopped. There's drugs [*sic*] located in the car. Chalfont's firearm is located in the car. The girl agrees to cooperate against Chalfont. And during the course of that cooperation, [ ] Chalfont—his girlfriend, tells his attorney[, ] who tells the DA, I'm going to trial. That's her gun in the car. She can say whatever

she wants to say. She's a heroin addict[;] I'm a heroin addict. Nobody's going to believe her. That's when they come to us, [Hayden's prior counsel, Mr. Pavlov ("Pavlov")]. And when he comes to us after the offer is made by the Commonwealth to have my client serve a term of four years['] probation on the gun case so cooperation, probation, none of that is on the radar when the Commonwealth Attorney, Mr. DiCindio, makes Mr. Hayden's first lawyer an offer. First it's five years['] probation, comes down to four years['] probation.[<sup>2</sup>]

**Id.** at 14-15. However, Hayden's counsel indicated that the Commonwealth's probation offer was revoked based upon Hayden's arrest in the scrap metal case. **Id.** at 16. As a result, Hayden offered to cooperate in the Chalfont case, with his counsel detailing the offer of cooperation in a letter to Chalfont's counsel. **Id.** at 16-17.

As a result of Hayden's cooperation in the Chalfont case, the Commonwealth reduced its sentencing recommendation for the firearms offense to a minimum of 24 months in prison.<sup>3</sup> **Id.** at 21. Defense counsel countered, requesting a probationary term for the firearms offense. **Id.** at 48. Ultimately, the sentencing court sentenced Hayden to 30 days to 23 months in jail for his conviction of the firearms offense. **Id.** at 65. For his conviction of conspiracy to commit retail theft, the sentencing court sentenced Hayden to a one-year term of probation, imposed consecutive to

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<sup>2</sup> Mr. Burack objected to the introduction of evidence related to the plea negotiations. **Id.** at 15.

<sup>3</sup> The Commonwealth had recommended that Hayden serve two years of probation for the retail theft and theft by unlawful taking offenses, to be served concurrent to his sentence on the firearms charge. Commonwealth Memorandum in Aid of Sentencing, 3/1/12, at 5.

Hayden's sentence in the firearms case, plus a fine and costs. **Id.** at 67. For his conviction of theft by unlawful taking, the sentencing court sentenced Hayden to a six-month term of probation, to be served consecutive to Hayden's probation term in the conspiracy case. **Id.**

The Commonwealth filed a Motion to reconsider Hayden's sentence. After a hearing, the sentencing court denied the Commonwealth's Motion. The Commonwealth then filed the instant timely appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of matters complained of on appeal.

The Commonwealth presents the following issue for our review: "Whether the [sentencing] court imposed a sentence that was not appropriate under the Sentencing Code[?]" Brief for the Commonwealth at 5.

The Commonwealth challenges the discretionary aspects of Hayden's sentence. A challenge to the discretionary aspects of a sentence must be considered a petition for permission to appeal, as the right to pursue such a claim is not absolute. **Commonwealth v. Bowen**, 55 A.3d 1254, 1262 (Pa. Super. 2012).

In addressing a challenge to the discretionary aspects of sentencing, an appellate court conducts 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).

\* \* \*

The determination of what constitutes a substantial question must be evaluated on a case-by-case basis. A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process.

***Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010) (quotation marks and some citations omitted).

Here, the Commonwealth filed a timely Notice of appeal, raised its claims in a Motion to reconsider the sentence, and included a Pennsylvania Rule of Appellate Procedure 2119(f) Statement in its brief. In its Rule 2119(f) Statement, the Commonwealth asserts that the sentencing court relied on improper factors in sentencing Hayden, and that its reasons for departing from the sentencing guidelines are insufficient. Brief for the Commonwealth at 13. These arguments raise a substantial question that the sentence was not appropriate under the Sentencing Code. **See *Commonwealth v. Stewart***, 867 A.2d 589, 592-93 (Pa. Super. 2005) (finding that a substantial question is raised when an appellant alleges that the sentencing court considered improper factors at sentencing); ***Commonwealth v. Hess***, 745 A.2d 29, 30 n.3 (Pa. Super. 2000) (stating that a claim that the sentencing court imposed an unreasonable sentence by

sentencing outside the guideline ranges presents a “substantial question” for review). Accordingly, we will address the merits of the Commonwealth’s challenge to the discretionary aspects of Hayden’s sentence.

Our standard of review of a sentencing court’s determination is for an abuse of discretion. ***Commonwealth v. Perry***, 32 A.3d 232, 236 (Pa. 2011). An abuse of discretion “is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.” ***Id.*** at 236 (citation and internal quotation marks omitted). An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion. ***Id.***

The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that the sentencing court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it. Simply stated, the sentencing court sentences flesh-and-blood defendants and the nuances of sentencing decisions are difficult to gauge from the cold transcript used upon appellate review. Moreover, the sentencing court enjoys an institutional advantage to appellate review, bringing to its decisions an expertise, experience, and judgment that should not be lightly disturbed. Even with the advent of sentencing guidelines, the power of sentencing is a function to be performed by the sentencing court. Thus, rather than cabin the exercise of a sentencing court’s discretion, the guidelines merely inform the sentencing decision.

***Id.*** at 236-37 (citation and internal quotation marks omitted). Finally, we observe that “rejection of a sentencing court’s imposition of sentence on

unreasonableness grounds [should] occur infrequently, whether the sentence is above or below the guidelines ranges.” **Commonwealth v. Macias**, 968 A.2d 773, 777 (Pa. Super. 2009) (citation omitted). “

The Commonwealth claims that the sentencing court imposed a sentence that was not appropriate under the Sentencing Code. Brief for the Commonwealth at 18. The Commonwealth first argues that, in sentencing Hayden for his violation of 18 Pa.C.S.A. § 6111(g)(4) (“the firearms offense”), the sentencing court’s characterization of the nature of Hayden’s offense contradicted the statutory elements of that offense. Brief for the Commonwealth at 21. The Commonwealth observes that Hayden pled guilty to making a false or misleading statement, intentionally and knowingly, while trying to purchase or transfer a firearm. **Id.** According to the Commonwealth, the sentencing court “made clear it did not believe [that Hayden] had the requisite mental state and explicitly relied on this belief in fashioning a mitigated sentence.” **Id.** at 22.

Section 6111(g)(4) provides, in relevant part, that

[a]ny person, purchaser or transferee commits a felony of the third degree if, in connection with the purchase, delivery or transfer of a firearm under this chapter, he **knowingly** and **intentionally**:

...

(ii) makes any materially false written statement, including a statement on any form promulgated by Federal or State agencies ....



18 Pa.C.S.A. § 6111(g)(4) (emphasis added). A violation of Section 6111(g)(4) contains fraud as a material element. **Commonwealth v. Riding**, 68 A.3d 990, 995 (Pa. Super. 2013).

Our review of the May 15, 2012 sentencing hearing discloses that defense counsel offered the circumstances underlying Hayden's firearms offense as mitigating evidence at sentencing:

Instead of buying [his cousin's firearm] through the black market, which is probably how 99.9 percent of the criminals get their guns, [Hayden] decided to take his cousin up on the idea of buying his gun. His cousin comes to him at one point [and] said I want to sell, I want to sell this gun to you. [] Hayden says to him—it's an undisputable fact in this case. I don't want to buy the gun from you out on the street, I want to go to French Creek Outfitters, [a] legal firearms dealer in Chester County. Surveillance cameras are everywhere. They walk in. They both go to the counter, the dealer says, What would you like to do? [Hayden] says, I would like to buy his gun and I would like to do it right away, transfer ownership of that gun to me right before your eyes in a legal manner. When [Hayden] gets to the question, Have you ever been convicted of a crime punishable by more than one year in prison, yes or no? He asked the gentleman behind the counter, How do I answer the question? The fellow said to them, have you ever done a year or more in prison. [Hayden] said no. He says that he checked no—off the box he did. He tendered that document to the dealer. He submitted to the records review and it said that that question was answered incorrect.

N.T., 5/15/12, at 35-36. Although Hayden's counsel requested the surveillance videos from French Creek Outfitters, they had not been preserved. **Id.** at 37.

As the Commonwealth argues, the sentencing judge expressed some doubt as to Hayden's criminal intent when filling out the firearms application.

However, the sentencing judge ultimately recognized that Hayden pled guilty to violating section 6111(g)(4):

I also, as I am required to do, am considering the facts and circumstances surrounding the occurrence of these offenses. And although a crime is a crime, there are different levels of boldness or seriousness or audacity of crimes. I am persuaded by [defense counsel's] charge that it's difficult to conclude that [] Hayden was conscious of committing a crime or was thinking that he was committing a crime. I'm well aware that ignorance of the law is no excuse, but it's difficult to conceive someone going into a licensed firearm dealer presumably with the intent of talking about doing something legally with regard to a transfer of a firearm—I am not placing any weight upon what the clerk at the counter may have informed or misinformed [] Hayden on the issue of more than a year of possible incarceration, but I just find the circumstances of [] Hayden walking into that store[,] it seems to me[,] for the sole purpose of attempting to do it legally and being incorrect and being found out nine months after the fact to be incorrect[,] could warrant state incarceration for him. I know what the guidelines suggest. I know the purpose of the guidelines, which is to provide uniformity across the State of Pennsylvania to trial judges such as myself, based on a defendant's prior record score and to correlate that with the offense gravity score.

But to treat this offense, circumstances of this offense and to sentence this defendant the way that some illegal drug transaction or illegal firearms transaction for sale on the street or elsewhere would be sentenced I think is not a proper exercise of my sentencing authority.

...

But primarily[,] the reason that I am about to make a departure downward from the mitigated range of the sentencing guidelines is because of the circumstances of this firearm charge. I have a difficult time bringing myself to conclude that [] Hayden walked into that store to perform a criminal act. To the contrary, I think he walked into the store to do what he thought was a lawful transaction and he mistakenly assessed that situation. But to have his sentencing the same as someone who intended actively to make fraudulent representation would be a mistake on the

[c]ourt's part, in my opinion. **I do recognize, however, that his guilty plea acknowledges that he did commit that crime.** I cannot, however, bring myself to impose a merely probationary sentence. I do think there is a sentence or punishment that should be recognized by [] Hayden and that some imprisonment is required.

N.T., 5/15/12, at 60-62, 64-65 (emphasis added).

At the hearing on the Commonwealth's post-sentence Motion, the sentencing judge again addressed his consideration of the circumstances underlying the firearms offense as mitigating evidence:

I view it as a necessary component of considerations in determining sentence to assess the underlying facts and circumstances of the case or cases very carefully. It's clear to me that the Commonwealth does not view the gravity or seriousness of these offenses at the same level as I do. Yet clearly on their face, these offenses are serious offenses, but I've got to determine what happened in the actual case or cases that are before me. That's what I attempted to do. I'm not going to relitigate or repeat what I said at the time of sentencing.

I still find it almost inconceivable that this defendant would have presented himself at a licensed gun dealer for the purpose of properly transferring a firearm only to affirmatively and fraudulently make an error on the paperwork that he wouldn't have even needed to fill out in the first place if he was just going to pass this gun off or accept this gun in some less than legal manner.

So I know the Commonwealth disagrees with the reasons I stated as a basis for departure. I recognize that the departure was a significant departure downward from the guidelines....

N.T., 6/27/12, at 26.

Thus, it appears from our review that, although the sentencing court expressed doubt as to Hayden's intent, it ultimately recognized that Hayden pled guilty to the offense, including its intent element. Notwithstanding, the

sentencing court considered the circumstances of the offense as mitigating evidence in fashioning Hayden's sentence. With the broad discretion afforded to a sentencing court, we cannot conclude that the sentencing court abused its discretion in considering the circumstances as substantial mitigating evidence. While we may disagree with the weight afforded to this mitigating evidence, we cannot conclude that the sentencing court abused its discretion. Accordingly, we cannot grant the Commonwealth relief on this claim.

The Commonwealth next argues that Hayden's sentence for the firearms offense is unreasonable in light of the gravity of that offense. Brief for the Commonwealth at 25. The Commonwealth points out that the misuse of firearms "creates a very real danger to innocent people all across the country." *Id.* According to the Commonwealth, "the [sentencing] court grossly depreciated the gravity of the offense by evaluating it as a clerical mistake on a form." *Id.* at 26. The Commonwealth asserts that, "because that depreciation was based upon [the court's] misconstruing what the elements of the offense were, it was an abuse of discretion." *Id.* at 27.

However, as stated above, the sentencing court ultimately recognized that Hayden pled guilty to violating section 6111(g)(4). In fashioning its sentence, the sentencing court considered as mitigating evidence the underlying circumstances giving rise to the charges. We cannot conclude that the sentencing court abused its discretion in the weight it assigned to

the mitigating evidence. Accordingly, we discern no abuse of discretion in this regard.

The Commonwealth next argues that the sentencing court unreasonably diminished Hayden's prior criminal history. Brief for the Commonwealth at 27. The Commonwealth argues that Hayden had a long criminal history, and that the sentencing court abused its discretion in reducing the effect of Hayden's criminal history to zero. *Id.* at 28. The Commonwealth does not object to the sentencing court's consideration of the age of Hayden's prior offenses, but to the weight afforded to those offenses by the sentencing court.

This Court has long recognized that "[a]n allegation that a sentencing court 'failed to consider' or 'did not adequately consider' certain factors does not raise a substantial question that the sentence was inappropriate." ***Commonwealth v. Urrutia***, 653 A.2d 706, 710 (Pa. Super. 1995) (citation omitted). "[S]uch a challenge goes to the weight accorded the evidence and will not be considered absent extraordinary circumstances." ***Commonwealth v. Petaccio***, 764 A.2d 582, 587 (Pa. Super. 2000) (citation omitted). The Commonwealth has not asserted extraordinary circumstances warranting review.

Similarly, the Commonwealth argues that the sentencing court ignored the fact that, while the firearms charge was pending, Hayden stole scrap metal and conspired to commit retail theft. Brief for Appellant at 29. The

Commonwealth, however, conceded that this information was provided to the sentencing court in the Pre-Sentencing Investigation Report. “In this Commonwealth, there is a presumption that when a court has facts in its possession, it will apply them.” **Commonwealth v. Moto**, 23 A.3d 989, 995 (Pa. 2011). Thus, the Commonwealth challenges the weight that the sentencing court assigned to this information at sentencing. Because the Commonwealth has not asserted extraordinary circumstances warranting review, we cannot grant it the relief requested.

The Commonwealth next argues that Hayden’s sentence is unreasonable because the sentencing court failed to give due regard to the sentencing guidelines. Brief for the Commonwealth at 31. The Commonwealth argues that the downward departure from the guidelines was “far too extreme”. **Id.** at 32. The Commonwealth provides no support for this argument, other than pointing out the disparity between the guidelines recommendation and the sentence imposed.

At sentencing, the sentencing court was informed of the guidelines recommendations. N.T., 5/15/12, at 5. Further, the sentencing court recognized the purpose of the sentencing guidelines on the record, and stated, in detail, its reasons for departing from those guidelines. **Id.** at 60-68. We cannot conclude the sentencing court abused its discretion based solely upon the disparity between the sentencing guidelines and the sentence imposed.

The Commonwealth also argues that the sentencing court departed from the sentencing guidelines for improper reasons. Brief for the Commonwealth at 33. In support, the Commonwealth again argues that the sentencing court viewed Hayden's conduct as less than intentional and knowing. ***Id.*** at 34.

As stated above, the sentencing court recognized that Hayden pled guilty to violating section 6111(g)(4). ***See*** N.T., 5/15/12, at 65 (wherein the trial judge stated, "I do recognize, however, that his guilty plea acknowledges that he did commit that crime."). The sentencing court stated that it departed from the guidelines, in part, based upon the circumstances underlying the offense. ***Id.*** at 64-65. While the downward departure was substantial, the Commonwealth has not presented the improper reasons relied upon by the sentencing court in departing from the guidelines. Accordingly, this claim fails.

Finally, the Commonwealth argues that the sentencing court did not provide sufficient justification for departing from the guidelines. Brief for the Commonwealth at 34. Again, the Commonwealth relies upon the sentencing court's consideration of the circumstances underlying Hayden's firearms conviction. ***Id.***

As set forth above, at the hearing on May 15, 2012, The Commonwealth advised the sentencing court of the following cooperation by Hayden in the Chalfont case. Hayden also presented evidence that, prior to

his cooperation, Hayden had resided at the Chalfont home. N.T., 5/15/12, at 45. Following his cooperation, Hayden received threats of violence from Chalfont's father. **Id.** at 44-45.

Hayden's counsel also presented evidence that Hayden's co-defendant in the scrap metal theft case, Boyd, engaged in the same activity and had a similar prior record. N.T., 3/1/12, at 9-10. Further, Boyd drove the vehicle to the scrap yard. **Id.** at 10. Notwithstanding the similar criminal acts and prior records, Boyd received a summary offense conviction for the theft of the scrap metal, while Hayden was charged with a misdemeanor. **Id.**

The sentencing court also was advised that Hayden suffered from bipolar disorder and manic depression, and that he was hospitalized for mental issues in April 2012. N.T., 5/15/12, at 42. The sentencing court also was advised that Hayden's parents died in 2011. **Id.**

At the close of the May 15, 2012 hearing, the sentencing court stated its reasons for its sentence, including the downward departure from the guidelines, on the record. The sentencing judge referred to Hayden's prior history, the timing and circumstances of the instant offenses, his mental condition and, in particular, the circumstances underlying Hayden's firearms offense:

I'm also considering the fact that there is a prior record score of five in this case, but clearly the bulk of that prior record score was incurred a number of years ago, really more than 10 years ago and in some instances more than 16 years ago, ... and I am taking that into account. A five is a five is a five and that factors into the guideline calculation, but I am considering the history,



the age of the incidents which comprise the prior record score. I'm also considering and giving some weight to the cooperation that [] Hayden offered to the Commonwealth in the [] Chalfont cases. I can't conclude that his role was the only reason why [] Chalfont chose to enter pleas of guilty[,] but I do believe it played a significant role and [] Hayden will be given some benefit for that cooperation in the sentence that I'm about to impose.

I also am required to examine the sentence of [] Boyd for his conduct in the [scrap metal] theft case and I'm mindful that his sentence for two summary disorderly conducts was 180 days or essentially six months of probation, together with fines and costs.

I am also taking into account that I'm sentencing as a result of guilty pleas that had been entered rather than a trial disposition. I think the Commonwealth itself typically weighs into a sentencing consideration whether the defendant has been using the judicial system for a trial or whether he's entering a guilty plea.

Finally, I'm considering the mental health status of [] Hayden, that there is some bipolar involvement. And while that does not provide a legal defense or excuse his conduct, I do believe that the more recent offenses, retail theft and the theft by unlawful taking offense occurred in the same time frame as the death of both of his parents coupled with his mental health issues warrant some consideration in his favor in the sentencing considerations in this case.

But primarily[,] the reason that I am about to make a departure downward from the mitigated range of the sentencing guidelines is because of the circumstances of this firearm charge. I have a difficult time bringing myself to conclude that [] Hayden walked into that store to perform a criminal act. To the contrary, I think he walked into the store to do what he thought was a lawful transaction and he mistakenly assessed that situation. But to have his sentencing the same as someone who intended actively to make fraudulent representation would be a mistake on the [c]ourt's part, in my opinion. I do recognize, however, that his guilty plea acknowledges that he did commit that crime. I cannot, however, bring myself to impose a merely probationary sentence. I do think there is a

sentence or punishment that should be recognized by [] Hayden and that some imprisonment is required.

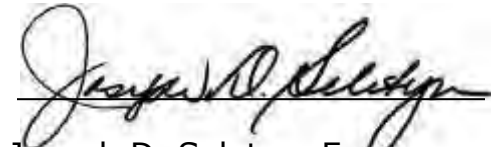
Therefore, for all of the above reasons, I do find that a lesser sentence than incarceration would depreciate the seriousness of the crime to which [] Hayden has entered into guilty pleas. Imprisonment will be imposed solely on the firearms charge and I will impose a probation sentence on the retail theft charge and the theft by unlawful taking charge.

***Id.*** at 60-65.

Thus, the record demonstrates the sentencing court's consideration of the charges, the gravity of the offenses, Hayden's prior record and the sentencing guidelines. The sentencing court's decision to depart from the sentencing guidelines was within the discretion vested in the sentencing court, and the record reflects no abuse of discretion. Accordingly, we affirm Hayden's judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 1/14/2014