

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JEFFREY WEIDER,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2188 EDA 2011

Appeal from the Judgment of Sentence June 6, 2011
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0005068-2010

BEFORE: STEVENS, P.J., BOWES, J., and FITZGERALD, J.*

MEMORANDUM BY STEVENS, P.J.

Filed: February 26, 2013

This is an appeal from the judgment of sentence entered by the Court of Common Pleas of Lehigh County after Appellant Jeffrey Weider pled guilty to one count of Criminal Conspiracy to Engage in the Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a Controlled Substance (Methamphetamine).¹ Appellant claims the trial court abused its discretion in imposing an aggravated range sentence by focusing solely on the gravity of the offense Appellant committed. We affirm.

On March 29, 2010, law enforcement arrested Appellant after conducting surveillance of his home and discovering Appellant's

* Former Justice specially assigned to the Superior Court.

¹ 35 P.S. § 780-113(a)(30); 18 Pa.C.S.A. § 903(a)(1).

methamphetamine lab hidden in the wooded area surrounding his home. After Appellant gave the officers consent to search his home and property, officers discovered 41,902 whole tablets of pseudoephedrine, along with iodine, and red phosphorus, which are all essential in manufacturing methamphetamine. Police also discovered paraphernalia used in the process of making methamphetamine. When questioned by police, Appellant admitted that his co-defendant, Leslie Prohaska, had previously asked to use his camper as a methamphetamine lab. Although Appellant initially refused, he gave her permission to use the camper for a methamphetamine lab after Ms. Prohaska gave Appellant \$200.00. Appellant helped Ms. Prohaska take materials to the camper and connected the camper with power from a generator that would be used to make methamphetamine.

After being charged with conspiracy and numerous offenses under the Controlled Substance, Drug, Device, and Cosmetic Act, Appellant agreed to plead guilty to the conspiracy charge if the Commonwealth agreed to drop six other offenses. The trial court accepted Appellant's plea and sentenced him to two and a half (2½) to seven (7) years imprisonment in a state prison. Appellant filed a post-sentence motion asking the Court to reconsider its sentence, which the trial court denied. This timely appeal followed.

Appellant claims on appeal that the trial court imposed an excessive sentence outside the sentencing guidelines and focused solely on the gravity

of the offense Appellant committed. This claim challenges the discretionary aspects of Appellant'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. Two requirements must be met before we will review this challenge on its merits. First, an appellant must set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. Second, the appellant must show that there is a substantial question that the sentence imposed is not appropriate under the Sentencing Code. The determination of whether a particular issue raises a substantial question is to be evaluated on a case-by-case basis. In order to establish a substantial question, the appellant must show actions by the trial court inconsistent with the Sentencing Code or contrary to the fundamental norms underlying the sentencing process.

Commonwealth v. Bricker, 41 A.3d 872, 874-75 (Pa. Super. 2012) (citing ***Commonwealth v. McAfee***, 849 A.2d 270, 274 (Pa. Super. 2004)).

Appellant included in his brief a statement of the reasons relied on for allowance of appeal in which he claimed the trial court "only concerned itself with the seriousness of the crime, but failed to analyze [Appellant] individually." Appellant's Brief at 7. In addition, Appellant claimed that his sentence violated the sentencing norms as it "far exceeded what was necessary to protect the public, or to provide for [Appellant's] rehabilitative needs." Appellant's Brief, at 8. This Court has provided that "an averment that the court sentenced based solely on the seriousness of the offense and failed to consider all relevant factors raises a substantial question." ***Bricker***,

41 A.3d at 875 (quoting *Commonwealth v. Macias*, 968 A.2d 773, 776 (Pa. Super. 2009)).

When reviewing a challenge to the sentencing court's discretion, our standard of review is as follows:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to 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.

Commonwealth v. Bowen, 55 A.3d 1254, 1263 (Pa. Super. 2012) (quoting *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002)).

Section 9721 of the Sentencing Code outlines general principles for the trial court to follow in fashioning a sentence, providing that "the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. § 9721. Moreover,

Section 9781(c) specifically defines three instances in which the appellate courts should vacate a sentence and remand: (1) the sentencing court applied the guidelines erroneously; (2) the sentence falls within the guidelines, but is "clearly unreasonable" based on the circumstances of the case; and (3) the sentence falls outside of the guidelines and is "unreasonable." 42 Pa.C.S. § 9781(c). Under 42 Pa.C.S. § 9781(d), the appellate courts must review the record and consider the nature and circumstances of the offense, the sentencing court's

observations of the defendant, the findings that formed the basis of the sentence, and the sentencing guidelines. The ... weighing of factors under 42 Pa.C.S. § 9721(b) [is] exclusively for the sentencing court, and an appellate court could not substitute its own weighing of those factors. The primary consideration, therefore, is whether the court imposed an individualized sentence, and whether the sentence was nonetheless unreasonable for sentences falling outside the guidelines, or clearly unreasonable for sentences falling within the guidelines, pursuant to 42 Pa.C.S. § 9781(c).

Bricker, 41 A.3d at 875-76 (Pa. Super. 2012) (citing **Commonwealth v. Bowen**, 975 A.2d 1120, 1123–1124 (Pa. Super. 2009)).

In this case, the trial court acknowledged that its sentence exceeded the aggravated range of the sentencing guidelines. The standard range sentence the guidelines recommended was nine to sixteen months and the aggravated range recommended sentence was twenty-two months. Nevertheless, the trial court found it proper to sentence Appellant to two and a half (2½) to seven (7) years imprisonment and fully discussed its basis for imposing a sentence outside the aggravated range of the guidelines.

The trial court discussed the gravity of the offense and the magnitude of Appellant's operation as Appellant possessed 41,902 whole tablets of pseudoephedrine, which the arresting trooper provided was one of the largest seizures he had ever seen in Pennsylvania. N.T. Sentencing, 6/6/11, at 6. The trooper opined that this amount of pseudoephedrine could have been used to produce nearly a kilogram of methamphetamine. N.T. Sentencing, 6/6/11, at 8-9, 11. In addition, the trooper noted Appellant had

been previously arrested on two separate occasions for possession with intent to distribute marijuana and crystal methamphetamine.

Although the trial court emphasized the seriousness of Appellant's offense, it reviewed Appellant's pre-sentence report and focused on Appellant's lack of remorse along with "his failure to learn from his past mistakes, the potential for injury to first responders, [and] the safety and protection of the public." T.C.O. 9/29/11, at 6. The trial court pointed out that Appellant was arrested for this offense just one month after Appellant had completed the Treatment Continuum Alternative Program (TCAP), a twenty-two month inpatient program focused on rehabilitation followed by a year of probation. At the sentencing hearing, the trial court stated the following reasons for imposing a sentence outside the aggravated guideline range:

This sentence departs from the guidelines on the upper range. The reason is that I find absolutely no remorse from you. It clearly was done totally for profit and money. We don't find as we review the presentence investigation that you were a heavy user.

Most importantly, and our major concern is that you had just been given a big break by being in the T-Cap Program, and it was only a short time after that you went right into an even heavier duty type of operation.

You posed a danger to the safety of anyone, both in terms of the coconspirators, or anyone else in the area, or any fireman or any law enforcement officer that might respond, and that you pose a threat to the community.

* * *

You brought in on yourself, absolutely. There you were, you were given every opportunity. You just thumbed your nose at the whole society and authority. That's exactly what you did here.

I mean, it just can't be tolerated. This was a big operation. It was done for money, and it was a total threat, not only to those around you, but everyone else in the vicinity who might respond.

N.T. Sentencing, 6/6/11, at 24-25.

Upon our review of this case, we find the trial court's reasoning for imposing a sentence outside the aggravated range of the sentencing guidelines is supported by the record. In light of the circumstances in this case, we find Appellant's sentence to be reasonable and conclude that the trial court did not abuse its discretion in imposing Appellant's sentence.

Judgment of sentence affirmed.