NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. LEONARD HAMMOND, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3011 EDA 2010

Appeal from the Judgment of Sentence June 25, 2010
In the Court of Common Pleas of Delaware County
Criminal Division at No.: CP-23-CR-0000160-2009

BEFORE: MUNDY, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. Filed: January 3, 2013

Appellant, Leonard Hammond, appeals from the judgment of sentence imposed by the Court of Common Pleas of Delaware County, following his conviction of aggravated assault[1] and possession of an instrument of crime.[2] We affirm.

The evidence at trial demonstrated that Appellant employed the victim, Omar McMillian, in his construction business. After being dissatisfied with his work, Appellant fired the victim without pay for his last day on the job. The victim's brother, Jamir Johnson, called Appellant about his failure to pay his brother, and they agreed to meet to discuss the situation.

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 2702(a)(1).

[2] 18 Pa.C.S.A. § 907(a).

On December 4, 2008, at approximately 8:00 p.m., Appellant and a passenger arrived to talk with the victim and Johnson. Things quickly escalated and the men starting arguing and yelling. The victim's other brother, Jamel McMillian, joined the men. The victim and Appellant began physically fighting until Johnson separated them. Appellant and his passenger got back into their car, with Appellant in the driver's seat. As the brothers were walking home, they heard Appellant call "Omar." The victim turned and was shot in the neck.

As a result, Appellant was arrested and charged with attempted homicide, aggravated assault, possession of an instrument of crime, and possession of a firearm without a license. On March 8, 2010, Appellant filed a motion requesting that an eyewitness, Jamel McMillian, participate in a line-up. A hearing was held the following day, and, in an order filed on March 19, 2010, the court denied the motion.

On April 9, 2010, a jury convicted Appellant of aggravated assault and possession of an instrument of crime.[3] On June 25, 2010, Appellant was sentenced to not less than ten nor more than twenty years' imprisonment on the aggravated assault count, to be followed by five years' probation on the

[3] At the time of trial, the victim was paralyzed, had very limited movement and the bullet remained in his neck. He was unable to walk, in constant pain, unable to go to the bathroom or feed himself, and required constant care.

possession of an instrument of crime count. On October 8, 2010, the trial court denied Appellant's post-sentence motion. This timely appeal followed.[4]

Appellant raises the following four issues on appeal:

> (1) Whether the trial court's verdict was against the sufficiency of the evidence?
>
> (2) Whether the trial court's verdict was against the substantial weight of the evidence?[]
>
> (3) Whether the trial court erred in denying [Appellant's p]re-trial motion for a line up?[]
>
> (4) Whether the sentence given was a legal sentence[?]

(Appellant's Brief, at 6).

Appellant's first argument is that there was insufficient evidence to support his convictions for aggravated assault and possession of an instrument of crime. (***See*** Appellant's Brief, at 9-12). Appellant contends that the Commonwealth did not prove beyond a reasonable doubt that he was the one in possession of the gun and that he was the one who shot the victim. (***See id.***).

When reviewing a claim challenging the sufficiency of the evidence, we apply the following standard:

> [W]hether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we

[4] Appellant filed a statement of errors complained of on appeal on December 1, 2010, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). He filed an amended Rule 1925(b) statement on June 13, 2011. The trial court filed a Rule 1925(a) opinion on January 20, 2012.

> may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Bullick, 830 A.2d 998, 1000 (Pa. Super. 2003) (quoting ***Commonwealth v. Gooding***, 818 A.2d 546, 549 (Pa. Super. 2003)).

"A person is guilty of aggravated assault if he: (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life[.]" 18 Pa.C.S.A. § 2702(a)(1). "Serious bodily injury" is defined as "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S.A. § 2301.

"A person commits [possession of an instrument of crime,] a misdemeanor of the first degree[,] if he possesses any instrument of crime with intent to employ it criminally." 18 Pa.C.S.A. § 907(a). An "instrument of crime" is defined as, *inter alia*, "[a]nything used for criminal purposes and

possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have." 18 Pa.C.S.A. § 907(d)(2).

Appellant's sufficiency claim is without merit. Appellant argues that there was insufficient evidence to support his convictions because "each of the Commonwealth [w]itnesses gave a different account of what occurred that night and the specifics of the shooting, including whether [Appellant] did indeed have a gun." (Appellant's Brief, at 10). Appellant's argument that the witnesses' testimony was inconsistent raises a challenge to the credibility of the witnesses, and, thus, goes to the weight of the evidence, not the sufficiency. ***See, e.g.***, ***Commonwealth v. Boxley***, 838 A.2d 608, 612 (Pa. 2003) (claims that testimony was contradictory went to the weight of the evidence, not sufficiency); ***Commonwealth v. Small***, 741 A.2d 666, 672 (Pa. 1999), *cert. denied*, 531 U.S. 829 (2000) (claim that testimony of witnesses was inconsistent is properly a challenge to the weight of the evidence). Therefore, Appellant's sufficiency claim fails.

Appellant's second question on appeal is whether the verdict was against the weight of the evidence. (***See*** Appellant's Brief, at 12-14). The applicable standard of review when passing upon a challenge to the weight of the evidence is as follows:

> The weight given to trial evidence is a choice for the factfinder. If the factfinder returns a guilty verdict, and if a criminal defendant then files a motion for a new trial on the basis that the verdict was against the weight of the evidence, a trial court is not to grant relief unless the verdict is so contrary to the evidence as to shock one's sense of justice.

> When a trial court denies a weight-of-the-evidence motion, and when an appellant then appeals that ruling to this Court, our review is limited. It is important to understand we do not reach the underlying question of whether the verdict was, in fact, against the weight of the evidence. We do not decide how we would have ruled on the motion and then simply replace our own judgment for that of the trial court. Instead, this Court determines whether the trial court abused its discretion in reaching whatever decision it made on the motion, whether or not that decision is the one we might have made in the first instance.
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> Moreover, when evaluating a trial court's ruling, we keep in mind that an abuse of discretion is not merely an error in judgment. Rather, it involves bias, partiality, prejudice, ill-will, manifest unreasonableness or a misapplication of the law. By contrast, a proper exercise of discretion conforms to the law and is based on the facts of record.

Commonwealth v. West, 937 A.2d 516, 521 (Pa. Super. 2007), *appeal denied*, 947 A.2d 737 (Pa. 2008) (internal citations omitted).

Relying on the argument he advanced in his sufficiency of the evidence portion of his brief, Appellant argues that the verdict in the instant matter shocks one's sense of justice because the eyewitness' testimony was not credible. (***See*** Appellant's Brief, at 14; ***see also id.*** at 10-12). We disagree.

The victim, who knew Appellant through work, testified he was having a dispute with Appellant over his pay. (***See*** N.T., 4/06/10, at 50-53). He testified that, after their altercation, Appellant returned to his vehicle and sat in the driver's side seat, which was approximately ten to fourteen feet from where the victim was standing. He then heard Appellant call his name,

followed by gunshots. (***See id.*** at 64-67). Johnson testified that after getting into a fight with the victim over money, Appellant got into the driver's seat of his vehicle and began to drive away. Johnson heard the victim's name being called, then heard gunshots and saw sparks flying from the driver's side window. (***See id.*** at 123, 138-39, 142, 151). A third eyewitness, Jamel McMillian, also testified about the victim and Appellant getting into a fight over Appellant's failure to pay the victim for a day's work. (***See id.*** at 205, 207). McMillian also stated that he saw Appellant get into the driver's seat of the vehicle and heard him call out the victim's name. (***See id.*** at 208-09). He then heard gunshots and saw a black gun in Appellant's hand and flickering lights. (***See id.*** at 218, 220). McMillian also testified that he had no difficulty seeing because there was a light on over the street. (***See id.*** at 237). There was ample evidence presented in support of Appellant's convictions; the verdict was not "so contrary to the evidence as to shock one's sense of justice." ***West***, ***supra*** at 521; ***see also Commonwealth v. Edwards***, 903 A.2d 1139, 1148 (Pa. 2006), *cert. denied*, 549 U.S. 1344 (2007) (citations and quotation marks omitted) ("A trial judge cannot grant a new trial because of a mere conflict in testimony or because the trial judge on the same facts would have arrived at a different conclusion."); ***Commonwealth v. Champney***, 832 A.2d 403, 408 (Pa. 2003), *cert. denied*, 542 U.S. 939 (2004) (citations omitted) ("The weight of the evidence is exclusively for the finder of fact who is free to

believe all, part, or none of the evidence and to the determine the credibility of the witnesses."). Appellant's second claim is without merit.

Appellant's third issue on appeal is that the trial court erred in denying his pre-trial motion for a line-up with eyewitness Jamel McMillian. (***See*** Appellant's Brief, at 14). Appellant argues that Jamel McMillian's identification at trial was unreliable because he had never met Appellant before, he was the victim's brother, and visibility was poor.[5] (***See id.*** at 16).

When reviewing the denial of a motion for a line-up, we apply an abuse of discretion standard. ***See Commonwealth v. Rush***, 562 A.2d 285, 289 (Pa. 1989). Further, "the absence of a pretrial identification may go to the weight of the identification testimony, but it certainly does not render the testimony inadmissible[.]" ***Id.*** (citation omitted).

We find Appellant's claim to be waived. Appellant cites no relevant case law in support of his contention and provides no record citations.[6] (***See*** Appellant's Brief, at 14-17); ***see also*** Pa.R.A.P. 2119(a)-(c). Other than

[5] Appellant also contends that the trial court erred in finding his motion to be untimely. (***See*** Appellant's Brief, at 15). The trial court only addressed the timeliness of the motion in one sentence in its Rule 1925(a) opinion. (***See*** Trial Court Opinion, 1/20/12, at 12). Although the motion was filed only one month prior to trial, we need not address this issue based on our resolution of this claim. ***See Commonwealth v. Charleston***, 16 A.3d 505, 529 n.6 (Pa. Super. 2011), *appeal denied*, 30 A.3d 486 (Pa. 2011) (noting that this Court may affirm a trial court's decision on any basis).

[6] Appellant includes two citations in this section of his argument. One is a general citation to the standard of review and the other relates to the timeliness of a motion for a line-up. (***See*** Appellant's Brief, at 15).

listing the factors he argues go to unreliability and making a general assertion that the identification was unreliable, Appellant fails to develop an argument that a line-up was necessary. (***See*** Appellant's Brief, at 14-17); ***see also Commonwealth v. Hardy***, 918 A.2d 766, 771 (Pa. Super. 2007), *appeal denied*, 940 A.2d 362 (Pa. 2008) ("[I]t is an appellant's duty to present arguments that are sufficiently developed for our review. The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities.") (citations omitted). Thus, Appellant's issue is waived. ***Id.*** ("[W]hen defects in a brief impede our ability to conduct meaningful appellate review, we may dismiss the appeal entirely or find certain issues to be waived.").

Moreover, the issue is without merit. We agree with the trial court, which explained:

> Other than the inherent suggestiveness that is present in all in-court identifications there were no factors or attendant circumstances that suggested [Jamel McMillian's] identification would be unreliable. In fact, the trial testimony bore this out. Jamel testified that he joined his brothers outside their home when he heard loud arguing. He watched [Appellant] argue with his brother and watched the fistfight that ensued. He saw [Appellant] return to his vehicle and placed him in the driver's seat. He saw the gun and he saw the shots fired. All of his observations took place in good lighting conditions. See N.T. 4/7/20 pp. 218, 226, 235-36, 244. Further, in light of the fact that [the victim] and [Appellant] were well acquainted [Appellant's] identity was really not an issue in this case. Rather, if a factual issue did exist is was whether [Appellant] shot at [the victim]. . . . Further, . . . there was ample independent identification testimony offered and the likelihood of misidentification that would warrant the exclusion of Jamel McMillian's testimony did not exist. See Commonwealth v.

> Sexton, [400 A.2d 1289, 1291-92 (Pa. 1979)] (viewing totality of the circumstances surrounding identification at certification hearing . . . not so suggestive as to offend due process).

(Trial Ct. Op., 1/20/12, at 12-13). Thus, even had Appellant properly raised this issue, we would find it to be without merit.

Appellant's final claim on appeal is that his sentence is illegal. (***See*** Appellant's Brief, at 17). He argues that the sentence is illegal because (1) he should not be subject to the mandatory minimum for a crime committed with a firearm and (2) the trial court sentenced outside the Guidelines range without providing reasoning for its deviation. (***See id.***).

Appellant's first sentencing claim is that he should not have been subjected to a mandatory minimum sentence under 42 Pa.C.S.A. § 9712.[7] (***See id.*** at 17-18). He argues, relying on ***Apprendi v. New Jersey***, 530 U.S. 466 (2000), that "all facts that would affect [Appellant's] punishment

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[7] Section 9712(a) provides:

> **(a) Mandatory sentence.**—Except as provided under section 9716 (relating to two or more mandatory minimum sentences applicable), any person who is convicted in any court of this Commonwealth of a crime of violence as defined in section 9714(g) (relating to sentences for second and subsequent offenses), shall, if the person visibly possessed a firearm or a replica of a firearm, whether or not the firearm or replica was loaded or functional, that placed the victim in reasonable fear of death or serious bodily injury, during the commission of the offense, be sentenced to a minimum sentence of at least five years of total confinement notwithstanding any other provision of this title or other statute to the contrary. Such persons shall not be eligible for parole, probation, work release or furlough.

42 Pa.C.S.A. § 9712(a).

need to be confirmed by a jury." (***Id.*** at 18). Appellant contends that because the verdict slip listed aggravated assault, but not aggravated assault with a firearm, the mandatory minimum cannot be applied. (***See id.***).

In ***Commonwealth v. Williams***, 871 A.2d 254 (Pa. Super. 2005), this Court explained:

> The issue of whether a sentence is illegal is a question of law; therefore, our task is to determine whether the trial court erred as a matter of law and, in doing so, our scope of review is plenary. Additionally, the trial court's application of a statute is a question of law that compels plenary review to determine whether the court committed an error of law.

Williams, ***supra*** at 262 (citations omitted).

The statute in question specifically provides that the "[p]rovisions of this section shall not be an element of the crime[.]" 42 Pa.C.S.A. § 9712(b). Furthermore, the Commonwealth is not required to provide notice of its intent to pursue the mandatory minimum until after conviction. ***Id.*** Once the Commonwealth elects to proceed under Section 9712, "[t]he applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable." ***Id.***

In ***McMillan v. Pennsylvania***, 477 U.S. 79 (1986), the United States Supreme Court found that possession of a firearm was a sentencing factor

and not an element of the offense[8]; thus, a mandatory minimum sentence could be imposed by the sentencing court based on a preponderance of the evidence without depriving a defendant of his due process rights. ***See McMillan***, ***supra*** at 91-93.

In ***Apprendi v. New Jersey***, 530 U.S. 466 (2000), which Appellant argues supports his claim, the United States Supreme Court found that the Sixth Amendment gives a defendant the right to have "any fact that increases the penalty for a crime beyond the prescribed statutory maximum [be] submitted to a jury and proved beyond a reasonable doubt." ***Apprendi***, ***supra*** at 490. The Court specifically addressed ***McMillan***, stating that:

> Section 9712 neither alters the maximum penalty for the crime committed nor creates a separate offense calling for a separate penalty; it operates solely to limit the sentencing court's discretion in selecting a penalty within the range already available to it without the special finding of visible possession of a firearm.

Id. at 486 (quoting ***McMillan***, ***supra*** at 87). The ***Apprendi*** Court explicitly stated that it was not overruling ***McMillan***, but rather "limit[ing] its holding to cases that do not involve the imposition of a sentence more severe than the statutory maximum for the offense established by the jury's verdict." ***Id.*** at 487 n.13; ***see also Harris v. United States***, 536 U.S. 545 (2002) (declining to overrule ***McMillan***).

[8] In ***McMillan***, there were four petitioners. Two of those were, like Appellant, convicted of aggravated assault. ***McMillan***, ***supra***, at 82.

Next, in ***Blakely v. Washington***, 542 U.S. 296 (2004), the Supreme Court defined "statutory maximum" as "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." ***Blakely***, ***supra*** at 303 (emphasis and citations omitted). However, this Court has held that ***Blakely*** "does not implicate the Pennsylvania [sentencing] scheme, where there is no promise of a specific sentence, and a judge has discretion to sentence in the aggravated range so long as he or she provides reasons for the sentence." ***Commonwealth v. Bromley***, 862 A.2d 598, 603 (Pa. Super. 2004), *appeal denied*, 881 A.2d 818 (Pa. 2005), *cert. denied*, 546 U.S. 1095 (2006); ***see also United States v. Booker***, 543 U.S. 220, 233 (2005) ("If the [Federal Sentencing] Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to a differing set of facts, their use would not implicate the Sixth Amendment. . . . [W]hen a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.").

In ***Commonwealth v. Mitchell***, 883 A.2d 1096 (Pa. Super. 2005), *appeal denied*, 897 A.2d 454 (Pa. 2006), this Court addressed an appellant's claim that the sentencing court erred by imposing a mandatory minimum under Section 9712, despite the fact that the jury did not find that Appellant

had committed the crime with a firearm. ***Mitchell***, ***supra*** at 1103-04. The Court found no merit to the claim, explaining:

> [E]ven if the mandatory minimum sentence of five years exceeds the standard guideline range or the aggravated range of the sentencing guidelines for any given offense, this fact would not pose a ***Blakely*** problem. The key question is whether the jury's verdict vested the trial court with the authority to impose a five-year sentence. The answer is yes. In Pennsylvania, the jury's verdict vests the court with authority to impose any sentence up to the statutory maximum. Unlike the federal guidelines . . . the Pennsylvania guidelines are not mandatory, and thus do not prohibit any particular sentence within the statutory maximum. Of course, the guidelines and the Sentencing Code are designed to rein in unfettered judicial discretion in sentencing. The mere fact that the mandatory minimum divests courts of the discretion to impose a lower sentence does not implicate constitutional concerns. For these reasons, we hold that ***Blakely*** does not apply to the imposition of a mandatory minimum sentence under § 9712.

Id. at 1106 (citations and some emphasis omitted).

Here, Appellant was convicted of aggravated assault, a first-degree felony. ***See*** 18 Pa.C.S.A. § 2702(a)(1), (b). The statutory maximum sentence is no more than twenty years' imprisonment. 18 Pa.C.S.A. § 1103(1). Appellant was sentenced to a term of not less than ten (including the five-year mandatory minimum) nor more than twenty years' incarceration. ***See*** 42 Pa.C.S.A. § 9712(a). Thus, because Appellant's sentence does not exceed the statutory maximum, there is no constitutional problem with the sentencing court applying the mandatory minimum sentence under Section 9712. ***See Apprendi***, ***supra*** at 487 n. 13; ***Mitchell***, ***supra*** at 1106. Our analysis is unchanged by the fact that

Appellant's sentence is outside of the standard range suggested by the Sentencing Guidelines. ***See Mitchell***, ***supra*** at 1106; ***Bromley***, ***supra*** at 603. Appellant's claim is without merit.

Appellant's second sentencing claim is that the trial court erred in failing to provide an explanation for why it deviated from the standard range Guidelines sentence. (***See*** Appellant's Brief, at 19). Appellant has included this issue under his challenge to the legality of his sentence, but it is actually a challenge to the discretionary aspects of sentencing. ***See Commonwealth v. Lewis***, 911 A.2d 558, 567 (Pa. Super. 2006).

This Court set forth the proper standard for reviewing a claim challenging a discretionary aspect of sentencing in ***Commonwealth v. Shugars***, 895 A.2d 1270 (Pa. Super. 2006), 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. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Shugars, ***supra*** at 1275 (citation omitted). Thus, a sentencing court has broad discretion in deciding the proper sentence, based on a careful consideration of the individual circumstances of the case in light of statutory factors. ***See Commonwealth v. Walls***, 926 A.2d 957, 962-63 (Pa. 2007).

There is no absolute right of appeal to challenge a discretionary aspect of sentencing. ***Commonwealth v. Hornaman***, 920 A.2d 1282, 1284 (Pa.

Super. 2007). To properly preserve the discretionary aspects of sentencing for appellate review, the issue must be raised during sentencing or in a timely post-sentence motion, the appellant's brief must contain a concise statement of reasons relied upon pursuant to Pennsylvania Rule of Appellate Procedure 2119(f), and the appellant must demonstrate that there is a substantial question his sentence is inappropriate under the Sentencing Code. ***See id.***; ***see also*** Pa.R.Crim.P. 720; ***Commonwealth v. Fiascki***, 886 A.2d 261, 263 (Pa. Super. 2005), *appeal denied*, 897 A.2d 451 (Pa. 2006). Appellant has failed to properly preserve his claim because he has not included the requisite Rule 2119(f) statement in his brief and he has not developed an argument that his claim raises a substantial question.[9]

Moreover, even had Appellant properly preserved this issue, it is without merit. Appellant's claim that the sentencing court failed to provide an adequate contemporaneous explanation for its departure from the Guidelines standard range does raise a substantial question. ***See Commonwealth v. Robertson***, 874 A.2d 1200, 1212 (Pa. Super. 2005).

[9] It is not clear whether Appellant raised this claim is his post-sentence motion. The docket indicates that on July 6, 2010, Appellant filed a post-sentence motion that included, *inter alia*, a challenge to the legality of his sentence. Because the motion itself is not included in the certified record, we cannot tell the precise sentencing issue he raised. ***See Commonwealth v. Bongiorno***, 905 A.2d 998, 1000 (Pa. Super. 2006), *appeal denied*, 917 A.2d 844 (Pa. 2007) ("Our law is unequivocal that the responsibility rests upon the appellant to ensure that the record certified on appeal is complete in the sense that it contains all of the materials necessary for the reviewing court to perform its duty.").

A court may depart from the Guidelines "if necessary, to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community." ***Commonwealth v. Eby***, 784 A.2d 204, 206 (Pa. Super. 2001). However, when a sentencing court chooses to depart from the Guidelines, it must "demonstrate on the record, as a proper starting point, [its] awareness of the sentencing guidelines." ***Id.*** Further, the court must "provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines." 42 Pa.C.S.A. § 9721(b).

In ***Commonwealth v. Littlehales***, 915 A.2d 662 (Pa. Super. 2007), this Court discussed the written statement requirement:

> Unfortunately, the statute does not specify what type of opinion is required. We do note that our Courts have long rejected a requirement that sentencing courts provide a contemporaneous **written** statement of the reasons for deviating from the sentencing guidelines, even though the Sentencing Code appears to explicitly require such a written statement. Rather, contemporary sentencing practice requires only that the court **state on the record**, in the defendant's presence at sentencing, the reasons for the deviation. Similarly, and in keeping with modern case law, we hold that a court satisfies the requirement of a written "justifiable cause" opinion if it states on the record, in the defendant's presence during sentencing, its determination of justifiable cause and the factual findings underlying that determination.

Littlehales, ***supra*** at 665-66 (emphasis in original, internal citations omitted).

In the instant matter, Appellant acknowledges that the sentencing court was aware of the Guidelines standard range sentence and provided reasons for its sentence. (Appellant's Brief, at 20-21). However, he argues that "the Judge during sentencing did not specifically state the reasons she gave for the sentence, were the reasons for going above the guidelines." (***Id.*** at 21).

At sentencing, the court stated that it had considered a lengthy pre-sentencing investigation report, which contained a psychological evaluation, a substance abuse evaluation, and information about Appellant's educational, familial, and employment background, as well as the information presented at trial, letters from Appellant's character witnesses, and Appellant's statement at sentencing. (***See*** N.T., 6/25/12, at 19, 21-22; Trial Ct. Op., 1/20/12, at 10-11). The court also stated that it had consulted the Sentencing Guidelines and was aware of the standard range sentences, as well as the offense gravity scores and Appellant's prior record score of zero. (***See*** N.T., 6/25/12, at 30-31). Before sentencing Appellant, the court explained:

> It seems to me that what happened that night was senseless; didn't have any high level of emotionality it didn't seem to me to help to explain or provide a setting for what happened. It seemed to me to be a pretty callous act, more or less done by somebody who really didn't much care about the value of someone else's life. And I don't see mitigation here quite honestly. I see a serious level of aggravation to this because, by all the evidence that I recall, you were leaving and then turned around and called the name of the victim and shot him. That's -

> - that's an incomprehensible act. It's not something that society can understand. It's not something society can tolerate.

(***Id.*** at 22). The court also noted that Appellant denied responsibility for the shooting and claims to know who the shooter is, but refuses to reveal his name. (***Id.*** at 20). Based on the above explanation, we find no abuse of discretion in the sentencing court's contemporaneous statement at the time of sentencing, informing Appellant of the reasons for his sentence. Even if Appellant had properly preserved this issue for appeal, we would find his claim to be without merit.

Judgment of sentence affirmed.