

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

AUSTIN LEE JAMES TAYLOR

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 4 WDA 2013

Appeal from the Judgment of Sentence November 19, 2012
In the Court of Common Pleas of Crawford County
Criminal Division at No(s): CP-20-CR-0000920-2011

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY OLSON, J.:

FILED DECEMBER 4, 2013

Appellant, Austin Lee James Taylor, appeals from the judgment of sentence entered on November 19, 2012, as made final by the denial of his post-sentence motion on November 28, 2012. We affirm.

We briefly summarize the facts and procedural history of this case as follows. Appellant, with three cohorts, planned to rob Ron Shreffler on August 30, 2011. Armed with a rifle, the four men confronted the victim at his home in Crawford County, Pennsylvania wherein a co-defendant fatally shot Mr. Shreffler. In October 2012, Appellant pled guilty to third-degree murder. On November 19, 2012, the trial court sentenced Appellant to 20 to 40 years of imprisonment. On November 28, 2012, Appellant filed a post-

sentence motion for reconsideration of his sentence. The trial court denied relief by order that same day. This timely appeal resulted.¹

On appeal, Appellant presents one issue for our review:

1. Was the [t]rial [c]ourt's sentence manifestly unreasonable and excessive?

Appellant's Brief at 5.

Appellant argues that the trial court imposed an excessive sentence. He claims that "[w]hile the sentence imposed was within the standard sentencing guideline range, that sentence is at the extreme upper end of the guideline range." *Id.* at 7. Appellant contends the trial court failed to consider that he was: (1) 18 years old at the time of the crime; (2) addicted to marijuana; (3) suffering from bi-polar disorder; and (4) not the individual who shot the victim or provided the firearm. *Id.* at 7-8. Appellant also asserts that the trial court erroneously relied upon alleged misconduct while incarcerated at the Crawford County Correctional Facility in determining Appellant is not capable of rehabilitation. *Id.* at 8, 10.

¹ Appellant filed a notice of appeal on December 24, 2012. On December 27, 2012, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied timely on January 16, 2013. On that same date, the trial court entered an opinion sur Pa.R.A.P. 1925(a), wherein the trial court cites the sentencing transcript as to its rationale for imposing a standard range sentence.

Appellant's issue is a challenge to the trial court's discretionary authority to impose a sentence:

Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right. An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:

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).

Objections to the discretionary aspects of a sentence are generally waived if they are not raised at the sentencing hearing or in a motion to modify the sentence imposed.

Commonwealth v. Moury, 992 A.2d 162, 170 (Pa. Super. 2010) (citations and brackets omitted).

Here, Appellant has fulfilled the first, second, and third requirements of the above-mentioned four-part test. However, "[a]n allegation that the sentencing court failed to consider certain mitigating factors generally does not necessarily raise a substantial question." ***Id.*** at 171, *citing* ***Commonwealth v. McNabb***, 819 A.2d 54, 57 (Pa. Super. 2003). ***Accord*** ***Commonwealth v. Wellor***, 731 A.2d 152, 155 (Pa. Super. 1999) (reiterating allegation that sentencing court "failed to consider" or "did not adequately consider" certain factors generally does not raise substantial

question). **Compare Commonwealth v. Felmlee**, 828 A.2d 1105, 1107 (Pa. Super. 2003) (*en banc*) (stating substantial question is raised, however, where appellant alleges sentencing court imposed sentence in aggravated range without adequately considering mitigating circumstances). “[W]here a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code.” **Moury**, 992 A.2d at 171.

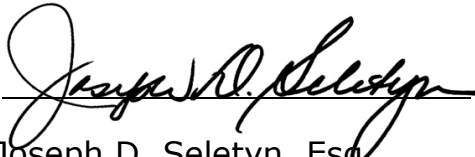
We conclude that Appellant has failed to raise a substantial question for our review. Appellant received a standard range sentence following his guilty plea to third-degree murder. Appellant’s claim that the trial court did not adequately consider certain individual factors simply does not raise a substantial question for our discretionary review.

Moreover, assuming *arguendo* Appellant presented a substantial question for our review, where, as here, the sentencing court had the benefit of a pre-sentence investigation report, we can assume it was aware of all the relevant statutory factors before imposing sentence. **See Commonwealth v. Rhoades**, 8 A.3d 912, 919 (Pa. Super. 2010).

Judgment of sentence affirmed.

J-A28024-13

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013