

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

PHILOME CESAR,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 453 EDA 2012

Appeal from the Judgment of Sentence December 20, 2011
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s):
CP-39-CR-0005299-2010
CP-39-CR-0005301-2010
CP-39-CR-0005302-2010

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

DISSENTING MEMORANDUM BY BENDER, J.

Filed: April 25, 2013

I respectfully dissent from the Majority's decision to uphold Cesar's sentence. In my view, the trial court failed to assess all of the requisite statutory factors and fashioned its sentence with the singular purpose of incarcerating Cesar for life. Therefore, I would conclude that Cesar's sentence is "clearly unreasonable" within the meaning of section 9781(d).

Initially, I agree that certain factors cited by the Majority weigh in favor of upholding Appellant's sentence. However, I disagree with the Majority's statement that "[t]he judge considered the required statutory

* Retired Senior Judge assigned to the Superior Court.

factors.” Majority Decision at 13. In support of this declaration, the Majority highlights the trial court’s evaluation of Cesar’s unwillingness to take responsibility for his actions and the terror that he inflicted on his victims. **See id.** What I find noticeably absent from both the record of Cesar’s sentencing hearing and, in turn, the Majority’s discussion thereof, is any meaningful consideration of Cesar’s rehabilitative needs. The trial court also did not recognize Cesar’s personal history and characteristics, such as his “rough upbringing,” or the fact that he had minimal trouble with the law prior to the instant offenses, as evidenced by his prior record score of two. N.T. Sentencing Hearing, 12/20/11, at 25-26. Furthermore, there was no acknowledgement of Cesar’s assertions that he served in the military, had a sound history of employment, or that he had a family and two young children dependent upon him for parental support.¹ **Id.**

¹ I acknowledge that in its January 6, 2012 opinion, the trial court perfunctorily states that it “considered the ‘protection of the public, the gravity of the offense as it relates to the impact on the victim and the community, the defendant’s rehabilitative needs, and the sentencing guidelines.’” Trial Court Opinion, 1/6/12, at 37. The court also declared that it “was cognizant of [Cesar’s] prior criminal history, his military background, his work history, his lack of a juvenile record, his prior paroles and probations, his lack of misconducts at Lehigh County Prison and his involvement with his children.” **Id.** at 38. However, in light of the court’s failure to acknowledge these factors during Cesar’s sentencing hearing, the record contradicts the court’s after-the-fact statement that it considered those elements in fashioning his sentence. **See** 42 Pa.C.S. § 9721(b) (“The court shall make as a part of the record, and *disclose in open court at the time of sentencing*, a statement of the reason or reasons for the sentence imposed”) (emphasis added).

Instead, it is apparent from the record that the trial court focused solely on the gravity of Cesar's offenses and their impact on his victims. At one point during the sentencing hearing, the court stated, "you were convicted and now you will pay for that with your life and you threw it away." N.T. Sentencing Hearing, 12/20/11, at 39-40. Without question, the court fashioned its sentence with the fixed purpose of keeping Cesar in jail for life, a sentencing agenda denounced in *Commonwealth v. Dodge*, 957 A.2d 1198, 1201 (Pa. Super. 2008), *appeal denied*, 980 A.2d 605 (Pa. 2009). This fact, combined with the court's disregard for Cesar's history, personal characteristics, and need for rehabilitation, compel me to conclude that Cesar's sentence is "clearly unreasonable."

Finally, I emphasize that I by no means intend to minimize the extreme emotional trauma Cesar's conduct caused his victims. However, I cannot ignore the fact that he did not inflict any physical harm on those individuals. Nevertheless, the trial court imposed the second most severe sentence that a court of this Commonwealth can fashion – life imprisonment without the possibility of parole, the only more serious sentence being death. Such a sentence, typically reserved for individuals convicted of first and second-degree murder, not only blurs the lines between murder and other less severe crimes, such as the robberies committed in this case, but it also diminishes the egregiousness of taking another's life.

Thus, I would vacate Cesar's sentence as clearly unreasonable and remand for resentencing. Because the Majority declines this course, I must respectfully dissent.