

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

TAHEIM DAVON WADE

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 574 EDA 2013

Appeal from the Judgment of Sentence January 25, 2013  
In the Court of Common Pleas of Lehigh County  
Criminal Division at No(s): CP-39-CR-0003832-2012

BEFORE: BOWES, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.

**FILED DECEMBER 12, 2013**

Taheim Wade appeals his judgment of sentence imposed by the Court of Common Pleas of Lehigh County after he pled guilty to robbery.<sup>1</sup> Upon our review, we affirm.

On July 29, 2012, at approximately 2:00 p.m., the victim was walking alone in Allentown, when a juvenile began to follow him. When the victim reached an intersection, he put his backpack down, and the juvenile picked up the backpack and ran. The victim was able to catch the juvenile and retrieve the backpack. At that point, Wade came around the corner and noticed the victim grabbing his younger brother, the juvenile. Wade and another friend approached the victim and attempted to end the altercation.

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<sup>1</sup> 18 Pa. C.S.A. § 3701(a)(1)(ii).

Wade hit the victim, picked up the backpack, ran with it, and eventually threw it in an alley as he ran away.

The Commonwealth offered Wade a plea agreement whereby, in exchange for pleading guilty to robbery, he would receive a minimum sentence of twelve months. Although Wade's counsel argued that no robbery occurred, Wade accepted the plea offer because he was afraid to go to trial. Following Wade's plea, the court ordered completion of a presentence investigation report.

On January 25, 2013, the trial court sentenced Wade to a term of imprisonment of twelve months to five years in a state correctional institution. On January 31, 2013, Wade, through counsel, filed a post sentence motion. On February 1, 2013, the court denied Wade's motion. This timely appeal followed.

On appeal, Wade presents the following issues for our review:

1. Did the court err in accepting a plea of guilty where [Wade] did not admit to facts making out each of the elements of the crime to which he pled?
2. Is there a substantial question for which the Superior Court should grant allowance of appeal from the discretionary aspects of the sentence?
3. Is the sentence harsh and manifestly excessive, and therefore unjust and unreasonable?

Brief of Appellant, at 6.

Wade's claims challenge the trial court's exercise of discretion in accepting his guilty plea and in fashioning his sentence. A person is guilty of

robbery if, in the course of committing a theft, he inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury. 18 Pa.C.S.A. § 3701(a)(1)(iv). A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. 18 Pa.C.S.A. § 3921.

"A guilty plea should not be accepted if the facts do not support the plea." ***Commonwealth v. Vaughn***, 326 A.2d 393, 394 (Pa. Super. 1974).

Because a guilty plea is not only an admission of conduct but also is an admission of all the elements of a formal criminal charge, and constitutes the waiver of constitutionally-guaranteed rights, the voluntariness of a guilty plea must be affirmatively established. . . . In order to satisfy the constitutional requirement that a valid guilty plea must stand as an intelligent admission of guilt, the law of this Commonwealth has long required that before a judge may properly accept a plea of guilty, a colloquy with the defendant must demonstrate that there is a factual basis for the plea and that the defendant understands the nature and elements of the offense charged.

***Commonwealth v. Hines***, 437 A.2d 1180, 1182 (Pa. 1981) (citations omitted).

Here, the trial court conducted a thorough oral colloquy during which Wade answered all of the court's inquiries and demonstrated that he understood the nature and elements of the offense charged. N.T. Guilty Plea, 12/6/12, at 2. Additionally, the court supplemented Wade's oral colloquy with a written colloquy, which the court reviewed and which Wade averred he completed, reviewed, and fully understood. ***Id.*** at 3. Following Wade's entry of a plea of guilty to robbery, the Commonwealth presented a factual basis to the trial court. N.T. Guilty Plea, 12/6/12, at 4-6. The court

then asked Wade if that is what he did, to which Wade replied, "Yes, your Honor. I did hit him." **Id.** at 6. The court then specifically asked Wade, "You hit him and you guys took his backpack?" **Id.** With a brief explanation afterward, Wade replied, "Yeah." **Id.**

Wade is bound by the statements he made under oath. **See Commonwealth v. Pollard**, 832 A.2d 517, 523 (Pa. Super. 2003) (person who pleads guilty is bound by statements he makes in court while under oath and may not later assert grounds for withdrawing the plea which contradict statement made in his colloquy). Moreover, Wade's affirmations under oath demonstrate that his plea was knowing, voluntary, and intelligent. **See Commonwealth v. Sauter**, 567 A.2d 707, 708-09 (Pa. Super. 1989) (where written plea colloquy supplemented oral colloquy, it strongly suggests that defendant's plea was knowing and intelligent). Accordingly, Wade's claim that the trial court erred in accepting his guilty plea is without merit and must fail.

In his second and third issues, Wade challenges the discretionary aspects of his sentence. "It is well-settled that appeals of discretionary aspects of a sentence are not reviewable as a matter of right." **Commonwealth v. Ladamus**, 896 A.2d 592, 595 (Pa. Super. 2006). Rather, before we reach the merits of a discretionary sentencing issue

we conduct a four part analysis to determine: (1) whether appellant has filed a timely notice of appeal; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (3) whether appellant's brief has a fatal defect; and (4) whether there is a substantial

question that the sentence appealed from is not appropriate under the Sentencing Code.

***Commonwealth v. Kneller***, 999 A.2d 608, 613 (Pa. Super. 2010) (citations omitted). An appellant who wishes to challenge the discretionary aspects of his sentence in a criminal matter 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.” **See** Pa.R.A.P. 2119(f).

Wade timely complied with the first three requirements; however, he has failed to demonstrate that a substantial question exists concerning the propriety of his sentence.

When a sentence is within the statutory limits, this Court must review each excessiveness claim on a case-by-case basis. In order for an appellant raising such a claim to state a substantial question, he must sufficiently articulate[] the manner in which the sentence violates either a specific provision of the sentencing scheme set forth in the Sentencing Code or a particular fundamental norm underlying the sentencing process. An appellant’s contention that the trial court did not adequately consider a mitigating circumstance when imposing sentence does not raise a substantial question sufficient to justify appellate review of the merits of such claim.

***Ladamus***, 896 A.2d at 595.

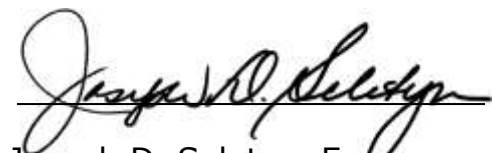
Here, Wade’s minimum sentence was within the standard range of the guidelines and his maximum sentence was set below the statutory maximum. In his Rule 2119(f) statement, Wade asserts that the trial court failed to consider the recommendations of both the presentence investigator and the Commonwealth regarding his maximum sentence. In his brief, Wade further argues that the trial court did not adequately consider the

mitigating circumstances of his age, and that this was his first brush with the law as an adult when imposing his sentence.

Prior to sentencing, the trial court reviewed the Presentence Investigation Report. The court was aware of all of the information contained therein, including Wade's lack of an adult prior record, the facts giving rise to the offense, and Wade's level of cooperation throughout the proceeding. Trial Court Opinion, 2/1/13, at 3. At sentencing, the trial court explained it did not believe Wade's version of the facts and disagreed with the presentence investigator's recommendation. N.T. Sentencing, 1/25/13, at 15. Exercising its discretion, the trial court imposed a sentence that was within the standard range of the guidelines and in compliance with Wade's plea agreement. Accordingly, Wade fails to present a substantial question regarding the appropriateness of his sentence and we cannot reach the merits of his discretionary sentencing issue.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/12/2013