

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

HERMAN OJEDA

Appellant

No. 646 EDA 2013

Appeal from the Judgment of Sentence January 7, 2013
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0001163-2012
CP-39-CR-0001297-2012

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

MEMORANDUM BY LAZARUS, J.

FILED DECEMBER 10, 2013

Herman Ojeda appeals from the judgment of sentence imposed in the Court of Common Pleas of Lehigh County after he pled guilty to forty-one counts of burglary¹ and three counts of attempted burglary.² For the reasons set forth below, we dismiss Ojeda's appeal of the discretionary aspects of his sentence.

While under house arrest and undergoing treatment for his drug addiction, Ojeda burglarized multiple residences in Lehigh County. On December 5, 2012, he pled guilty in two separate cases, to a combined total of forty-one counts of burglary and three counts of attempted burglary. The

¹ 18 Pa.C.S. § 3502(a).

² 18 Pa.C.S. §§ 901(a), 3502(a).

court ordered a pre-sentence investigation, and on January 7, 2013, Ojeda was sentenced to consecutive ten to twenty year sentences for each case, resulting in an aggregate sentence of twenty to forty years' imprisonment. This complied with the terms of his plea agreement, in which the minimum sentence was set at twenty years' confinement and the maximum sentence capped at forty years' confinement, in exchange for the Commonwealth's agreement not to pursue any other counts in the information. Ojeda filed a post-sentence motion to reconsider his sentence, which the court denied on January 22, 2013. This timely appeal followed.

On appeal, Ojeda challenges the discretionary aspects of his sentence, arguing that the trial court imposed an aggravated-range sentence without considering any mitigating circumstances. "It is firmly established that a plea of guilty generally amounts to a waiver of all defects and defenses except those concerning the jurisdiction of the court, the *legality* of the sentence, and the validity of the guilty plea." ***Commonwealth v. Dalberto***, 648 A.2d 16, 18 (Pa. Super. 1994) (emphasis in original). Thus, when a defendant pleads guilty pursuant to a plea agreement that includes a negotiated sentence, the defendant may not seek a discretionary appeal as to the agreed-upon sentence. ***Id.*** at 20-21; ***Commonwealth v. Brown***, 982 A.2d 1017, 1019 (Pa. Super. 2009). Permitting such an appeal would make a sham of the negotiated plea process, thus depriving the Commonwealth of the benefit of the bargain, and giving the defendant a second bite at the sentencing process. ***Dalberto***, 648 A.2d at 19-21.

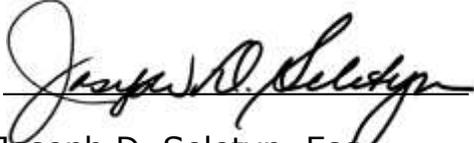
Here, Ojeda entered a plea of guilty to forty-four counts of burglary and attempted burglary as part of a plea agreement that included a negotiated sentence. Each count, as a first-degree felony, carried with it a potential twenty-year sentence. **See** N.T. Guilty Plea, 12/5/12, at 8. Both Ojeda and the prosecution agreed to the potential twenty to forty year sentence, in exchange for the Commonwealth's agreement not to pursue any more counts based upon the current information. **Id.** at 7-9. The maximum cap was, in fact, specifically requested by Ojeda. **Id.** at 8. The plea agreement was accepted by the trial court, **id.** at 54, and Ojeda was sentenced in accordance with the plea agreement. **See** N.T. Sentencing, 1/7/13, at 27.

Therefore, since Ojeda received the benefit of his bargain, he cannot now seek a discretionary appeal of his agreed-upon penalties. **See Brown**, 982 A.2d at 1019; **see also Commonwealth v. Reichle**, 589 A.2d 1140, 1141 (Pa. Super. 1991) ("This court has no authority to permit a discretionary appeal of a negotiated sentence agreed upon by the parties and accepted by the court."). We, therefore, dismiss Ojeda's appeal, as it solely raises issues regarding the discretionary aspects of his sentence.³

³ We note that even if we were able to reach the merits of Ojeda's appeal, we would not disturb the sentence imposed by the trial court. In light of the record, it is obvious that the trial court not only fully considered the mitigating circumstances Ojeda claims it ignored, but also had good reason to discount such mitigating circumstances. The trial court fully articulated those reasons, both at the sentencing hearing and in its January 22, 2013 (*Footnote Continued Next Page*)

Appeal dismissed.

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: 12/10/2013

(Footnote Continued) _____

order, when it stated four reasons for the sentence it imposed: (1) the multiple victims involved; (2) the Defendant's prior history; (3) the terms of the plea agreement; and (4) the protection of the public. **See** Order Denying Post-Sentence Motion, 1/22/13, at 3; N.T. Sentencing, 1/7/13, at 27. Thus, the trial court did not abuse its discretion in imposing this sentence. **See Commonwealth v. Bowen**, 55 A.3d 1254, 1262-65 (Pa. Super. 2012) (holding that the trial court did not abuse its discretion in imposing an aggravated-range sentence because the trial court fully considered and properly articulated its reasons for the sentence, including the nature and circumstances of the offense, as well as appellant's history and personal characteristics).