NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JAMES ARTHUR GEELEN, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 673 WDA 2013

Appeal from the Judgment of Sentence of November 20, 2012
In the Court of Common Pleas of Cameron County
Criminal Division at No(s): CP-12-CR-0000047-2011

BEFORE: BENDER, P.J., GANTMAN AND OLSON, JJ.

MEMORANDUM BY OLSON, J.: **FILED DECEMBER 4, 2013**

Appellant, James Arthur Geelen, appeals from the judgment of sentence entered on November 20, 2012, as made final by the denial of Appellant's post-sentence motion on March 19, 2013. We affirm.

In 2011, Appellant was arrested and charged with several offenses after, it was alleged, he stole money from the Loyal Order of the Moose Club in Emporium, Pennsylvania. As the trial court ably explained, during Appellant's September 10, 2012 non-jury trial, the following evidence was presented.

> [Appellant] was the [] administrator of the Emporium Moose Club from the latter part of 2010 until June 2011[,] when he was dismissed from his position. The Commonwealth presented evidence that[,] during [Appellant's] tenure [as administrator], [Appellant] exercised dominion and control over certain funds that were segregated for various programs or functions of the Moose Club. In that regard,

> Paula Cherry testified as the chaplain of the Women of the Moose.
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> [As Ms. Cherry testified, i]n and before December 2010, [the Women of the Moose] had raised $1,624.39[. The Women of the Moose used some of that money] to purchase Christmas presents for children and to conduct a Christmas party at the club. [The Women of the Moose then] returned [$450.00] from the amount raised in 2010 and added it to the [$800.00] which had been raised in prior years, yielding a total of [$1,250.00. The total sum of $1,250.00 was termed the "Kids' Christmas Fund;" it was] placed in a[n individually labeled] bank bag and delivered to [Appellant] to be secured in the safe in the administrator's office. [Appellant was the only person who possessed a key to the administrator's office safe.] Counts 1 and 17 of the criminal information relate to the theft and failure to make required disposition of funds relating to the "Kids' Christmas Fund" [that was] collected by the Women of the Moose.
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> In addition to the Kids' Christmas Fund[,] . . . other cash funds were [] kept . . . in the [administrator's] office [safe. These funds were the "Daily Dollar" Fund, the "Mad Drawing" Fund,[1] and the "Bingo start-up" Fund. Like the Kids' Christmas Fund, each of the additional funds were segregated into individual envelopes or bags and then stored in the administrator's office safe]. . . .
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> On June 26, 2011, after [Appellant] had been dismissed as the [administrator] of the Moose [C]lub, the safe in the [administrator's] office was opened[. At that time, the Moose Club members discovered that] there was no money in [] the Bingo start-up [Fund bag,] the Kids' Christmas [F]und bag[, the Daily Dollar Fund envelope, and one of the two Mad Drawing Fund envelopes. Further, the other] Mad Drawing [Fund] envelope[contained only $130.00]. The evidence demonstrated that[: the Bingo start-up fund bag should have contained $300.00; the Kids' Christmas Fund bag should have contained $1,250.00; one Mad Drawing Fund envelope should have contained $250.00; the second

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[1] There were two separate "Mad Drawing" Funds.

Mad Drawing Fund envelope should have contained $500.00; and, the Daily Dollar Fund envelope should have contained $827.00]. The charges relating to the theft and failure to make required disposition of funds regarding the Daily Dollar drawing, Mad Drawing, [and] Bingo start-up were set forth in counts [3], 4, [5], 18, 19, and 20, respectively[,] in the criminal information [] in this matter.

During his testimony, [Appellant] asserted that the various cash accounts had been deposited into the general operating fund of the Moose Club because of the dire financial [straits] of the club. [Appellant's] testimony was vague and [unspecific] in terms of when the alleged deposits were made and there was absolutely no documentary evidence presented on behalf of [Appellant] to demonstrate when the purported deposits of the cash funds were made by [Appellant] into the general operating account of the club. Instead, [Appellant] refuted the amounts in the Bingo start-up [Fund] envelope and the source of the money maintained in the Kids' Christmas [F]und. He also [testified] that the Daily Dollar book [F]und[] in the amount of [$827.00] had been deposited by him because the club's operating funds were low. It was telling that not only did [Appellant] not have any documentation to support his contention, but [Appellant] did not inform any officer of the Moose Club that he had taken the action to deposit the cash in order to keep the club afloat. [Indeed, the treasurer of the Moose Club – Daniel Morton – testified that, during Appellant's tenure as administrator, the Moose Club would have twice-monthly board meetings, during which time Appellant would deliver the club's financial reports. Mr. Morton testified that, during these meetings, Appellant never indicated that the Moose Club was experiencing financial difficulties].

[Bradley Allen Northrop was on the Moose Club's board at the same time that Appellant was the club's administrator and Mr. Northrop was present during Appellant's twice-monthly financial accounts to the board. As Mr. Northrop testified, he began to notice that Appellant kept reporting "identical" expenses for alcohol, beer, and food. Suspicious, Mr. Northrop contacted the remaining board members and, following an investigation, the board unanimously dismissed Appellant as administrator.]

> [Mr. Northrop testified that, following Appellant's dismissal, he was tasked with discovering the extent of Appellant's misdeeds. According to Mr. Northrop, he attempted to access the financial records on the computer, but the computer was "locked up. We couldn't get into numerous things in the Moose end of it or the banking end. We couldn't get in. The passwords were changed." Mr. Northrop also discovered that the bartender register receipts for the years 2010 and 2011 were missing – and that Appellant had access to those receipts. Third, Mr. Northrop discovered "[a] bunch" of overdue, unpaid bills just sitting in the office. Fourth, Mr. Northrop discovered a variety of charges on a Moose Club debit card that Appellant and another man – named Robert Young – possessed. Mr. Northrop testified that the charges were for unauthorized, non-club related purchases, including: personal schooling, online computer gaming, and car payments. Mr. Young testified that he did not make the purchases. Finally, Mr. Northrop testified that, after Appellant was dismissed from his administrator position, Mr. Northrop demanded that Appellant turn over all of the Moose Club keys that Appellant possessed. Appellant eventually turned over all but one key – the one key that Appellant refused to turn over was the key to the administrator's office safe.]
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> [Appellant's] response to the inquiry as to whether he ever took money from the club was [] disingenuous. When asked if he had taken cash from the club, [Appellant] responded "not that was not . . . nothing that was not owed to me, sir." [Yet, numerous Moose Club members testified that Appellant flatly "refused" compensation for the position of administrator.]

Trial Court Opinion, 3/19/13, at 3-4 (internal citations omitted).

At the conclusion of Appellant's trial, the trial court found Appellant guilty of four counts of theft by unlawful taking[2] (relating to the theft of

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[2] 18 Pa.C.S.A. § 3921(a).

$1,250.00 from the Kids' Christmas Fund bag, $827.00 from the Daily Dollar Fund envelope, $630.00 from the two Mad Drawing Fund envelopes, and $300.00 from the Bingo start-up fund) and guilty of four counts of theft by failure to make required disposition of funds received[3] (relating to Appellant's theft from the same funds). The trial court found Appellant not guilty of the remaining counts. N.T. Trial, 9/10/12, at 228-229.

On November 20, 2012, the trial court sentenced Appellant, at each count, to serve a term of five years' probation and, as a special condition of probation, the trial court ordered that Appellant be maintained on house arrest (without electronic monitoring) for 90 days and to participate in the "forensic mental health program administered by Dickinson Center[,] Inc." N.T. Sentencing, 11/20/12, at 9-10 and 12. The trial court ordered the sentences to run concurrent to one another.

On November 29, 2012, Appellant filed a post-sentence motion. Within this motion, Appellant claimed that the evidence was insufficient to sustain his convictions and that verdict was against the weight of the evidence. Appellant's Post-Sentence Motion, 11/29/12, at 1-2. Further, Appellant claimed that the trial court abused its discretion in imposing its sentence because: the sentence was excessive, the trial court failed to consider Appellant's mental health, and the trial court mistakenly imposed

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[3] 18 Pa.C.S.A. § 3927(a).

an aggravated range sentence and did so without stating the reasons for the sentence on the record. ***Id.*** at 2-3. The trial court denied Appellant's post-sentence motion and Appellant filed a timely appeal to this Court.

Appellant raises the following claims on appeal:[4]

> 1. Whether the evidence was sufficient to sustain the verdict of guilty as to the four counts of [theft by unlawful taking or disposition]?
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> 2. Whether the evidence was sufficient to sustain the verdict of guilty as to the four counts of [theft by failure to make required disposition of funds received]?
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> 3. Whether the verdict was against the weight of the evidence as to the four counts of [theft by unlawful taking or disposition]?
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> 4. Whether the verdict was against the weight of the evidence as to the four counts of [theft by failure to make required disposition of funds received]?
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> 5. Whether the [trial c]ourt abused its discretion in sentencing [Appellant] to a period of probation of five years with a special condition of house arrest without electronic monitoring for four counts of [theft by unlawful taking or disposition], said sentence to run concurrent to each other?
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> 6. Whether the [trial c]ourt abused its discretion in sentencing [Appellant] to a period of probation for five years with a special condition of house arrest for 90 days without electronic monitoring for each offense of [theft by failure to make required disposition of funds received], said sentence to run concurrent to each other and concurrent to

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[4] The trial court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant complied and, within Appellant's Rule 1925(b) statement, Appellant listed the six claims recited above.

> the sentence imposed for the four counts of [theft by unlawful taking or disposition]?

Appellant's Brief at 4-5.[5]

For Appellant's first two claims on appeal, Appellant contends that the evidence was insufficient to sustain his convictions. These claims fail.

We review Appellant's sufficiency of the evidence challenges under the following standard:

> The standard we apply in reviewing the sufficiency of the evidence is whether 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 may not weigh the evidence and substitute our judgment for [that of] 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.

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[5] For ease of discussion, we have reordered Appellant's claims on appeal.

Commonwealth v. Brown, 23 A.3d 544, 559-560 (Pa. Super. 2011) (*en banc*), *quoting* ***Commonwealth v. Hutchinson***, 947 A.2d 800, 805-806 (Pa. Super. 2008).

Appellant was convicted of four counts of theft by unlawful taking or disposition and four counts of theft by failure to make required disposition of funds received. In relevant part, these crimes are defined as follows:

> **§ 3921. Theft by unlawful taking or disposition**
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> **(a) Movable property.**--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.

> **§ 3927. Theft by failure to make required disposition of funds received**
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> **(a) Offense defined.**--A person who obtains property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the failure of the actor to make the required payment or disposition.

18 Pa.C.S.A. § 3927.

In this case, all of Appellant's convictions arose from the fact that the Moose Club entrusted Appellant with $1,250.00 from the Kids' Christmas Fund bag, $827.00 from the Daily Dollar Fund envelope, $630.00 from the

two Mad Drawing Fund envelopes, and $300.00 from the Bingo start-up Fund envelope – and, instead of safely keeping the funds for later use or distribution by the club, Appellant misappropriated the funds for his own personal use and enjoyment. Now on appeal, Appellant claims that the evidence was insufficient to sustain his convictions because Appellant, himself, testified that he used the funds to pay other debts of the Moose Club.

Obviously, Appellant's argument fails, as "[t]he fact-finder is responsible for making credibility determinations . . . [and] may believe all, part, or none of a witness's testimony." ***Commonwealth v. Garang***, 9 A.3d 237, 244 n.4 (Pa. Super. 2010). In this case, the trial court simply did not believe Appellant's self-serving, unsupported testimony that, instead of stealing the missing money (to which only Appellant had access), Appellant used the money to pay other, unspecified debts of the Moose Club and that Appellant did so because the Moose Club was in financial difficulty. This credibility determination was within the trial court's province and Appellant's claim to the contrary fails.

Moreover, we note that the Commonwealth presented evidence tending to show that: Appellant could not provide any documentation for the alleged debt payments; Appellant was not authorized to spend the money in the specified funds; Appellant secreted the funds from the safe and did not inform anyone that he was withdrawing or spending the funds; Appellant destroyed receipts and altered passwords on a computer to

conceal his thievery; the funds were kept in the administrator's office safe and only Appellant had access to that safe; when Appellant was dismissed as administrator, Appellant refused to return his safe key; and, during the twice-monthly board meetings, Appellant never informed the board that the club was experiencing financial difficulties. When viewed in the light most favorable to the Commonwealth, the evidence is clearly sufficient to support Appellant's convictions for theft by unlawful taking or disposition and theft by failure to make required disposition of funds received. Appellant's first two claims on appeal thus fail.

For Appellant's next two claims on appeal, Appellant argues that the trial court's verdict was against the weight of the evidence. Again, these claims fail.

As our Supreme Court has explained:

> in a challenge to the weight of the evidence, the function of an appellate court on appeal is to review the trial court's exercise of discretion based upon a review of the record, rather than to consider *de novo* the underlying question of the weight of the evidence. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. It is for this reason that the trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings.

Commonwealth v. Rivera, 983 A.2d 1211, 1225 (Pa. 2009) (internal quotations and citations omitted). "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law,

or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record." ***Commonwealth v. Serrano***, 61 A.3d 279, 290 (Pa. Super. 2013) (internal quotations and citations omitted).

Appellant's weight of the evidence arguments simply repeat his sufficiency of the evidence arguments. Essentially, Appellant claims that the trial court should have believed his own, unsupported testimony that he used the missing money to pay other debts of the Moose Club. Yet, given the (above described) body of evidence tending to show that Appellant did not use the money to pay the debts of the Moose Club – and that Appellant instead stole the money – we conclude that the trial court did not abuse its discretion when it denied Appellant's weight of the evidence claims.

For Appellant's final two claims on appeal, Appellant asserts that the trial court abused its discretion in imposing its sentence, as the trial court: failed to consider Appellant's mental health, mistakenly imposed an aggravated range sentence, and imposed an aggravated range sentence without stating its reasons on the record. These claims fail.

Since Appellant challenges the discretionary aspects of his sentence, we note that "sentencing is a matter vested in the sound discretion of the sentencing judge, whose judgment will not be disturbed absent an abuse of discretion." ***Commonwealth v. Ritchey***, 779 A.2d 1183, 1185 (Pa. Super. 2001). Moreover, pursuant to statute, Appellant does not have an automatic right to appeal the discretionary aspects of his sentence. ***See*** 42 Pa.C.S.A.

§ 9781(b). Instead, Appellant must petition this Court for permission to appeal the discretionary aspects of his sentence. ***Id.***

As this Court has explained:

> [t]o 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, Pa.R.A.P. 902, 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, 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).

Commonwealth v. Cook, 941 A.2d 7, 11 (Pa. Super. 2007).

In the case at bar, Appellant satisfied the first two requirements, as he filed a timely notice of appeal and properly preserved his discretionary challenges in a post-sentence motion. Moreover, although Appellant has not included a Pennsylvania Rule of Appellate Procedure 2119(f) statement in his brief, the Commonwealth has not objected to this defect. As such, "this Court may ignore the omission and determine if there is a substantial question that the sentence imposed was not appropriate." ***Commonwealth v. Yoemans***, 24 A.3d 1044, 1049 (Pa. Super. 2011) ("when the appellant has not included a Rule 2119(f) statement, and the [Commonwealth] has not objected, this Court may ignore the omission and determine if there is a substantial question that the sentence imposed was not appropriate"). We must now determine whether Appellant has presented a "substantial

question that the sentence appealed from is not appropriate under the Sentencing Code." ***Cook***, 941 A.2d at 11.

Generally, to raise a substantial question, an appellant must "advance a colorable argument that the trial judge's actions were: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Commonwealth v. McKiel***, 629 A.2d 1012, 1013 (Pa. Super. 1993); ***Commonwealth v. Goggins***, 748 A.2d 721, 726 (Pa. Super. 2000) (*en banc*), *appeal denied*, 759 A.2d 920 (Pa. 2000).

Appellant first claims that, in fashioning his sentence, the sentencing court failed to consider his mental health needs. Since this claim alleges that the sentencing court failed to consider Appellant's rehabilitative needs – and since the sentencing court must, pursuant to 42 Pa.C.S.A. § 9721(b), impose a sentence "that is consistent with the . . . rehabilitative needs of the defendant" – Appellant's claim raises a substantial question that his sentence is inappropriate under the Sentencing Code. 42 Pa.C.S.A. § 9721(b). Certainly, Appellant's claim alleges that, when the sentencing court imposed its sentence, the court failed to consider a requisite, statutory factor under the Sentencing Code. ***See Commonwealth v. Downing***, 990

A.2d 788, 793 (Pa. Super. 2010); ***Commonwealth v. Ventura***, 975 A.2d 1128, 1135 (Pa. Super. 2009); 42 Pa.C.S.A. § 9721(b).[6]

The claim, however, fails on its merits because the sentencing court was well aware of Appellant's mental health needs. Initially, as Appellant admits, the sentencing court possessed a pre-sentence report prior to imposing sentence. Appellant's Brief at 18. This report, by its very nature, contained both the "official version of the offense" and a detailed description of Appellant's rehabilitative needs and prospects. ***See*** Pa.R.Crim.P. 720; ***Commonwealth v. Monahan***, 860 A.2d 180, 184-185 (Pa. Super. 2004) (listing the basic requirements of a pre-sentence investigation report). Further, since the "pre-sentence report[] exist[s in this case], the presumption [] stand[s] that the sentencing judge was both aware of and appropriately weighed all relevant information contained therein." ***Commonwealth v. Griffin***, 804 A.2d 1, 8 (Pa. Super. 2002); ***Commonwealth v. Devers***, 546 A.2d 12, 18 (Pa. 1988) ("[i]t would be

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[6] We recognize the existence of contrary case law, which holds that a claim that the trial court improperly failed to consider the rehabilitative needs of an appellant does not raise a substantial question under the Sentencing Code. ***Commonwealth v. Hutchins***, 683 A.2d 674, 677 n.3 (Pa. Super. 1996); ***Commonwealth v. Lawson***, 650 A.2d 876, 881 (Pa. Super. 1994). We, however, believe that ***Downing*** and ***Ventura*** reflect a more well-reasoned approach to the "substantial question" issue. Indeed, by claiming that the trial court ignored a mandatory sentencing factor, Appellant has alleged that the trial court fashioned a sentence that is "contrary to the fundamental norms which underlie the sentencing process." ***McKiel***, 629 A.2d at 1013.

foolish, indeed, to take the position that if a court is in possession of the facts, it will fail to apply them to the case at hand"). Thus, Appellant's claim that the sentencing court "failed to consider" his rehabilitative needs immediately fails.

Moreover, it should be noted that the sentencing court, in fact, imposed a sentence that was considerate of Appellant's mental health needs. Indeed, the sentencing court specifically ordered Appellant to "participate in the forensic mental health program administered by Dickinson Center[,] Inc." N.T. Sentencing, 11/20/12, at 12. Therefore, since Appellant's claim has no basis in fact, the claim fails.

Second, Appellant claims that the sentencing court mistakenly imposed an aggravated range sentence and that the court did so without stating the reasons for the sentence on the record. Appellant's Brief at 17-19. This claim also raises a substantial question that Appellant's sentence was inappropriate under the Sentencing Code. ***See Commonwealth v. Garcia-Rivera***, 983 A.2d 777, 779-780 (Pa. Super. 2009) (claim that the sentencing court mistakenly sentenced the defendant in the mitigated range of the guidelines – when the sentencing court believed that it was sentencing the defendant in the standard range – raised a substantial question under our Sentencing Code); 204 Pa.Code § 303.1(a) ("[the sentencing] court shall consider the sentencing guidelines in determining the appropriate sentence for offenders convicted of . . . misdemeanors"); 42 Pa.C.S.A. § 9781(c)(1) ("[t]he appellate court shall vacate the sentence and

remand the case . . . if it finds . . . [that] the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously"); ***Commonwealth v. Bromley***, 862 A.2d 598, 604 (Pa. Super. 2004) (claim "that the sentencing court sentenced [the defendant] in the aggravated range without placing adequate reasons on the record . . . raises a substantial question"); 204 Pa.Code § 303.13(c) ("[w]hen the court imposes an aggravated or mitigated sentence, it shall state the reasons on the record"). The claim, however, fails on the merits.

In this case, Appellant's prior record score was zero, each of Appellant's eight convictions carried an offense gravity score of three,[7] and the standard sentencing guideline range for each conviction was restorative sanctions to one month. N.T. Sentencing, 11/20/12, at 3-4; ***see also*** 204 Pa.Code § 303.16a (basic sentencing matrix). During Appellant's sentencing hearing, the sentencing court considered all of the relevant facts, circumstances, and law and then stated, on the record, that it intended to sentence Appellant within the standard range of the guidelines. N.T. Sentencing, 11/20/12, at 10 (sentencing court stated: "I don't find any factors that would allow me to sentence you within either the mitigated or aggravated range of sentence"). The sentencing court then imposed the following sentence:

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[7] All of Appellant's convictions were first-degree misdemeanors. ***See*** Pa.C.S.A. § 3903(b) (grading of theft offenses).

> [Appellant] is placed on probation for a period of five years under the direction and supervision of the Cameron County Probation Department for each count of [theft by unlawful taking or disposition], 18 Pa.C.S.A. § 3921(a), and each count of [theft by failure to make required disposition of funds], 18 Pa.C.S.A. § 3927(a), with the periods of probation for each count to run concurrent each to the other. As a special condition of probation, [Appellant] shall be maintained on house arrest for a period of 90 days[, without electronic monitoring,] effective this date. As an additional special condition of probation, [Appellant] shall participate in the forensic mental health program administered by Dickinson Center Inc. at his expense and comply with all treatment recommendations.

Id. at 9-10 and 12.

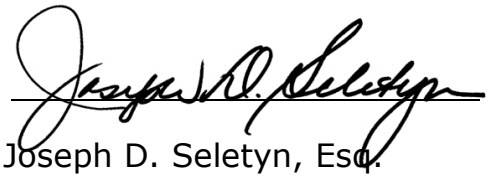
Appellant now claims that his sentence of 90 days' house arrest caused his sentence to fall within the aggravated range of the sentencing guidelines, as it was two months greater than the standard sentencing range of "restorative sanctions to one month." Appellant's Brief at 17-19. Appellant has misinterpreted our sentencing guidelines and his claim, therefore, fails.

As the sentencing guidelines specifically state: "**[a]ll numbers in sentence recommendations suggest months of minimum confinement** pursuant to [42 Pa.C.S.A.] **§ 9755(b)** [(concerning the "minimum sentence of **partial confinement**")] and [42 Pa.C.S.A.] **§ 9756(b)** [(concerning the "minimum sentence of **total confinement**")]. 204 Pa.Code 303.16a (emphasis added). Obviously, house arrest constitutes neither "partial" nor "total" confinement. ***See Commonwealth***

v. DiMauro, 642 A.2d 507, 508-509 (Pa. Super. 1994) ("the legislature intended one sentenced to partial confinement to be confined in a penal institution with permission to leave the facility to go to work, school or other proper activity. . . . [H]ome monitoring [does not] fall[] within the scope of partial confinement"). Rather, house arrest is a type of intermediate punishment. ***See*** 42 Pa.C.S.A. § 9804; ***Commonwealth v. Sarapa***, 13 A.3d 961 (Pa. Super. 2011). Therefore, since the numbers in the sentencing guidelines denote only the months of "partial" and "total" confinement – and since house arrest is neither "partial" nor "total" confinement – Appellant's sentence of 90 days' house arrest did not constitute an aggravated range sentence. Appellant's claim fails.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013