NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. KENNETH CRAWFORD ADAMS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 852 WDA 2011

Appeal from the Judgment of Sentence January 13, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0002901-2010

BEFORE: BOWES, LAZARUS, and COLVILLE,* JJ.

MEMORANDUM BY BOWES, J.: **FILED MAY 1, 2013**

Kenneth Crawford Adams appeals from the judgment of sentence of seven to fourteen years incarceration imposed by the trial court after a jury found him guilty of two counts each of robbery, receiving stolen property, and recklessly endangering another person (REAP), and one count each of persons not to possess a firearm, firearm not to be carried without a license, and simple assault. After careful review, we affirm Appellant's convictions, but vacate his judgment of sentence and direct the trial court to correct a clerical error in its written judgment of sentence order.

The trial court set forth the pertinent facts as follows.

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* Retired Senior Judge assigned to the Superior Court.

Shortly after noon on February 10, 2010, Appellant and a female companion approached the meat counter in the Giant Eagle store, located in Crafton, Allegheny County where they ordered two special cuts of meat (filet mignon and lamb chops). After leaving the meat counter[,] Appellant concealed the items in his clothing and was en route to leave the store with his companion.

Store security officer Guy Morsillo witnessed the concealment and approached Appellant, identified himself and confronted Appellant who denied having the meat. Morsillo requested that Appellant accompany him to the manager's office to discuss the meat concealed within his clothing. Appellant removed the items from under his sweatshirt and coat and placed them into a shopping cart. Nonetheless[,] Morsillo told Appellant that he would have to go back to the manger's [sic] office.

Appellant refused, punched Morsillo and attempted to flee. Morsillo was able to grab Appellant and the two began to struggle. Appellant pulled out of his coat and escaped Morsillo's grasp. Morsillo fell to the ground injuring his ankle, however[,] he called for assistance from nearby employees. During this time Appellant's female companion fled the store. When Morsillo fell to the ground[,] Appellant began to run toward the store's exit but he was pursued by employees John Steele and Ron Schmidt who had responded to Morsillo's request for assistance. During his flight[,] Appellant reached for a .25 caliber handgun that he had concealed in his clothing, however[,] the gun fell to the ground. Appellant stopped and picked up the gun[,] which allowed Steele and Schmidt to move within five feet of Appellant.

Appellant confronted Steele and Schmidt with the handgun. Appellant pointed the gun at both men, stated that he wasn't afraid to use it, and attempted to fire the gun at Steele but it did not fire. Both Steele and Schmidt heard the gun click twice. In the face of the weapon[,] Steele stepped aside and Appellant continued his flight but was closely pursued by Schmidt. When Appellant reached the store entrance his exit was impeded by a store employee who was returning shopping carts to the entrance. Schmidt was able again to close the distance between himself and Appellant who again pointed the gun and attempted to fire it at Schmidt. However[,] Schmidt was able to grab Appellant and take him to the ground, and

> along with Steele they were able to disarm Appellant. The weapon proved to be a .25 caliber [semi-]automatic handgun with 6 live rounds in the magazine but none in the chamber.

Trial Court Opinion, 7/9/12, at 5-7 (internal citations and footnote omitted).

Thereafter, the Commonwealth charged Appellant with two counts each of attempted homicide, aggravated assault, and receiving stolen property, three counts of robbery, and one count each of persons not to possess a firearm, firearm not to be carried without a license and simple assault. The jury acquitted Appellant of the attempted homicide charges and one count of robbery, but convicted him at the remaining counts. The court sentenced Appellant to two concurrent five-to-ten-year terms of imprisonment for the robbery convictions and a consecutive two to four years incarceration for the persons not to possess a firearm charge. Additionally, Appellant received a concurrent six to twelve months of incarceration for his simple assault conviction. The court imposed no further penalty on the remaining convictions.

Appellant filed a post-sentence motion, which the court denied. This appeal ensued. The trial court directed Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant complied, and the trial court authored its Pa.R.A.P. 1925(a) opinion. The matter is now ready for our review. Appellant raises four issues for our consideration.

> I. Whether Mr. Adams' conviction on Count 6—Robbery (Schmidt) must be reversed, and the Judgment of

Sentence in this regard must be vacated, when the Commonwealth failed to prove, beyond a reasonable doubt, that he threatened Schmidt with "serious bodily injury", or intentionally put Schmidt in fear of "serious bodily injury"?

II. Whether the verdicts of guilty on Count 5—Robbery (Steele) and Count 6—Robbery (Schmidt) were against the weight of the evidence when Mr. Adams credibly testified that he did not threaten Steele or Schmidt with the gun, he did not pull the trigger, and his only objective was to get out of the store, not hurt anyone, there was other evidence showing that Mr. Adams did not pull out and brandish the gun, but it simply fell out of his pants as he was running out of the store, and after Mr. Adams picked up the gun, he simply ran out of the store as Steele and Schmidt gave pursuit, nothing less and nothing more?

III. Whether Judge Borkowski abused his sentencing discretion by imposing the 2-4 year sentence on Count 8—Person Not to Possess Firearm consecutively to the concurrent 5-10 year mandatory sentences on Count 5—Robbery (Steele) and Count 6—Robbery (Schmidt), thereby imposing an aggregate sentence of 7-14 years incarceration, when Mr. Adams presented multiple, substantial mitigating factors involving his character.

IV. Whether Mr. Adams' sentences on Count 5—Robbery (Steele) and Count 6—Robbery (Schmidt) are illegal because, at both Counts, Mr. Adams was convicted under § 3701(a)(1)(ii), but the Judgment of Sentence reflects convictions under § 3701(a)(1)(i)?

Appellant's brief at 7.

Appellant's initial challenge is to the sufficiency of the evidence. We review such claims under the following settled precepts.

> We must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. Where there is sufficient evidence to enable the trier of fact to find every

> element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.
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> The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. ***Commonwealth v. Mobley***, 14 A.3d 887, 889–890 (Pa.Super. 2011). Additionally, "in applying the above test, the entire record must be evaluated and all evidence actually received must be considered." ***Commonwealth v. Coleman***, 19 A.3d 1111, 1117 (Pa.Super. 2011).

Commonwealth v. Brown, 52 A.3d 320, 323 (Pa.Super. 2012) (quoting ***Commonwealth v. Stokes***, 38 A.3d 846, 853-854 (Pa.Super. 2011)).

Robbery is defined in relevant part as

> **(a) Offense defined.**--
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> (1) A person is guilty of robbery if, in the course of committing a theft, he:
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> . . . .
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> (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury;

18 Pa.C.S. § 3701(a)(1)(ii).

Appellant contends that his conviction can only be sustained by showing that he threatened Mr. Schmidt with serious bodily injury or intentionally put Mr. Schmidt in fear of serious bodily injury. Appellant first argues that the Commonwealth did not establish that he threatened Mr. Schmidt with serious bodily injury and that "this incident involved only

fear of 'bodily injury.'" Appellant's brief at 15. In this respect, Appellant maintains that the mere brandishing of a firearm does not automatically give rise to a threat to inflict fear of serious bodily injury. He asserts that Mr. Schmidt was not certain whether Appellant pointed the gun at him and he did not hear Appellant pull the trigger while aiming the gun at him. In a tenuous argument, Appellant also submits that although the gun was loaded with six bullets, it was "never a serious danger to Schmidt (or any other person)" because there was no bullet chambered. Appellant's brief at 20.

Appellant continues that he never brandished the weapon and it merely fell from his pocket and he retrieved it. He highlights that Mr. Schmidt was not threatened by the weapon since he continued to pursue Appellant and testified that "he was indifferent to the fact that Mr. Adams was in possession of a gun." Appellant's brief at 22. According to Appellant, "the only reasonable inference to draw from Schmidt's continued, relentless pursuit of Mr. Adams was that he feared only the possibility of "impairment of physical condition or substantial pain." ***Id***. at 23 (citation omitted). Thus, Appellant asserts that he violated § 3701(a)(1)(iv), which is a second-degree felony, and not § 3701(a)(1)(ii).

The Commonwealth counters that the firearm in question was a danger since it "could have easily been fired by merely operating the slide to chamber a bullet from the magazine." Commonwealth's brief at 10. Additionally, the Commonwealth points out that Mr. Schmidt did testify that Appellant brandished the gun and that Appellant "shot the gun but the gun,

all I heard was clicking[.]" Commonwealth's brief at 11 (quoting N.T., 10/12/10, at 84). Mr. Schmidt reiterated that "I didn't stop pursuing him because I was worried about him having a gun and going out. That's when he was firing but it didn't go off. It just clicked." ***Id***. Indeed, Mr. Schmidt testified that the two were so close that the gun was "at me or it could have been or it could have missed me[.]" ***Id***. The Commonwealth continues that a surveillance tape of the incident plainly indicated that when Appellant was tackled, the gun was pointed at Mr. Schmidt's chest, though Mr. Schmidt acknowledged being unaware of where the gun was pointing.

We disagree with Appellant's premise that, simply because a person offers resistance to a person possessing a gun, the person is not threatened or in fear of serious bodily injury. Pointedly, a person threatened or in fear of serious bodily injury may, in fact, respond in a similar manner as Mr. Schmidt, *i.e.*, fighting back rather than fleeing. Further, we find that, viewing the evidence in a light most favorable to the Commonwealth, Appellant's act of firing the weapon, though it did not discharge, constituted a threat of immediate serious bodily injury to Mr. Schmidt. Here, Appellant's threat was genuine since he actually attempted to fire the weapon and Mr. Schmidt implored Appellant to put the gun down. Instead, Appellant waved the gun around after attempting to shoot the gun in close proximity to Mr. Schmidt. As Mr. Schmidt stated, "I'm trying to get my arms around to get the gun because obviously you see him. I don't know what he would have done but I was worried about getting it and I was worried about

myself." N.T., 10/12/10, at 90. The jury could infer that Mr. Schmidt was in fear for his life at that time. Accordingly, Appellant is not entitled to relief. Indeed, the only thing that appears to have prevented Appellant from having successfully shot the weapon was his unfamiliarity with the stolen gun.

Appellant's next claim is that both of his robbery convictions are against the weight of the evidence. This issue is patently without merit.

Our Supreme Court recently explained the governing law in this area as follows.

> A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. ***Commonwealth v. Widmer***, 560 Pa. 308, 319, 744 A .2d 745, 751–52 (2000); ***Commonwealth v. Brown***, 538 Pa. 410, 435, 648 A.2d 1177, 1189 (1994). A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. ***Widmer***, 560 A.2d at 319–20, 744 A.2d at 752. Rather, "the role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.'" ***Id***. at 320, 744 A.2d at 752 (citation omitted). It has often been stated that "a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." ***Brown***, 538 Pa. at 435, 648 A.2d at 1189.
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> An appellate court's standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:
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> > Appellate review of a weight claim *is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence.* ***Brown***, 648 A.2d at 1189. Because the trial judge has had the opportunity to hear and see

> the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. ***Commonwealth v. Farquharson****,* 467 Pa. 50, 354 A.2d 545 (Pa.1976). One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should [or should not] be granted in the interest of justice.
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> ***Widmer****,* 560 Pa. at 321–22, 744 A.2d at 753 (emphasis added).

Commonwealth v. Clay, 2013 WL 474441, *5, __ A.3d __ (Pa. 2013) (filed February 8, 2013).

Accordingly, we do not determine whether our conscience is shocked. Instead, we only look to whether the trial court abused its discretion in ruling on the issue. Appellant begins by asserting in a rather misleadingly fashion, that the evidence "clearly established" that he did not brandish the gun, Appellant's brief at 25, despite evidence that he waved the gun around, and Mr. Steele's testimony that he believed Appellant intentionally pulled the gun out but dropped it while fleeing. ***See*** N.T., 10/12/10, at 74, 83. Moreover, even if Appellant did not initially intend to remove the gun from his clothing, he displayed the gun after picking it up from the floor, was waving it around, and pointed it at Mr. Steele and fired it in close proximity to Mr. Schmidt. ***Id***. at 58-59, 84-85. Thus, it is apparent that Appellant begins his argument from a false premise.

Appellant continues his crafty misrepresentations by contending that the "gun was not loaded to fire," Appellant's brief at 25, when in fact the gun was loaded, but a bullet was not chambered. He also claims that he never pulled the gun's trigger, despite testimony directly contrary. ***See*** N.T., 10/12/10, at 58-59, 74, 84-85. Also, Appellant argues that his testimony was considered credible. Of course, had the jury credited his testimony, it would not have rendered the verdict it did in this matter.

Contrary to Appellant's self-serving assertions, this case is not one based on mere surmise or conjecture, nor does it in any manner resemble the cases reversing a conviction on a mere conjecture basis under a sufficiency of the evidence analysis. ***See Commonwealth v. Karkaria***, 625 A.2d 1167 (Pa. 1993). Simply put, this is not a matter where, notwithstanding all the evidence, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice. Thus, we find that the trial court did not abuse its discretion in concluding that its conscience was not shocked by the verdict.

In his third issue, Appellant raises a challenge to the discretionary aspects of his sentence. "[I]ssues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion or by presenting the claim to the trial court during the sentencing proceedings. Absent such efforts, an objection to a discretionary aspect of a sentence is waived." ***Commonwealth v. Kittrell***, 19 A.3d 532, 538 (Pa.Super. 2011).

In addition, "there is no absolute right to appeal when challenging the discretionary aspect of a sentence." ***Commonwealth v. Crump***, 995 A.2d 1280, 1282 (Pa.Super. 2010); 42 Pa.C.S. § 9781(b); ***but see*** Pa.Const. Art. V § 9 ("there shall also be a right of appeal from a court of record . . . to an appellate court"). Rather, an "[a]ppeal is permitted only after this Court determines that there is a substantial question that the sentence was not appropriate under the sentencing code." ***Crump***, ***supra*** at 1282.

> A defendant presents a substantial question when he "sets forth a plausible argument that the sentence violates a provision of the sentencing code or is contrary to the fundamental norms of the sentencing process." In order to properly present a discretionary sentencing claim, a defendant is required to preserve the issue in either a post-sentence motion or at sentencing and in a court-ordered Pa.R.A.P. 1925(b) concise statement. Further, on appeal, a defendant "must provide a separate statement specifying where the sentence falls in the sentencing guidelines, what provision of the sentencing code has been violated, what fundamental norm the sentence violates, and the manner in which it violates the norm."

Commonwealth v. Naranjo, 53 A.3d 66, 72 (Pa.Super. 2012) (citations omitted). Appellant preserved his issues via his post-sentence motion, Pa.R.A.P. 1925(b) statement, and by providing a Pa.R.A.P. 2119(f) statement.

Appellant asserts in his Pa.R.A.P. 2119(f) statement that the imposition of the consecutive two-to-four-year term of incarceration for the persons not to possess a firearm charge raises a substantial question. He also alleges that the trial court failed to consider substantial mitigating factors, including that he earned his GED while incarcerated, completed a

drug and alcohol program, and could gain employment as a carpenter. In addition, Appellant submits that the court did not consider that he had a strong family support system, is the father of two children, and maintained a strong relationship with those children. Thus, Appellant contends that his excessiveness claim in conjunction with the trial court's purported failure to consider mitigation evidence raises a substantial question for our review.

The Commonwealth replies that, generally, imposition of a consecutive sentence does not raise a substantial question for review. It adds that the trial court reviewed a pre-sentence report, listened to Appellant, and heard from Appellant's witnesses and counsel. Since Appellant was a drug addict with a significant criminal record involving theft offenses and one prior assault, it maintains that he was a danger to himself and society.

We begin by acknowledging that a defendant **may** raise a substantial question where he receives consecutive sentences within the guideline ranges if the case involves circumstances where the application of the guidelines would be clearly unreasonable, resulting in an excessive sentence. However, a bald claim of excessiveness due to the consecutive nature of a sentence will not raise a substantial question. ***See Commonwealth v. Moury***, 992 A.2d 162, 171-172 (Pa.Super. 2010) ("The imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes

and the length of imprisonment."); ***Commonwealth v. Mastromarino***, 2 A.3d 581 (Pa.Super. 2010); ***Commonwealth v. Gonzalez-Dejusus***, 994 A.2d 595 (Pa.Super. 201); ***Commonwealth v. Dodge***, 957 A.2d 1198 (Pa.Super. 2008); 42 Pa.C.S. § 9781; ***Commonwealth v. Mouzon***, 812 A.2d 617 (Pa. 2002) (plurality); ***Id***. at 629 (Castille, J. dissenting) ("I also agree with the lead opinion that a claim that a sentence is excessive, but which falls within the statutory maximum allowable for the crime at issue is not categorically barred from appellate review under the Sentencing Code.").

In determining whether a substantial question exists, this Court does not examine the merits of whether the sentence is actually excessive. ***Commonwealth v. Tuladziecki***, 522 A.2d 17 (Pa. 1987). Rather, we look to whether the appellant has forwarded a plausible argument that the sentence, when it is within the guideline ranges, is clearly unreasonable. Concomitantly, the substantial question determination does not require the court to decide the merits of whether the sentence is clearly unreasonable.

This Court has applied ***Mouzon*** on multiple occasions and determined that an excessiveness claim, in combination with allegations that a sentencing court did not consider the nature of the offenses or provide adequate reasons for its sentence, presents a plausible argument that the length of the sentence violates fundamental sentencing norms. ***See Commonwealth v. Vega***, 850 A.2d 1277 (Pa.Super. 2004); ***Commonwealth v. Parlante***, 823 A.2d 927 (Pa.Super. 2003); ***see also***

Commonwealth v. Boyer, 856 A.2d 149 (Pa.Super. 2004). Similarly, in ***Commonwealth v. Perry***, 883 A.2d 599, 602 (Pa.Super. 2005), this Court found that an excessive sentence claim, in combination with an assertion that the court did not consider mitigating factors, raised a substantial question. ***But see Commonwealth v. Johnson***, 961 A.2d 877, 880 (Pa.Super. 2009) ("Appellant's assertion of abuse of discretion for imposing consecutive sentences without properly considering mitigating factors fails to present a substantial question to justify this Court's review of his claim."); ***Moury***, ***supra*** at 175.[1]

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[1] We are mindful that it is apparent that this Court's determination of whether an appellant has presented a substantial question in various cases has been less than a model of clarity and consistency, even in matters not involving excessive sentence claims. ***Compare Commonwealth v. Montalvo***, 641 A.2d 1176, 1186 (Pa.Super. 1994) ("allegation that the sentencing court 'failed to consider' or 'did not adequately consider' facts of record" does not present substantial question); ***Commonwealth v. Rivera***, 637 A.2d 1015, 1016 (Pa.Super. 1994) (same); ***Commonwealth v. Nixon***, 718 A.2d 311, 315 (Pa.Super. 1998), *overruled on other grounds by* ***Commonwealth v. Mouzon***, 812 A.2d 617 (Pa. 2002) ("ordinarily, allegations that a sentencing court 'failed to consider' or 'did not adequately consider' various factors" does not raise a substantial question); ***Commonwealth v. Petaccio***, 764 A.2d 582, 587 (Pa.Super. 2000), *overruled on other grounds by* ***Mouzon***, ***supra*** ("an allegation that a sentencing court 'failed to consider' or 'did not adequately consider' certain factors does not raise a substantial question that the sentence was inappropriate."); ***Commonwealth v. Palmer***, 700 A.2d 988, 994 (Pa.Super. 1997), *overruled on other grounds,* ***Commonwealth v. Archer***, 722 A.2d 203 (Pa.Super. 1998) (*en banc*) (same); ***Commonwealth v. McNabb***, 819 A.2d 54, 57 (Pa.Super. 2003) (failure to "consider certain mitigating factors does not raise a substantial question."); ***Commonwealth v. Wellor***, 731 A.2d 152, 155 (Pa.Super. 1999) (same); ***Commonwealth v. Johnson***, 961 A.2d 877, 880 (Pa.Super. 2009) ***with Commonwealth v.***

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In light of the inconsistent pronouncements in this area, we decline to find that Appellant has not presented a substantial question and proceed to review the merits of his claim. Appellant argues that while the court

(Footnote Continued) ———————————

Boyer, 856 A.2d 149, 151-152 (Pa.Super. 2004) (finding substantial question where defendant argued "that his sentence was manifestly excessive and that the court erred by considering only the serious nature of the offenses and failing to consider mitigating factors such as his age (19) at sentencing, his rehabilitative needs, his limited education, his years of drug dependency, and his family dysfunction."); ***Commonwealth v. Perry***, 883 A.2d 599, 602 (Pa.Super. 2005) (failure to consider mitigating factors and excessive sentence raised substantial question); ***Commonwealth v. Ventura***, 975 A.2d 1128, 1133 (Pa.Super. 2009) ("Ventura further asserts that the trial court imposed his sentence based solely on the seriousness of the offense and failed to consider all relevant factors, which has also been found to raise a substantial question."); ***Commonwealth v. Downing***, 990 A.2d 788, 793 (Pa.Super. 2010) (failure to consider rehabilitative needs and the protection of society in fashioning a sentence raises a substantial question).

Our recognition of the lack of preciseness in our jurisprudence involving what comprises a substantial question is not new. As the learned Judge Joseph Del Sole opined in his dissent in ***Commonwealth v. McFarlin***, 587 A.2d 732 (Pa.Super. 1991), "Widely divergent and inconsistent views of what constitutes a substantial question have arisen resulting in nonuniform treatment of a defendant's ability to appeal a sentencing matter." ***Id***. at 738. He continued, stating, "examination of the caselaw will indicate the practical application of the requirements of Section 9781(b) and Pa.R.App.P. 2119(f) has led to the creation of dubious standards, and allowed for inconsistent results." ***Id***. Certainly, analyzing the substantial question issue on a case-by-case basis lends itself to some disparity based on the facts of a case. Nonetheless, it should not result in conflicts in legal principles or allow insignificant differences in the phrasing of an issue to determine whether this Court evaluates a discretionary sentencing claim. Careful litigants should note that arguments that the sentencing court failed to consider the factors proffered in 42 Pa.C.S. § 9721 does present a substantial question whereas a statement that the court failed to consider facts of record, though necessarily encompassing the factors of § 9721, has been rejected.

indicated that it considered the required sentencing factors, "it is obvious that [the trial court] did not give these factors their due and proper consideration." Appellant's brief at 43. According to Appellant, the trial court's statement was mere fluff. In support of his position, Appellant avers that he only intended to commit a retail theft, but "the situation spun woefully out of control." ***Id***. He posits that he accepted responsibility and that his crime is primarily the result of drug addiction and mental health problems. Appellant asserts that because he expressed remorse over the incident and took steps to better himself and overcome his problems, the sentence was excessive and unreasonable. We disagree.

The trial court in this matter appropriately considered the pre-sentence report, Appellant's own statements, the statements of Appellant's mother and father, and the arguments of counsel. Thus, we are required to presume all sentencing factors were weighed. ***Commonwealth v. Macias***, 968 A.2d 773, 778 (Pa.Super. 2009). The court also explicitly stated that it considered Appellant's "involvement in the lives of his two beautiful sons." N.T., 1/13/11, at 18.

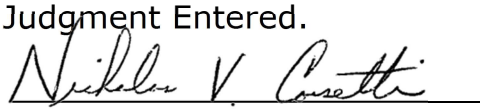
The trial court remained cognizant that, while Appellant had a significant history of theft-related crimes, he did not have a history of violence, and it concluded that Appellant was fortunate that the firearm in this case did not discharge and injure someone. In light of the trial court's careful consideration of the facts relevant to sentencing, we cannot conclude

that the court abused its discretion or that its statements during sentencing were mere fluff. A two-to-four-year sentence for person not to possess a firearm is not excessive, especially where the testimony at trial indicates Appellant attempted to fire the weapon to escape. Furthermore, the trial court did consider mitigating factors. Rather, the court chose to weigh the sentencing factors in a manner with which Appellant disagrees. ***See Macias***, ***supra*** at 778. Accordingly, Appellant's issue is without merit.

Appellant's final claim is that the court sentenced him illegally because he was convicted of violating 18 Pa.C.S. § 3701(a)(1)(ii), but the written order indicates that he was sentenced for violating § 3701(a)(1)(i). The Commonwealth agrees that the written order contains an error, which must be corrected. However, it notes that both sections are first-degree felonies and that the length of his mandatory sentences are unaffected. We vacate Appellant's judgment of sentence and remand so that the trial court may correct the clerical error herein and reinstate its sentence.

Judgment of sentence vacated. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.



Deputy Prothonotary

Date: 5/1/2013