

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant		
v.		
EVE M. SHREVE,		
Appellee		No. 859 WDA 2012

Appeal from the Judgment of Sentence entered April 23, 2012,
in the Court of Common Pleas of Erie County,
Criminal Division, at No(s): CP-25-CR-0002310-2011

BEFORE: BENDER, ALLEN, and MUSMANNO, JJ.

MEMORANDUM BY ALLEN, J.:

Filed: January 11, 2013

The Commonwealth appeals from the judgment of sentence entered against Eve M. Shreve (“Appellee”) after she pled guilty to one count of arson and one count of recklessly endangering another person.¹ We affirm.

The trial court summarized the pertinent facts as follows:

On Friday, March 18, 2011, the City of Corry Fire Department responded to a house fire at 52 Marion Street involving the reported entrapment of a person in the residence. The fireman located an unresponsive female (subsequently identified as [Appellee]), who resided at the residence. [Appellee’s] 24 year old son, Daniel Shreve, was also present at the residence at the time of the fire, but he was able to exit the residence under his own power.

An investigation was conducted to discover the origin of the fire. It was determined that the fire was intentionally set in

¹ 18 Pa.C.S.A. §§ 3301(a)(1)(i) and 2705, respectively.

both the walk-in closet and in the basement of the house. On the day of the arson, [Appellee] had taken a quantity of Unisom and Benadryl pills with a small amount of alcohol, and then she used a razor to slit her wrists. Several Corry firefighters were at risk in the performance of their duties as a result of this arson. [The record indicates that on the day of the arson, Appellee had received a foreclosure notice. N.T., 4/23/12, at 7.]

Trial Court opinion, 7/23/12, at 2 (internal citations omitted).

Appellee was arrested and charged with the aforementioned crimes. On March 6, 2012, Appellee entered a guilty plea, and on April 23, 2012, the trial court sentenced her to 10 years of probation, accompanied by mandatory mental health treatment. The Commonwealth filed a timely post-sentence motion, which the trial court denied on May 8, 2012. This appeal followed. Both the Commonwealth and the trial court have complied with Pa.R.A.P. 1925.

The Commonwealth presents the following issue for our review:

When the Appellee pleads guilty to Arson pursuant to 18 Pa.C.S.A. § 3301(a)(1)(i) (and thereby admits to intentionally starting a fire and recklessly placing her son in danger of death or serious bodily injury), does a sentencing court commit a manifest abuse of discretion, with respect to the Arson count, by substantially deviating from the Sentencing Guidelines and imposing a term of 10 years of probation.

Commonwealth Brief at 3.

The Commonwealth argues that the trial court abused its discretion by deviating from the sentencing guidelines and sentencing Appellee to 10 years of probation for arson where the sentencing guidelines recommended a sentence of 22 to 36 months in the standard range, and 10 months in the mitigated range, given Appellee's prior record score of zero. Commonwealth

Brief at 9-12. The Commonwealth maintains that a sentence in the standard range of the sentencing guidelines should have been imposed, in light of the seriousness of the offense in which Appellee set a potentially deadly fire, with the knowledge that her son was in the house at the time, requiring firefighters to risk their lives responding to the fire. *Id.* Accordingly, the Commonwealth asserts that the trial court's downward departure from the sentencing guidelines was unreasonably lenient, and constitutes an abuse of discretion. *Id.*

The Commonwealth raises a challenge to the discretionary aspect of the trial court's sentence. The right to appeal a discretionary aspect of sentence is not absolute. Rather, a party who desires to raise such matters must petition this court for permission to appeal and demonstrate that there is a substantial question that the sentence is inappropriate. 42 Pa.C.S.A. § 9781(b). ***Commonwealth v. Kenner***, 784 A.2d 808, 811 (Pa. Super. 2001). "The determination of whether a particular issue constitutes a substantial question as to the appropriateness of sentence must be evaluated on a case-by-case basis. It is only where an aggrieved party can articulate clear reasons why the sentence imposed by the trial court compromises the sentencing scheme as a whole that we will find a substantial question and review the decision of the trial court." *Id.* "We will grant an appeal only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific

provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process. In fulfilling this requirement, the party seeking to appeal must include in his or her brief a concise statement of the reasons relied upon in support of the petition for allowance of appeal. Pa.R.A.P. 2119(f)." *Id.*

Here, as required by Pa.R.A.P. 2119(f), the Commonwealth has included in its brief a statement of reasons relied upon for allowance of appeal, asserting that the trial court abused its sentencing discretion by unreasonably deviating from the sentencing guidelines. See Commonwealth Brief at 8. We conclude that the Commonwealth has presented a substantial question for our review. *Commonwealth v. Sims*, 728 A.2d 357, 359 (Pa. Super. 1999) (The Commonwealth's claim that the factors relied upon by the trial court for the imposition of a sentence below the mitigated range of the guidelines were unreasonable, and that the circumstances do not support such downward deviation, presents a substantial question for review). Therefore, we will address the merits of the Commonwealth's claim.

The Commonwealth argues that the trial court improperly deviated from the sentencing guidelines, minimized the gravity of Appellee's conduct, and placed undue emphasis on Appellee's rehabilitative needs and mental health status in reaching its sentencing determination. We disagree.

In *Commonwealth v. Daniel*, 30 A.3d 494 (Pa. Super. 2011), this Court explained our review of a trial court's sentencing determination as follows:

In *Commonwealth v. Walls*, 592 Pa. 557, 926 A.2d 957 (2007), our Supreme Court observed that the parameters of this Court's review of the discretionary aspects of a sentence is confined by the dictates of 42 Pa.C.S. § 9781(c) and (d). Section 9781(c) states in relevant part that we may "vacate the sentence and remand the case to the sentencing court with instructions" if we find that "the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable." 42 Pa.C.S. § 9781(c)(3). Section 9781(d) provides that when reviewing a sentence, we must consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
- (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
- (3) The findings upon which the sentence was based.
- (4) The guidelines promulgated by the commission.

42 Pa.C.S. § 9781(d).

The *Walls* Court noted that the term "unreasonable" generally means a decision that is either irrational or not guided by sound judgment. It held that a sentence can be defined as unreasonable either upon review of the four elements contained in § 9781(d) or if the sentencing court failed to take into account the factors outlined in 42 Pa.C.S. § 9721(b).

Daniel, 30 A.3d at 497.²

² Section 9721(b) of the Sentencing Code provides in pertinent part:

[T]he court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and
(Footnote Continued Next Page)

Here, at the sentencing hearing, the trial court considered testimony from Appellee's counsel, as well as Appellee herself. The trial court subsequently expressed its reasons for sentencing as follows:

I read all of your letters. I have listened to what your lawyer has said. One of the things that I look at in your presentence report is even before this episode, you got a life time of law abiding behavior. ...

* * *

I see a 47 year old woman who has led by all standards until this episode, a life that she can be proud of. She starts to suffer some mental illness, okay, through no fault of her own, and now because of the depression, she attempts a suicide, a good attempt, might have killed herself, killed her husband. She might have killed her son. The firefighters might have been dead or injured.

But there is no question in my mind this is ... entirely due to mental health, that the world overwhelms her like a wave. Like a wave, she is washed under in one fell swoop.

* * *

And I'm not running to the label of temporary insanity, but as much as I've seen, anyone who looks fairly blameless because of a mental problem, this lady looks like it.

* * *

I looked at this case, and in my view, it is an exceptional case. In the life of this [trial court], my impression from material before me is this is a woman who's led an exemplary

(Footnote Continued) _____

the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing

life that she can be proud of, but for this serious episode, which in my view is triggered by her mental health problems for which she wasn't prepared when they crept up on her.

Were people endangered? Yes. The question in my mind is whether the guidelines capture this in suggesting incarceration as a requirement, and whether that's an appropriate sentence here. And my view is that they do not.

I think this woman needs treatment. That her entire problem is mental health related, and she's in need of treatment. The prosecutor and I agree on that. He wants to send her to a state institution and have her treated. I'm not convinced that offers anything. It doesn't offer her what can't be offered to her in the community.

Is there a risk here she'll hurt herself or others? Absolutely. Did she fail to think through that she was not only committing suicide, but putting her son and husband and others at risk? Absolutely. Is she a criminal if she pled guilty to a crime? But nothing in her life suggests she's criminally oriented. Whether she was temporarily insane, I don't know, but clearly mental health and her inability played a role in this given the triggering events. People are much like metal, a period of fatiguing can have fail, and it looks to me like that's what happens with otherwise good human beings.

I look at the guidelines and the range, 22 to 36 and the mitigated range of 10. I think all those overstate the need for incarceration here. To satisfy the Commonwealth's interests, I'm going to do the following:

I'm placing her on probation for a period of 10 years. I'm going to require that she continue with Safe Harbor Behavioral Health, that she receive that until discharged. If she fails to follow through with her mental health treatment, she's in violation of her probation. If Safe Harbor goes away, she's to be enrolled in another equivalent mental health program.

In the [trial court's] view, this whole matter, all of it, and her prior history is a result of her depression for which she's now seeking treatment, and with all the safeguards in place, I'm not in a position to guarantee the community she won't put anyone else at risk, but after a lifetime of law abiding behavior, she's

entitled to some measure of understanding. The [trial court] finds that the guidelines don't capture what's appropriate here even though I've considered them.

N.T., 4/23/12, at 9-15.

Additionally, in its Pa.R.A.P. 1925(a) opinion, the trial court provided the following rationale:

At sentencing, [Appellee's] mental state was discussed at length. [Appellee's] attorney informed the [trial court] that at the time of the fire, [Appellee] had no support network for her mental health problems. She had bi-polar mood disorder, (characterized by several days of manic behavior, followed by several days of severe depression), accompanied by obsessive compulsive disorder and anxiety disorder, but at that time, the conditions were undiagnosed. Her husband was a long haul truck driver who was rarely home, and [Appellee] was in charge of the family's finances. Because she suffered from compound mental illness, she got to the point where she was unable to carry on with the daily routines of life anymore, and the arson was clearly an attempt to take her own life.

Since the fire, she has been successfully treated by a psychiatrist at Safe Harbor. She is now on four different medications to treat her mental health problems. She has a support network (including the support of her husband and son), as well as a crisis plan if she is feeling stressed. Someone checks in with her every day. It was [Appellee's] attorney's opinion that because [Appellee] now understands the stressors in her life and knows how to deal with her mental health issues, she is no longer a danger to others.

The [trial court] considered that for the large majority of [Appellee's] life, she was a law abiding citizen. When she started to suffer from mental illness, she experienced her first run-in with the law when she failed to furnish local tax information in 2007, 08 and 09. In the [trial court's] view, the arson event was entirely due to the onset of severe symptoms of her mental illness. Despite the fact that she endangered her son and firemen due to her behavior, the [trial court] determined that she was fairly blameless because of her mental problems.

She intended to kill herself, and the fact that she put others at risk was not a rational or intentional act.

Ultimately, the [trial court] determined that [Appellee] would not benefit from incarceration, but rather needed continued monitoring and intensive mental health treatment. The sentencing guidelines, even in the mitigated range, were not appropriate punishment for the unique facts of the case. Nothing in her life prior to the arson suggested she was a criminally oriented individual, and the community offered better services to treat her mental illness than the prison system.

Trial Court Opinion, 7/23/12, at 2-3.

Considering the factors outlined in § 9781(d), including the nature and circumstances of the offense and the history and characteristics of the defendant, the opportunity of the sentencing court to observe the defendant and consider the presentence investigation, the findings upon which the sentence was based, and the guidelines promulgated by the sentencing commission, we find no abuse of the trial court's sentencing discretion in the present case. As the trial court acknowledged, the nature and circumstances of the arson were serious. Appellee put herself and her family in danger, in addition to endangering responding firefighters. The trial court acknowledged that Appellee exercised bad judgment and failed to fully appreciate the repercussions of her actions at the time of the arson. However, as the trial court emphasized, Appellee's actions were attributable to her mental illness, for which she promptly sought effective and ongoing treatment.

The trial court, at the sentencing hearing, had the opportunity to observe Appellee's demeanor, and concluded that Appellee's expressions of

remorse were sincere, that Appellee fully accepted responsibility for her actions, and that she was making a genuine and successful effort at rehabilitation and mental health treatment. Moreover, the trial court had the benefit of a presentence investigation which included psychiatric evaluations, letters from Appellee's husband and son in support of Appellee, and letters from a medical professional at Safe Harbor Behavioral Health indicating that Appellee is "motivated and appears to possess excellent insight regarding how devastating her illness can be when not properly addressed" but that her "prognosis is favorable despite the rather severe nature of her illness" and that she is "working hard to maintain stability." Letter from Safe Harbor Behavioral Health, 4/11/12. Further, in addition to receiving ongoing psychiatric treatment at Safe Harbor, Appellee informed the trial court that she has joined a support group for sufferers of depression and bipolar disorder at the Mental Health Association of Northwest Pennsylvania, and provided letters indicating that she attends the support group regularly and is benefitting from the services provided. Letter from Mental Health Association of Northwest Pennsylvania, 4/2/12.

We conclude that the record contains ample support for the trial court's conclusion that Appellee was remorseful, understood and accepted responsibility for her behavior, and was taking steps to rehabilitate herself and prevent a recurrence of criminal behavior. While the trial court, in imposing a sentence of ten years of probation, significantly departed from the guidelines, we conclude that the reasons relied on by the trial court were

sufficient to justify the downward departure. The trial court did not understate the seriousness of the crime, nor the potential risk that Appellee continued to present to herself, her family and the public. However, in light of Appellee's "exemplary" history, the fact that she was receiving ongoing mental health assistance, the continued support of her family members, and her commitment to rehabilitation, we find no abuse of discretion in the trial court's decision. The trial court adequately took into consideration the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The trial court appropriately considered all relevant sentencing factors before reaching its determination that, under the circumstances, a downward departure from the guidelines was warranted. After careful review of the record, we do not find this downward departure "unreasonable." *Daniel, supra*. Therefore, we affirm the judgment of sentence.

Judgment of sentence affirmed.