NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY MICHAEL OVERBECK,	:	
	:	
Appellant	:	No. 950 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000464-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY M. OVERBECK,	:	
	:	
Appellant	:	No. 951 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000465-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY MICHAEL OVERBECK,	:	
	:	
Appellant	:	No. 952 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000459-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY MICHAEL OVERBECK,	:	
	:	
Appellant	:	No. 953 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000460-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY MICHAEL OVERBECK,	:	
	:	
Appellant	:	No. 954 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000461-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	

ANTHONY M. OVERBECK,	:	
	:	
Appellant	:	No. 955 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000462-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY M. OVERBECK,	:	
	:	
Appellant	:	No. 956 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000466-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY M. OVERBECK,	:	
	:	
Appellant	:	No. 957 WDA 2012

Appeal from the Judgment of Sentence May 23, 2012
In the Court of Common Pleas of Jefferson County
Criminal Division No(s).: CP-33-CR-0000463-2011

BEFORE: STEVENS, P.J., MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: February 11, 2013

Appellant, Anthony Michael Overbeck, brings these consolidated appeals from the judgments of sentence to serve an aggregate term of imprisonment of fourteen and one-half years to forty years, imposed after he pleaded guilty to eight counts of arson.[1] Counsel for Appellant has also petitioned this Court to withdraw from representation in this appeal and submitted an ***Anders***/***Santiago*** brief.[2] We affirm the judgment of sentence and grant counsel's petition to withdraw.

By way of background to this appeal, Appellant, who was a volunteer firefighter, admitted to investigators that he started eight fires between February and August of 2011 — two at occupied residential structures, two at unoccupied residential structures, one at a residential garage, one at a commercial structure, and two wildfires. Appellant, on May 2, 2012, entered open guilty pleas to eight counts of arson, six of which were graded as

* Former Justice specially assigned to the Superior Court.

[1] The trial court originally imposed sentence on May 16, 2012. The sentence was corrected by the order entered on May 23, 2012. Therefore, this appeal properly lies from the judgment of sentence of May 23, 2012, and have amended the captions accordingly.

[2] ***Anders v. California***, 386 U.S. 738 (1967); ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009).

felonies of the first degree, and two as felonies of the third degree.[3] The trial court, on May 16, 2012, sentenced Appellant to serve eight consecutive sentences, of which five sentences were in the aggravated minimum sentencing range, for a total sentence of seventeen and one-half years to forty years. Appellant filed a motion to modify the sentence seeking, in relevant part, the imposition of concurrent sentences based upon an alleged sentencing agreement, as well as the imposition of standard range minimum sentences. The trial court, on May 23, 2012, stated that it had intended to impose standard range minimum sentences on all offenses, and corrected the aggravated range sentences to standard range sentences so that the total sentence equaled fourteen and one-half years to forty years. Appellant did not file further post-sentencing motions. This appeal followed.

In the ***Anders*** brief, counsel for Appellant identifies the following questions Appellant wishes to raise in this appeal:

> Whether the trial court violated a promised plea agreement with Appellant, thereby entitling him to withdraw his plea . . .?
>
> Whether the trial court abused [its] sentencing discretion where it consecutively sentenced Appellant to eight (8) separate [individual] sentences . . .?

[3] Prior to entering his pleas of guilty, all eight counts were graded as felonies of the first degree. Appellant objected to the grading of two of the eight counts, arguing that the counts related to the brush fires should have been graded as felonies of the third degree. The Commonwealth conceded that issue and the charges were amended to include six counts of felony one arson and two counts of felony three arson. N.T., Guilty Plea, 5/2/12, at 2–3.

Anders Brief at 14. Appellant has not responded to counsel's petition to withdraw from representation or the filing of the ***Anders*** brief.

Before considering the issues identified by counsel for Appellant, we must first review whether counsel has complied with the procedural requirements to seek withdrawal from representation.

> When presented with an ***Anders*** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw. Before counsel is permitted to withdraw, he or she must meet the following requirements:
>
> > First, counsel must petition the court for leave to withdraw and state that after making a conscientious examination of the record, he has determined that the appeal is frivolous; second, he must file a brief referring to any issues in the record of arguable merit; and third, he must furnish a copy of the brief to the defendant and advise him of his right to retain new counsel or to himself raise any additional points he deems worthy of the Superior Court's attention.

Commonwealth v. Martuscelli, 54 A.3d 940, 947 (Pa. Super. 2012) (citations omitted).

Following our review, we conclude that counsel for Appellant has complied with the procedural and briefing requirements for seeking withdrawal. Therefore, we proceed to review the issues identified in the ***Anders*** brief.

In the first issue identified by counsel, Appellant wishes to withdraw his "open pleas [of guilt] based on the court's breach of [a] plea agreement," which, according to Appellant was negotiated directly with the

trial judge. ***See Anders*** Brief at 19–20. However, the record does not to reveal even a suggestion that the trial court and Appellant had entered into an agreement regarding sentencing.[4] Moreover, Appellant's contention that there was a specific agreement regarding the sentence to be imposed by the trial court is belied by the fact that Appellant did not request to withdraw his guilty pleas after sentencing, either in his motion to modify the original sentence or after the trial court amended its original sentencing order.[5] Therefore, we agree with counsel's assessment this challenge lacks any support in the record.

In the second issue identified by counsel, Appellant wishes to challenge the decision of the trial court to impose consecutive sentences on each of the eight counts of arson, which resulted in a total sentence of fourteen and one-half years to forty years.

As a preliminary matter, we must determine whether Appellant's intended challenge to the discretionary aspects of sentencing raises a

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[4] Based upon the record before this Court, Appellant appears to rely upon a statement by the trial court at the guilty plea hearing indicating that it considered one count to be "aggravated" under the Sentencing Guidelines because a person was present at the time of the fire. ***See*** N.T., 5/2/12, 5; 204 Pa.Code § 303.15 (setting an offense gravity score of ten for "Arson Endangering Persons (were a person is inside . . .)"). However, the trial court made no express reference to the possibility of imposing concurrent sentences prior to accepting Appellant's pleas.

[5] Indeed, counsel only indicated that Appellant sought to withdraw his guilty for the first time in this appeal.

substantial question that the sentence is not appropriate under the Sentencing Code. ***See*** 42 Pa.C.S. § 9781(b).[6] As this Court has stated, the determination of whether a challenge to consecutive sentences poses a substantial question focuses on whether the aggregate sentence appears, on its face, to be excessive level in light of the criminal conduct at issue in the case. ***Commonwealth v. Gonzalez-Dejusus***, 994 A.2d 595, 598–599 (Pa. Super. 2010).

In the present case, nothing on the face of the record suggests that the aggregate sentence was excessive in light of the criminal conduct at issue, namely, the setting of eight separate fires over the course of six months. Therefore, on its face, Appellant's intended challenge to the sentence does not present a substantial question. ***See id***.

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[6] In general, we must conduct a four-part analysis to reach the merits of a discretionary sentencing issue: (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. Anderson***, 830 A.2d 1013, 1016 (Pa. Super. 2003).

Here, Appellant filed a timely appeal from the judgment of sentence and post sentence motions from the imposition of the original sentencing order entered May 16, 2012, which preserved appellate consideration of a challenge to the imposition of consecutive sentences. Although counsel for Appellant did not include a separate Pa.R.A.P. 2119(f) statement in the ***Anders*** brief, we will proceed to review counsel's assessment that this claim is meritless. ***See Commonwealth v. Wilson***, 578 A.2d 523, 525 (Pa. Super. 1990). ***Accord Commonwealth v. Lilley***, 978 A.2d 995 (Pa. Super. 2009).

In any event, even if we were to proceed to a review of the merits of Appellant's intended challenge, the record reveals no basis for appellate relief. It is well settled that:

> [T]he proper standard of review when considering whether to affirm the sentencing court's determination is an abuse of discretion. [A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will. In more expansive terms, our Court recently offered: An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.

Commonwealth v. Walls, 926 A.2d 957, 961 (Pa. 2007) (citation, footnote, and quotation marks omitted).

Here, Appellant's intended challenge focuses on the imposition of the following eight consecutive sentences:

- At CR-0000459-2011: **two years to six years** for the July 26, 2011, fire at a residence in which a person was present,

- At CR-0000460-2011: **two years to six years** for the April 24, 2011, fire at an abandoned structure,

- At CR-0000461-2011: **three years to six years** for the July 30, 2011, fire at an unoccupied residence, which had been damaged by a previous fire set by Appellant,[7]

[7] There is an anomaly in the corrected sentencing order, in that the trial court intended to sentence appellant to a term of imprisonment of three years to six years at CR-0000459-2011, based upon the presence of a person in the structure that Appellant set on fire. However, in responding to

- At CR-0000462-2011: **two years to six years** for the June 19, 2011, fire at a commercial structure,
- At CR-0000463-2011: **nine months to two years** for the April 23, 2011, brush fire,
- At CR-0000464-2011: **two years to six years** for the August 8, 2011, fire at a residence,
- At CR-0000465-2011: **nine months to two years** for the March 26, 2011, brush fire, and
- At CR-0000466-2011: **two years to six years** for the February 18, 2011, fire at an unoccupied residence/apartment.

Each of the intended individual sentences fell within the standard suggested minimum sentence set forth in the Sentencing Code.

The trial court, at the time of original sentencing, explained its decision to impose consecutive sentences as follows:

> I've reviewed your presentence investigation, the victim impact statement for . . . the property owners . . .. I've considered your age, your background, your prior record or lack thereof — in your case, you have no prior record or lack thereof—as well as your family history, everything necessary for sentencing everything contained in the presentence. . . . You've admitted your involvement once you were caught. . . . I've always said criminals shouldn't get a bargain discount because I do think they're aggravating factors. The first and foremost is, you're a

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Appellant's motion to modify the original sentence, the trial court, in what we presume to be typographical error, changed the sentence at CR-0000459-2011 to a two-year minimum sentence, but did not correct a three-year minimum sentence for the offense listed at CR-0000461-2011. The offense listed at CR-0000461-2001 did not involve the presence of a person in the structure that was burned.

> fireman. You're supposed to be protecting—I mean, I know it's a volunteer situation; but when you volunteer, you say I want to protect people . . . You six times lit buildings, some for business, some adapted for overnight accommodation, at least one that had a person in it at the time an elderly person at that, at the time the fire was lit. Several properties were not in bad shape. Some, at least, were reported to have been in good shape. . . . It is an aggravated factor that at least one person was present. Firemen and women were called out and risked their lives. . . . I find it aggravating that these were your neighbors, friends, people you knew all your life. . . . I think certainly each one needs to stand on its own act. You went to each building. You lit it up. I can't see running any of them concurrent. . . . So I think in each fire a sentence within the standard range one consecutive to the other for each fire on that, [is] a sentence that appropriately considers your age, but also appropriately considers the act . . ..

N.T., 5/16/12, 3–6.

Given the rationale of the trial court, we cannot conclude that the court acted unreasonably when ordering that the sentence on each count run consecutively to the other. ***See Commonwealth v. Marts***, 889 A.2d 608, 615 (Pa. Super. 2005). Moreover, in light of our standards of review, we cannot conclude that the aggregate sentence was unduly excessive. ***See id***. at 616. Consequently, we agree with counsel's assessment that Appellant's intended challenge to the discretionary aspects of sentencing was meritless.

Having reviewed the record and finding no other issues of arguable merit in this direct appeal, we affirm the judgment of sentence and grant counsel's petition to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.