

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LAMAR WRIGHT,	:	
	:	
Appellant	:	No. 993 WDA 2012

Appeal from the Judgment of Sentence April 24, 2012,
Court of Common Pleas, Somerset County,
Criminal Division at No. CP-56-CR-0000581-2011

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: January 24, 2013

Lamar Wright (“Wright”) appeals from the April 24, 2012 judgment of sentence entered by the Court of Common Pleas, Somerset County. For the reasons that follow, we affirm.

While in prison serving a sentence for a prior conviction (“prior sentence”), Wright injured a corrections officer by punching him in the mouth. N.T., 2/14/2012, at 2-3. The Commonwealth charged Wright with aggravated assault (18 Pa.C.S.A § 2702(a)(2)), simple assault 918 Pa.C.S.A. §2701(a)(1)), and harassment (18 Pa.C.S.A. § 2709(a)(1)). Wright pled guilty to simple assault, and, in exchange, the Commonwealth agreed to withdraw the remaining charges. N.T., 2/14/2012, at 5. On April 24, 2012, the trial court sentenced Wright to serve one to two years of incarceration to

run consecutive to his prior sentence.¹ Wright filed a timely motion to modify his sentence, which the trial court denied on June 8, 2012, following a hearing.

On July 6, 2012, Wright filed a timely notice of appeal followed by a court ordered Pa.R.A.P. 1925(b) statement.

On appeal, Wright raises the following two issues for our review:

I. Whether the lower court committed an abuse of discretion in imposing this sentence to be consecutive to other sentences, so that the result would be the inability of [Wright] to be subject to parole on the earlier sentence.

II. Whether the lower court committed an abuse of discretion in imposing a sentence of not less than [one] year not more than [two] years, when the guidelines would have allowed a minimum of three months.

Appellant's Brief at 4.²

Wright's issues on appeal challenge the trial court's sentencing discretion.³ We review the trial court's exercise of sentencing discretion for

¹ The length of Wright's prior sentence is unclear from the record.

² We have reordered Wright's issues for the ease of our review.

³ "A plea of guilty constitutes a waiver of all nonjurisdictional defects and defenses. When a defendant pleads guilty, he waives the right to challenge anything but the legality of his sentence and the validity of his plea." ***Commonwealth v. Jones***, 593 Pa. 295, 308, 929 A.2d 205, 212 (2007) (quoting ***Commonwealth v. Montgomery***, 485 Pa. 110, 401 A.2d 318, 319 (1979) (internal citations omitted)). However, "open plea agreements[, as opposed to a plea agreement that includes a negotiated sentence,] are an exception in which a defendant will not be precluded from appealing the

an abuse of discretion. ***Commonwealth v. Moury***, 992 A.2d 162, 169 (Pa. Super. 2010). “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.” ***Id.*** at 170 (citation omitted).

Because a challenge to the discretionary aspects of a sentence is not appealable as of right, an appellant must invoke the jurisdiction of this Court by satisfying the following four-part analysis:

- (1) whether appellant has filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, ***see*** 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).

Moury, 992 A.2d at 170 (citations omitted).

Wright filed a timely notice of appeal and properly preserved his discretionary challenges in a motion to modify his sentence. Wright includes

discretionary aspects of the sentence.” ***Commonwealth v. Tirado***, 870 A.2d 362, 364 n.5 (Pa. Super. 2005) (emphasis in original). Furthermore, we may also review challenges to a sentence where, as part of the plea bargain, the Commonwealth agrees to recommend a certain sentence. ***Commonwealth v. Dalberto***, 648 A.2d 16, 21 (Pa. Super. 1994). Thus, although the Commonwealth recommended at Wright’s plea that the sentence be imposed consecutively to his prior sentence, his plea was an open plea agreement and we may review Wright’s discretionary challenge. ***See*** N.T., 2/24/2012, at 2; N.T., 6/1/2012, at 5-6.

a Pa.R.A.P. 2119(f) statement in his brief. Therein, Wright asserts that his sentence is excessive because the trial court ordered it to run consecutive instead of concurrent to his prior sentence. **See** Appellant's Brief at 7. Wright's claim, however, does not raise a substantial question for our review. "Generally, Pennsylvania law affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. Any challenge to the exercise of this discretion ordinarily does not raise a substantial question." **Commonwealth v. Prisk**, 13 A.3d 526, 533 (Pa. Super. 2011) (citation and quotation marks omitted) (finding that appellant failed to raise a substantial question where appellant was found guilty of 314 separate offenses and the aggregate sentence imposed was 633 to 1500 years). Nor is an appellant entitled to a volume discount for the commission of multiple crimes. **Id.**

Furthermore, a standard range minimum sentence of one year is not excessive simply because it is imposed consecutive to an existing sentence for a prior offense. "[W]here a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code." **Moury**, 992 A.2d at 171. Nor do we find convincing Wright's bald assertions that the trial court abused its discretion because due to the consecutive nature of the sentences, he will serve a much longer sentence on the existing sentences; he will be deprived of early parole on

the prior sentence; and he will have to “max out” his sentences. Appellant’s Brief at 7. While these impacts of the sentencing may be factually accurate, Wright offers no argument or citation to authority to support the proposition that this was an abuse of discretion. **See Moury**, 992 A.2d at 170 (stating that this Court does not accept bald assertions of sentencing errors when determining if a substantial question has been raised). Because Wright has failed to invoke this Court’s jurisdiction by raising a substantial question for our review (**see id.**), we do not reach the merits of his first discretionary claim.

Our review of Wright’s Rule 2119(f) statement reveals that he has failed to include his second discretionary challenge therein. However, we are not precluded from determining whether Wright’s claim raises a substantial question because the Commonwealth has failed to object to this deficiency. **See Commonwealth v. Brougher**, 978 A.2d 373, 375-76 (Pa. Super. 2009) (stating that “claims relating to the discretionary aspects of a sentence are waived if an appellant does not include a Pa.R.A.P. 2119(f) statement in his brief and the opposing party objects”). Thus, we proceed to determine whether Wright’s second discretionary claim raises a substantial question.

Wright contends that the trial court abused its discretion by imposing a minimum sentence at the high end of the standard range. Appellant’s Brief at 8. According to Wright, the trial court stressed the status of the victim as

a correctional officer instead of the slight injury requiring no medical attention and the specific facts and events behind his plea. *Id.* However, this claim does not raise a substantial question. First, Wright offers no argument or citation to authority to support the assertion that focus on the victim of a crime when fashioning a sentence is an abuse of discretion. To the extent Wright is suggesting that by so focusing, the trial court failed to consider certain mitigating factors, the sentencing court's purported failure in this regard does not raise a substantial question to invoke our review. *Commonwealth v. Kane*, 10 A.3d 327, 335-36 (Pa. Super. 2010), *appeal denied*, 612 Pa. 689, 29 A.3d 796 (2011). More importantly, the trial court had the benefit of the presentence investigation report, and therefore, "we can assume the sentencing court was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors." *Commonwealth v. Rhoades*, 8 A.3d 912, 919 (Pa. Super. 2010), *appeal denied*, 611 Pa. 651, 25 A.3d 328 (2011) (citation and quotation marks omitted). Thus, Wright's claim warrants no relief.

Judgment of Sentence affirmed.