

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,032

VS :

CAMERON MONROE DAY II :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated June 29, 2000, wherein the Defendant was sentenced to undergo incarceration for a minimum of twenty (20) years and a maximum of forty (40) years. This sentence was imposed after the Defendant pled guilty of murder in the third degree of his 20-month old stepson.

The child suffered, disusse cerebral hypoxic insult, bilateral cerebral edema, a fractured skull, bilateral retinal hemorrhaging, and respiratory failure as a result of blunt trauma to the head. The Defendant admitted that he had inflicted the injuries that the child suffered.

Defendant filed a post sentence motion on July 6, 2000, which was denied by the Court on July 11, 2000. Defendant filed his appeal on July 20, 2000. On appeal, Defendant argues that the Court erred in not giving adequate weight and consideration to his prompt admission, acceptance of responsibility, waiver of hearings, prompt entry of plea, lack of history of abuse with the child, and his concern for others. Defendant argues further that the Court erred by placing too much emphasis on the negative aspects of the Defendant's past, including a 1980 conviction for cruelty to animals.

Initially, the Court must determine whether Defendant states a substantial question meriting review. See [Commonwealth v. Tuladziecki, 513 Pa. 508, 522 A.2d 17 \(1987\)](#). The determination of whether a particular issue constitutes a substantial

question must be evaluated on a case by case basis. [Commonwealth v. Losch, 369 Pa.Super. 192, 535 A.2d 115 \(1987\)](#). Generally, however, an appeal is allowed where a defendant advances 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." [Id.](#)

The Court would find that Defendant's arguments do not meet either of the above criteria. Defendant's arguments challenge the weight accorded sentencing factors, and as such, they fail to present a substantial question. "A challenge to the weight accorded sentencing factors does not raise a substantial question absent extraordinary circumstances." [Commonwealth v. Breter, 425 Pa.Super. 248, 251, 624 A.2d 661, 662 \(1993\)](#). The Court finds no extraordinary circumstances in this case.

Even if it were found that one or more of Defendant's arguments present a substantial question, the Court would find that the sentence was not an abuse of discretion, in that it neither exceeds the statutory limits nor is manifestly excessive, [Commonwealth v. Martin, 416 Pa.Super. 507, 611 A.2d 731 \(1992\)](#). The longest allowable minimum and maximum sentence for murder of the third degree is twenty to forty years. In determining Defendant's appropriate sentence, the Court was additionally cognizant of the standards set forth in 42 Pa.C.S.A. § 9721(b). That section provides that:

. . . the 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 the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every

case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.

(emphasis added)

The Court considered the Sentencing Guidelines in determining the time of incarceration for the Defendant's offense. The Defendant was found to have, and the Defendant does not dispute that he has a prior record score of five (5). The offense gravity score for murder of the third degree is fourteen (14). The standard guideline range for the offense would therefore be 192 to 240 months.

Although a minimum sentence of 240 months is considered in the aggravated range, see Commonwealth v. Hoover, 342 Pa.Super. 163, 492 A.2d 443, (1985) (a sentence at the bound of the minimum and aggravated ranges belongs in the higher range), the Court determined this sentence to be appropriate after considering all of the factors in this case. The Court would find that it provided adequate reasons on the record for sentencing the Defendant in the aggravated range. See N.T. 6/29/00, pp. 39 – 43. The Court therefore rejects Defendant's argument.

Dated: October 6, 2000

By The Court,

Nancy L. Butts, Judge

xc: William Miele, Esquire (PD)
Kenneth Osokow, Esquire
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges