IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**No. 00-10,207**
	:	**00-10,128**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
ISMAIL BAASIT,	**:**	
Defendant	**:**	**1925(a) Opinion**

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

This opinion is written in support of this Court's Judgment of Sentence dated October 10, 2000 and docketed October 13, 2000. The relevant facts are as follows.

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On December 26, 1999, Jason Bentley and Jennifer Arthur were in Apartment 104 at 25 S. Montour Street in Montoursville when they heard a knock on the door. Mr. Bentley answered the door and three black males forced their way into the apartment. One individual jumped on Mr. Bentley and began punching him and another individual held a knife to Ms. Arthur's throat while the third individual began going through the apartment looking for items to steal. A mac card and $40 were taken from Mr. Bentley's person and a shotgun, rifle, shells for the rifle and a paintball gun were taken from the residence.

Ismail Baasit and Thomas Parker were identified by the police as possible suspects. A photograph of Baasit was shown to Mr. Bentley, who identified Baasit as one of the three individuals involved in the incident. Baasit was Mirandized and interviewed by

the police. In his interview, Baasit stated: (1) he knocked on the door of the apartment; (2) Thomas Parker and Tremont Hill forced their way into the apartment; (3) Parker was the individual who jumped Mr. Bentley; (4) Tremont Hill was the individual who grabbed Ms. Arthur; and (5) Baasit looked through the house for items to steal, taking a rifle, shotgun and paintball gun.

On or about January 21, 2000 the police filed the following charges against the defendant: burglary, conspiracy to commit burglary, robbery-commit or threat to commit a first or second degree felony, criminal trespass, aggravated assault, robbery-take property, theft, receiving stolen property, unlawful restraint, possession of an instrument of crime, false imprisonment, recklessly endangering, and simple assault.

On July 13, 2000, the defendant entered a guilty plea to burglary, conspiracy to commit burglary and robbery in exchange for the dismissal of the remaining charges and the agreement by the Commonwealth that it would not seek any mandatory sentences or sentencing enhancements.

On October 10, 2000, the Court sentenced the defendant to three to six years incarceration in a state correctional institution for robbery, a concurrent three to six years for burglary, and a consecutive one and a half years to four years for conspiracy.

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On or about July 19, 1999, the defendant came in contact with Brian McCloskey, who the defendant had known for a couple years. The defendant engaged in conversation with Mr. McCloskey. During the conversation, the defendant asked Mr. McCloskey if he had any money. Mr. McCloskey said no. The defendant then punched Mr.

McCloskey, rendering him unconscious. When Mr. McCloskey regained consciousness, his pockets were turned inside out but he did not know whether he had any money in his possession prior to being punched out. On July 21, 1999, the police filed the following criminal charges against the defendant: robbery-inflict bodily injury, robbery-take property from another by force however slight, attempted robbery, simple assault, attempted theft, and harassment.

On July 13, 2000, the defendant entered a guilty plea to simple assault and attempted theft in exchange for the remaining counts to be dismissed.

On October 10, 2000, the Court sentenced the defendant to incarceration in a state correctional institution for six months to two years for simple assault and a concurrent three months to one year for attempted theft. The Court ordered this sentence to be served consecutive to the sentence imposed in case number 00-10,207.

The defendant filed a timely notice of appeal. In his concise statement of matters complained of on appeal, the defendant asserts that each of his sentences for simple assault, burglary and robbery were excessive and the aggregate sentences imposed under both cases was excessive under the circumstances.

Imposition of sentence is vested in the discretion of the sentencing judge and will not be disturbed absent a manifest abuse of that discretion. Commonwealth v. Smith, 543 Pa. 566, 673 A.2d 893, 895 (1996); Commonwealth v. Plank, 498 Pa. 144, 145, 445 A.2d 491, 492 (1982); Commonwealth v. Burns, 765 A.2d 1144, 1150 (Pa.Super. 2000). Similarly, a trial judge has discretion to determine whether a given sentence should be consecutive to, or concurrent with, other sentences being imposed.

Commonwealth v. Wellor, 731 A.2d 152, 155 (Pa.Super. 1999); Commonwealth v. Rickabaugh, 706 A.2d 826, 847 (Pa.Super. 1997). A sentencing court has not abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. Smith, supra; Burns, supra.

The record reflects that the Court considered all relevant factors in fashioning the sentenced imposed. The Court had the benefit of a pre-sentence investigation (PSI). The PSI provided a summary of the basic facts of the cases, set forth the defendant's prior record, his educational background, his work history, and a summary of his drug problems. The defendant's prior record score was three. The offense gravity scores were as follows: for burglary and robbery - nine; for conspiracy - eight; for simple assault - three; and for attempted theft - two. The standard sentencing guideline ranges were thirty to forty-two months for burglary and robbery, eighteen to twenty-four months for conspiracy, restorative sanctions to twelve months for simple assault and restorative sanctions to three months for attempted theft. The Court also reviewed the victim impact statements and letters from the defendant and his relatives. Each sentence imposed was within the standard range of the sentencing guidelines, with most being at the low end or in the middle of that ranges.[1] The Court made the burglary and attempted theft sentences concurrent because of the defendant's cooperation with the authorities. The Court also acknowledged the

[1]The only sentence which was at the top of the standard range was the minimum sentence of three months for attempted theft which was concurrent to all the other sentences imposed.

defendant's drug problem and the factor that it likely played in the commission of these crimes. Nevertheless, the Court believed a sentence involving a somewhat lengthy period of state incarceration was appropriate given the severity of the crimes, the defendant's prior criminal record and the fact he had opportunities for rehabilitation in the past which he squandered. N.T. at 31-34.

For the forgoing reasons, the Court believes the sentence was not excessive and that it did not abuse its discretion.

DATE: _____ By The Court,

_____
Kenneth D. Brown, J.

cc: Diane Turner, Esquire
J. Michael Wiley, Esquire
Law Clerk
Superior Court (original & 1)
Work file
Gary Weber, Esquire (Lycoming Reporter)