

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 00-10,338
	:	00-10,339
	:	
vs.	:	CRIMINAL DIVISION
	:	
	:	
ATOM HAMILTON,	:	
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 issued on or about September 22, 2000. The relevant facts are as follows:

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On February 12, 2000 at approximately 12:45 a.m., Defendant knocked on the door of Ruth Hill's apartment. When Ms. Hill, a sixty-nine (69) year old woman, answered the door, Defendant forced his way inside. He pushed Ms. Hill onto the couch. He took off his clothes and then undressed Ms. Hill. Defendant attempted vaginal sex with Ms. Hill, but was unsuccessful. Defendant then turned Ms. Hill over onto her hands and knees and attempted to have intercourse with her "doggie" style. Again, Defendant was unsuccessful. Defendant turned Ms. Hill over onto her back and performed oral sex on her. He then dragged her into the bedroom and had vaginal intercourse with her. When he was finished, he asked Ms. Hill for her money. She claimed she didn't have any. Defendant pushed her down in the living room and she hit her head on the coffee table. Defendant searched for and found Ms. Hill's purse and took \$240 therefrom.

On February 15, 2000, Defendant was arrested and charged with numerous offenses arising out of his contact with Ms. Hill. On May 25, 2000, Defendant pled guilty to rape and burglary. He pled nolo contendere to involuntary deviate sexual intercourse and robbery because he did not recall having oral sex with the victim or pushing her down to obtain her money as he was under the influence of alcohol and/or drugs.

On September 22, 2000, the Court sentenced Defendant to an aggregate term of incarceration of thirteen (13) to twenty-six (26) years in a state correctional institution, consisting of seven (7) to fourteen (14) years for rape, a consecutive six (6) to twelve (12) years for involuntary deviate sexual intercourse, a concurrent two and one-half (2½) years to five (5) years for burglary and a concurrent five and one-half (5½) years to eleven (11) years for robbery.

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On February 13, 2000, at approximately 2:00 a.m., Defendant broke into home of Christi Bowers and her five year old son by taking a hammer or mallet from the garage and breaking a pane of glass in the rear door. He looked around downstairs then went upstairs and turned on the hall light. Ms. Bowers awoke and saw a figure in the entryway of her bedroom with something in his hand. She thought it was Atom Hamilton¹ and shouted, "Atom?" Defendant fled the scene.

Defendant was arrested and charged with burglary, criminal trespass, loitering and prowling at nighttime, and criminal mischief. When Defendant spoke to the

¹Ms. Bowers had known Defendant for several years prior to this incident.

police following his arrest, he claimed he was searching for Ms. Bowers' car keys so he could steal the car and kill himself. On May 25, 2000, Defendant pled guilty to burglary.

On September 22, 2000, the Court sentenced Defendant to incarceration in a state correctional institution for a minimum of three and one-half (3½) years and a maximum of seven (7) years. The Court further directed that the sentence be served consecutively to the sentence imposed in case number 00-10,338.

Defendant filed a motion for reconsideration of sentence, which the Court denied. Defendant then filed a timely notice of appeal.

In his statement of matters complained of on appeal, Defendant asserts the Court erred in failing to give adequate weight to the following: (1) his admission of culpability for the offenses; (2) his unwavering acceptance of responsibility; (3) Defendant's waiver of all hearings; (4) Defendant's entry of a guilty plea; and (5) Defendant's age of twenty-one (21) years. Defendant further asserts the Court abused its discretion in imposing an aggregate sentence of sixteen and one-half (16½) years to thirty-three (33) years and failing to consider the above mitigating factors.

Sentencing matters are vested in the sound discretion of the sentencing judge and will not be disturbed absent an abuse of discretion. Commonwealth v. Plank, 498 Pa. 144, 145, 445 A.2d 491, 492 (1982); Commonwealth v. Burns, 765 A.2d 1144, 1150 (Pa.Super. 2000). The sentencing judge also has discretion to determine whether a sentence should be consecutive to or concurrent with other sentences being imposed. Commonwealth v. Wellor, 731 A.2d 152, 155 (Pa.Super. 1999). 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. Burns, supra at 1150.

The Court does not believe there was any abuse of discretion in the sentences imposed. Defendant had a prior record score of three. The offense gravity score for rape and involuntary deviate sexual intercourse was twelve and the offense gravity score for burglary was nine. Thus, the standard sentencing guideline ranges were sixty-six to eighty-four months for the sex offenses and thirty to forty-two months for the burglary. The Court sentenced Defendant to seven years (or eighty-four months) on the rape conviction, six years (or seventy-two months) for involuntary deviate sexual intercourse and three and one-half years (or forty-two months) for the burglary of Ms. Bowers home. The aggregate sentence was sixteen and one-half years to thirty-three years. The Court recognized this was a lengthy sentence, but felt it was appropriate under the circumstances.

Contrary to Defendant's assertions, the Court did consider Defendant's age, his waiver of hearings, his entry of a guilty plea and the like. N.T., September 22, 2000 at p. 32. The Court, however, found that these factors were outweighed by the following: the seriousness of the crimes; the effect of the crimes on the victims; the age of the rape victim (69 years old); the defendant's prior criminal history and its escalating nature; his failure to take advantage of prior rehabilitation opportunities; and society's interest in protection of the public. N.T., September 22, 2000 at pp. 30-33. Based on the foregoing, the Court does not believe it abused its discretion in sentencing Defendant to an aggregate term of imprisonment of sixteen and one-half to thirty-three years in a state correctional institution.

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: Kenneth Osokow, Esquire (ADA)
William Miele, Esquire
Law Clerk
Work file
Superior Court (original & 1)
Gary Weber, Esquire (Lycoming Reporter)