IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-1968-2016**
	:	
KYIEM BRADSHAW,	**:**	**Motion for Reconsideration**
Defendant	**:**	**of Sentence**

OPINION AND ORDER

Defendant was charged by Information filed on November 18, 2016 with fleeing or attempting to elude a police officer, a felony of the third degree. Defendant elected, with the Commonwealth's consent, during his jury trial to proceed to a non-jury trial. On February 14, 2017 following the non-jury trial, the court convicted Defendant. The court found that the Commonwealth proved the following facts beyond a reasonable doubt.

On September 15, 2016, Defendant was a driver of motor vehicle. Defendant was parked at a gas station in the driver's seat of the vehicle. His hands were on the steering wheel, and the engine was running. Defendant was in actual physical control of the vehicle.

While Defendant was stopped, Officer Jason Dockey of the Williamsport Bureau of Police approached Defendant, as there was a warrant for Defendant's arrest, and twice directed Defendant to turn off the vehicle. Defendant said something to the effect that he didn't do anything wrong or did not have anything. Defendant then fled the scene. As Defendant was fleeing, he sped out of the parking lot around Officer Dockey's vehicle (which was parked in front of him) and out into traffic almost hitting another vehicle. While Defendant was attempting to leave, Officer Dockey attempted to grab the post of the car door and the actual car door itself.

Defendant sped off in an easterly direction at a high rate of speed. He was traveling approximately 60 to 70 mph in a 30 mph zone, and endangered members of the public and other drivers on the highway due to him driving at such a high rate of speed.

On June 14, 2017, the court sentenced Defendant to 15 months to five years' incarceration in a state correctional facility. The court directed this sentence to be served consecutive to Defendant's Columbia County sentence of 13 to 26 months' incarceration for possession of a controlled substance in case number CP-19-CR-890-2016. The incident leading to Defendant's charges in Columbia County occurred on October 25, 2016, approximately a month after Defendant committed his Lycoming County offense.

In Defendant's Columbia County case, he was credited for time served from November 8, 2016 to May 24, 2017. In this case, Defendant was credited from time served from October 26, 2016 to November 7, 2016.

The charge in this case was filed against Defendant on October 12, 2016. Defendant was preliminarily arraigned on October 26, 2016 and subsequently incarcerated in lieu of bail.

On June 21, 2017, Defendant filed a motion for reconsideration of sentence. The argument on said motion was held on July 3, 2017. It was rescheduled from August 1, 2017.

Defendant claims that: (1) the court erred in not awarding him credit for October 25, 2017; and (2) the court, in its discretion, should have run the Lycoming County sentence concurrent to the Columbia County sentence.

Defendant argued that: he "effectively" accepted responsibility for the offense; he attended and completed counseling while incarcerated; he has a family with eight children who he will not be able to support because of not receiving social security disability benefits while incarcerated; he has been trying to do what he can while incarcerated to be a better parent and to humble himself; he understood that his sentence would be 13 months as recommended by the Commonwealth's trial attorney if he agreed to a non-jury trial; and a concurrent sentence would be sufficient to achieve the punishment, deterrence and rehabilitation goals of sentencing.

Prior to sentencing, the court ordered and thoroughly reviewed a pre-sentence investigation report. The standard guideline range was 12 to 18 months given an offense gravity score of a 5 and Defendant's prior record score of a 5. While incarcerated on these charges at the Lycoming County Prison, Defendant was housed in minimum security. He attended a drug and alcohol program, was not a disciplinary problem, and had no write-ups. He did, however, have one warning for unauthorized contact.

Defendant, now 40 years old, started getting into trouble as a juvenile. He was committed to a long term residential treatment program after committing a serious juvenile offense. As an adult, he committed numerous criminal offenses and spent time in county prison facilities, the state motivational boot camp and state prison facilities. His prior adult convictions included among other things, receiving stolen property, theft by unlawful taking, firearms without a license, simple assault, false identification to law enforcement authorities, delivering a controlled substance in 1998, 2007 and 2009, and possessing a controlled

substance in 2004, 2005 and 2016. Defendant's eight children range in age between 6 and 20. Six reside in Philadelphia while two reside in Williamsport.

Defendant's first claim that he should have been given credit for October 25, 2016 can be summarily dismissed. The record is clear that Defendant was not preliminarily arraigned and committed in lieu of bail until October 26, 2016. A defendant is entitled to credit for only time spent incarcerated on an offense. The defendant was not incarcerated on this offense until October 26, 2016. The fact that he was arrested by the police on October 25, 2016 does not entitle him to credit.

It was difficult to discern Defendant's argument with respect to the consecutive nature of his sentence. Defendant did not argue that the court abused its discretion, acted with manifest unreasonableness, partiality, prejudice, bias or ill will. Defendant did not argue that there was a lack of support for the sentence so as to be clearly erroneous. Instead, Defendant, in essence, appealed to the mercy of the court and requested that he be given another opportunity to address the court in order to convince the court, in its discretion, not to impose a consecutive sentence.

Sentencing is a matter vested within the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. ***Commonwealth v. Rush***, 2017 PA Super 141, 2017 Pa. Super. LEXIS 335, *25 (May 11, 2017), *citing* ***Commonwealth v. Crump***, 995 A.2d 1280, 1282 (Pa. Super. 2010); *see also* ***Commonwealth v. Perry***, 32 A.3d 232, 236 (Pa. 2011). "An 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." ***Perry, id*** (internal quotations omitted), *citing* ***Commonwealth v. Walls***, 926 A.2d 957, 961 (Pa. 2007).

In imposing the sentence, "the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant." 42 Pa. C.S.A. § 9721 (b).

The court is also guided by § 9781 (d) of the Judicial Code, which requires appellate courts in reviewing a sentence to determine from the record whether the court considered: "(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the opportunity of the sentencing court to observe the defendant, including any pre-sentence investigation; (3) the findings upon which the sentence was based; and (4) the guidelines promulgated by the commission." 42 Pa. C.S.A. § 9781 (d).

The court considered the relevant factors and imposed a sentence consistent with the law and the court's discretion. While directly appealing to the court's sense of mercy, Defendant indirectly asserts that the consecutive nature of the sentence is unduly harsh or excessive.

In determining if a sentence is excessive or unduly harsh, great weight must be afforded to the sentencing court's discretion. ***Commonwealth v. Colon***, 102 A.3d 1033, 1043 (Pa. Super. 2014), *quoting* ***Commonwealth v. Mouzon***, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

An allegation of excessiveness due to the imposition of consecutive sentences implicates the discretionary aspects of sentencing. ***Commonwealth v. Mastromarino***, 2 A.3d 581, 585 (Pa. Super. 2010).

In this case, the court's consecutive sentence was neither inconsistent with any specific provision of the sentencing code nor contrary to the fundamental norms which underlie the sentencing process. Finally, the aggregate sentence Defendant must serve as a result of the Columbia County and Lycoming County sentences cannot be deemed excessive in light of defendant's criminal conduct at issue and his criminal history.

Defendant fled from police at a high rate of speed, which endangered not only law enforcement officers but numerous members of the public. As he sped out of the gas station lot and into traffic, he nearly hit another vehicle.

The sentence imposed on Defendant was within the guidelines. Defendant's prior record score was capped at a 5, and did not adequately reflect his prior criminal history. 204 Pa. Code §303.5(d). If all of his prior convictions were counted in his prior record score, Defendant's prior record score would have been an 8. Defendant has either been incarcerated or on probation or parole supervision most of his adult life. Approximately a month after this incident, Defendant committed another criminal offense in a different county. Nothing – not treatment programs, probation, county incarceration, state motivational boot camp, state incarceration or even his eight children – has affected Defendant's behaviors or choices. He just keeps committing crimes.

Defendant claims that he has had an epiphany and he is a changed man, but

his criminal actions speak louder than his words. He is still only considering himself and his family. He does not seem to comprehend the dangers that his flight from the police posed to law enforcement officers and the public (including other people's children). Regardless of Defendant's post-arrest efforts at rehabilitation or epiphany regarding how his conduct will collaterally impact his children, he is not entitled to a volume discount. ***Commonwealth v. Prisk***, 13 A.3d 526, 533 (Pa. Super. 2011); ***Commonwealth v. Hoag***, 665 A.2d 1212, 1214 (Pa. Super. 1995).

ORDER

AND NOW, this ___ day of July 2017, following a hearing and argument, Defendant's motion for reconsideration of sentence is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Ken Osokow, Esquire, ADA
Kyle Rude, Esquire
Gary Weber, Lycoming Reporter
Work File