

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-548-2020
	:
vs.	: CRIMINAL DIVISION
	:
	:
ERIC SYLVESTER GRAHAM,	: MOTION TO RECONSIDER SENTENCE
Defendant	:

OPINION AND ORDER

The motion before the court is Defendant's request for reconsideration of sentence filed on August 6, 2021, and argued on November 2, 2021, before this Court.

On May 7, 2021, after a jury had been selected, Defendant entered an open plea to the charges of aggravated assault¹, simple assault², recklessly endangering another person³ disorderly conduct⁴ and the summary charge of harassment⁵. Defendant entered these pleas before the Honorable Marc F Lovecchio⁶. At the time of his plea, Defendant admitted that he acted “recklessly and cause[d] serious bodily injury to the victim who was over the age of 60 at the time”. Guilty plea, 5/7/21, p. 1. Defendant also acknowledged at the time of the plea that his victim, R.D., suffered serious bodily injury. *Id.* At the time of the plea, the Commonwealth placed Defendant on notice that it would be asking for at minimum the mandatory sentence under 42 Pa. C.S.A. § 9717. Judge Lovecchio indicated that all of the remaining charges merged into the aggravated assault, which carried the statutory maximum

¹18 Pa. C.S.A. § 2702(a)(1).

² 18 Pa. C.S.A. § 2701(a)(1).

³ 18 Pa. C.S.A. § 2705.

⁴ 18 Pa. C.S.A. § 5503(a)(1).

⁵ 18 Pa. C.S.A. § 2709(a)(1).

⁶ Judge Lovecchio’s last day of service as an active judge was November 2, 2021.

of 20 years. Judge Lovecchio ordered that a presentence investigation report be prepared, and the sentencing be scheduled for August 4, 2021.

At the sentencing hearing on August 4, Judge Lovecchio determined that Defendant had a prior record score of 2, which would place the standard range for the aggravated assault, with an offense gravity score (OGS) of 11, in the 48-66 month range. The aggravated and mitigated ranges were plus or minus 12 months. The sentencing court reviewed the presentence investigation report, written statement from the victim, the risk needs assessment as well as the video of the incident as it was captured on surveillance video at the grocery store. The Court also heard and considered arguments from both attorneys as well. Judge Lovecchio sentenced Defendant to a sentence of eight (8) to twenty (20) years in a State Correctional Institution. He also found that Defendant was not eligible for RRRI, the State Motivational Boot Camp or the State Drug Treatment Program. In Defendant's motion for reconsideration, Defendant argues that his sentence was excessive in that it "was far beyond the top end of the standard range and well beyond the aggravated range on the charge of aggravated assault". Motion to Reconsider Sentence, 8/6/2021, p. 2. Defendant alleges that the court failed to consider the recommendation made by the Adult Probation office in its pre-sentence investigation and other factors that were presented at the sentencing hearing.

This Court was assigned to hear the motion to reconsider sentence on November 2, 2021. No additional testimony was presented; however, the defense counsel reiterated that the sentence was even greater than the sentence that the Commonwealth had requested that the court impose.

"When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S.A. § 9721(b), that is, the protection of the public, gravity of offense in relation to

impact on victim and community, and rehabilitative needs of the defendant....” *Commonwealth v. Fullin*, 892 A.2d 843, 847 (Pa. Super. 2006) (citation omitted). In a challenge to a judge’s sentence, the defendant “must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.” *Commonwealth v. Conti*, 198 A.3d 1169, 1176 (Pa.Super. 2018). Therefore, this Court must review the record as a whole to determine what the sentencing court chose to consider in both the facts of the case and the character of the defendant.

This Court finds in this case that Judge Lovecchio has properly weighed and considered all of the relevant factors in fashioning Defendant’s sentence. He has considered all of the factors set forth in 42 Pa. C.S.A. § 9721(b). Judge Lovecchio’s sentencing order thoroughly and quite comprehensively lists the factors that he considered and the specific reasons upon which he based his sentence. This Court cannot find that Defendant has established that Judge Lovecchio either ignored or misapplied the law, exercised his judgment out of prejudice, bias or ill will, or was not acting impartially. This Court also finds that, in light of the circumstances of the offense and the evidence presented, Judge Lovecchio did not arrive at a manifestly unreasonable decision. This Court notes that the un rebutted evidence Judge Lovecchio considered was “the history and characteristics of the defendant the court's observations of the defendant” as well as the sentencing guidelines and the information contained in the presentence investigation report. *Sentencing*

Order, at p. 2.

In addition, Judge Lovecchio stressed that he “reli[ed] on the impact of the victim [which] cannot be understated.” *Id.* He further states in his order that the victim suffered

serious physical injuries, which resulted in permanent injury. Id. at p. 3. He also related that the impact of this incident on the victim has changed her life; she has become isolated and is now unable to perform many of the activities that she previously engaged in and has directly impacted her relationship with her family. This Court infers, based upon his comments, that Judge Lovecchio determined that the victim who was once an independent, outgoing self-sufficient woman has clearly had her life altered forever and any sentence he imposed needed to reflect that fact. Finally, it is clear that Judge Lovecchio also considered the rehabilitative needs of Defendant in that he found that Defendant did not accept responsibility for what happened despite the fact that he entered a plea of guilty. He also had the opportunity to review the video and believed that it did not portray the events as Defendant insisted occurred thus supporting his belief that Defendant believed his assault on R.D., a 70-year old woman, was not justified despite Defendant's statements.

ORDER

AND NOW, this ____ day of January 2022, pursuant to Rule 721 of the Pennsylvania Rules of Criminal Procedure this matter must be denied by operation of law.

However, upon review of the record created by Judge Lovecchio, the evidence presented to him at the time of the sentencing hearing, and the justification for his decision as set forth in his guilty plea and sentencing orders, the Motion to Reconsider Sentence filed by Defendant would be DENIED.

Regardless of the reason for the denial, Defendant is advised that he has the right to an appeal within 30 days of the date of this order. As the public defender's office currently represents Defendant, he would continue to be eligible for the services of the public

defender in the preparation and litigation of this appeal. As Defendant's sentence includes imprisonment of 2 years or more, he does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

By The Court,

Nancy L. Butts, President Judge

cc: DA
Tyler Calkins, Esq.
Judge Butts