

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CR-1379-2023
	:	
	:	
vs.	:	CRIMINAL DIVISION
	:	
	:	
DONDRE T. MCMILLAN,	:	
	:	Opinion pursuant to
Defendant.	:	Pa. R.A.P. 1925(a)

OPINION PURSUANT TO RULE 1925 OF THE PENNSYLVANIA RULES OF APPELLATE PROCEDURE

This matter came before the Court for a jury trial on June 21, 2024. Although Dondre T. McMillan (hereinafter “Defendant”) attended jury selection on the previous day (and was personally present when the Court advised the jury that the trial would take place the following day), the Defendant did not appear for trial.

The Commonwealth established at trial that the Defendant sold a quantity of methamphetamine to a confidential informant (who testified personally at trial) on October 12, 2023. After that sale, law enforcement officers pursued the Defendant in an attempt to affect his arrest. After law enforcement activated their emergency vehicle lights, the Defendant accelerated his vehicle on a Lycoming County highway to a very high rate of speed, in an attempt to flee. Eventually, the Defendant’s vehicle collided with one of the law enforcement vehicles. The Defendant then left his vehicle and fled on foot from law enforcement (on bodycam video). After the Defendant was apprehended, law enforcement searched his vehicle and located a large quantity of methamphetamine.

The Defendant was charged with delivery of methamphetamine, possession with intent to deliver methamphetamine (drugs located in his vehicle), criminal use of a communication facility, fleeing or attempting to elude law enforcement, and two counts of aggravated assault (related to the vehicle collision).

At trial, the jury found the Defendant guilty of delivery of methamphetamine, guilty of criminal use of a communication facility, guilty of possession with intent to deliver methamphetamine (drugs located in his vehicle), guilty of fleeing or attempting to elude law enforcement, and not guilty of the two counts of aggravated assault related to the vehicle

collision. Because the Defendant did not appear for the trial (even though he attended jury selection the previous day), the Court issued a bench warrant for his arrest.

The Defendant was eventually apprehended on the bench warrant and appeared for sentencing on November 12, 2024. Although the methamphetamine seized from Defendant's vehicle was a different quantity of drugs from the methamphetamine sold by the Defendant, it was obvious to the Court that the drugs sold were a portion of the drugs seized from his vehicle. For that reason, the Court elected to sentence the Defendant to concurrent sentences for the delivery and the possession of drugs seized from his vehicle.

In the view of the Court, the Defendant's decision to flee law enforcement, both through a high-speed vehicle chase and later through a foot chase, were different in kind from the drug offenses. For that reason, the Court gave the Defendant a consecutive sentence on the charge of fleeing or attempting to elude law enforcement. All sentences were within the established Sentencing Guidelines. A copy of the sentencing Order of November 12, 2024, is attached hereto.

The Defendant filed a Post Sentence Motion on November 27, 2024, and after hearing on January 24, 2025, and based upon argument by counsel for the Commonwealth and counsel for the Defendant, the Court denied that Motion. In response to the Court's Order requiring the Defendant to file a Concise Statement of Matters Complained of on Appeal, the Defendant filed his Statement on March 17, 2025. A copy is attached hereto. The Defendant contends that the Court's sentence for fleeing or attempting to elude a police officer should have run concurrently to the Court's sentences for delivery of methamphetamine and possession of methamphetamine with intent to deliver "because this was one single episode and should [sic] all counts should have been run concurrent."

In the matter of *Commonwealth v. Prisk*, 13 A.3d 526 (Pa. Super. Ct. 2011), our Superior Court observed the following:

Generally, Pennsylvania law "affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. Any challenge to the exercise of this discretion ordinarily does not raise a substantial question." *Commonwealth v. Pass*, 914 A.2d 442, 446-47 (Pa.Super.2006). *See also Commonwealth v. Hoag*, 445 Pa.Super. 455, 665 A.2d 1212, 1214 (1995) (stating appellant is not entitled to "volume discount" for his crimes by having all sentences run concurrently). *But see Commonwealth v. Dodge*, 957 A.2d 1198

(Pa.Super.2008), *appeal denied*, 602 Pa. 662, 980 A.2d 605 (2009) (holding consecutive, standard range sentences on thirty-seven counts of **theft-related offenses** for aggregate sentence of 58 ½ to 124 years' imprisonment constituted virtual life sentence and, thus, was so manifestly excessive as to raise substantial question). “Thus, in our view, the key to resolving the preliminary substantial question inquiry is whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of the criminal conduct at issue in the case.” *Mastromarino, supra* at 587.

13 A.3d at 533; *see, e.g., Commonwealth v. Ventura*, 975 A.2d 1128, 1135 (Pa. Super. Ct. 2009) (internal citation omitted) (“Our Supreme Court has determined that where the trial court is informed by a pre-sentence report, it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that where the court has been so informed, its discretion should not be disturbed.”); *Commonwealth v. Hill*, 210 A.3d 1104, 1117 (Pa. Super. Ct. 2019) (internal citation omitted) (“[W]here a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code.”); *see generally Commonwealth v. Perry*, 32 A.3d 232, 236 (Pa. 2011) (internal citation and quotation omitted) (“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.’”).

In this matter, the Court considered the pre-sentence report and sentenced the Defendant within the Standard Guideline range for delivery of methamphetamine, and ran his sentence for possession with intent to deliver methamphetamine concurrently, within the Standard Guideline range.

Had the Court elected to sentence the Defendant consecutively for the possession with intent to deliver the methamphetamine seized from his vehicle, the sentence (justified by the facts of the case) would have been an aggregate period of incarceration of ten (10) years. Instead, the Court ran the sentences for delivery and possession with intent to deliver concurrently, and sentenced the Defendant to a consecutive sentence (within the Standard Guideline range) for fleeing or attempting to elude law enforcement. As a result, his aggregate minimum period of confinement will be six (6) years.

In the view of this Court, the aggregate sentence is not “[a]n excessive level in light of the criminal conduct at issue in the case.” 13 A.3d at 533.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Prothonotary
Lycoming County District Attorney’s Office (EB)
Howard Gold, Esquire