

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	<b>No.: 1382-2023</b>
	:	
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>FITZGERALD ROBINSON,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Defendant filed a timely Post Sentence Motion in the nature of a Motion to Reconsider Sentence on December 4, 2024. Argument on Defendant’s Motion was held on February 7, 2025. Defendant argues that the Court’s aggregate sentence of eight (8) to 16 years was an abuse of discretion in that it was unduly harsh and manifestly excessive.

***Background***

On September 27, 2024, Fitzgerald Robinson (Defendant) entered an open plea to the charges of Fleeing or Attempting to Elude<sup>1</sup>, a felony of the first degree, Endangering the Welfare of Children<sup>2</sup>, a felony of the second degree, Recklessly Endangering another Person<sup>3</sup>, a misdemeanor of the second degree, Attempted Criminal Trespass<sup>4</sup> and Criminal Trespass<sup>5</sup>, felonies of the third degree and the traffic summaries, Duties at a Stop Sign<sup>6</sup> and Failure to Stop at Red Signal<sup>7</sup>. Defendant acknowledged at his plea that on October 1, 2023 he was at 505 Wilson Street attempting to return his son and when he couldn’t return him, he called 911. While there he began kicking at the door, and the mother of his son was afraid of him and did not open the door. There was an active PFA between the parties at the time. Defendant also took a

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<sup>1</sup> 18 Pa. CSA 3733(a).  
<sup>2</sup> 18 Pa. C.S.A. §4304(a)(1).  
<sup>3</sup> 18 Pa. C.S.A. §2705.  
<sup>4</sup> 18 Pa. C.S.A. §901(a).  
<sup>5</sup> 18 Pa. C.S.A. §901(a).  
<sup>6</sup> 75 Pa. C.S.A. §3323(b).

baseball bat to her vehicle striking it several times, breaking the rear windshield and driver side rear window. He also damaged the driver side mirror and windshield wiper. But when the police came to the scene he drove his vehicle away at a speed greater than for a side street. Despite the officer having activated his emergency lights and siren, Defendant continued to drive in excess of the speed limit, disregarded traffic signs and nearly hit a parked vehicle with its door open. To avoid the vehicle, he drove into the yard of a residence and continued to travel away from the officer. While continuing to travel at a speed greater than posted, Defendant crossed five (5) streets while ignoring stop signs. Defendant continued to travel away from the police and happened to arrive at a green traffic light but ran the next light on red. Once police learned that Defendant's two (2) year old son was in the vehicle, they terminated their pursuit. Defendant then ran one more stop sign and red light. Going through the red light, Defendant's vehicle was struck in the rear by another vehicle causing the Defendant to lose control of his vehicle, where he struck a building and came to rest almost entirely inside of the building. Police were able to recover the two-year-old who was improperly restrained in a booster seat without a seat belt. The Court ordered a presentence investigation report and the sentencing was scheduled November 27, 2024.

At the sentencing hearing on November 27, 2024, the parties agreed that Defendant had a prior record score of a RFEL (Repeat Felony Offender)<sup>8</sup>, which would place the standard range for the fleeing charge at 24-36 months, endangering the welfare of children charge at 40-52 months, recklessly endangering and criminal trespass charges 12-24 months, and criminal mischief charge 24-36 months. The Court reviewed the presentence investigation report, official

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<sup>7</sup> 75 Pa. C.S.A. §3112(a)(3).

<sup>8</sup> (2) Repeat Felony 1 and Felony 2 Offender Category (RFEL). Offenders who have previous convictions or adjudications for Felony 1 and/or Felony 2 offenses which total 6 or more points in the prior record, and who do not

version of the facts, and noted that the Defendant was on probation with Montgomery County at the time of the offense for burglary, criminal trespass and theft charges. While housed at the county prison he received multiple writeups and served almost 200 days of disciplinary lock up time. The Court also reviewed a social assessment prepared by the Public Defender's office which discussed the Defendant's history of mental health and physical challenges. The Court also considered the arguments from both attorneys as well.

The Court sentenced the Defendant on the charge of Fleeing or Attempting to Elude to 2-4 years to be served in a State Correctional Institution, Endangering the Welfare of a Child, 4-8 years and Criminal Mischief 2-4 years with each sentence to run consecutive to the other for an aggregate sentence of 8-16 years to be served in a state correctional facility. At the same time, the Court also accepted the Defendant's plea of guilty to two counts of indirect criminal contempt for letters he sent to the victim as violations of the current PFA. For those violations, the Court sentenced the Defendant to 6 months in jail but allowed those sentences to run concurrently to the sentence in this case.

In Defendant's motion for reconsideration of sentence, he argues that the Court did not give sufficient weight to the Defendant's history and characteristics, age, rehabilitative needs and mental and physical health issues, the lapse of time of the majority of his criminal history, and his mental health diagnoses. Defendant further argued that the sentence was unduly harsh and excessive and that the sentence was not consistent with the need for protection of the public, the gravity of the offense or the effect on the victim. Argument on the Motion to Reconsider was held on February 7, 2025.

### ***Discussion***

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fall within the Repeat Violent Offender Category, shall be classified in the repeat Felony 1 and Felony 2 Offender Category. 204 Pa.C.S.A. § 303.4(a)(2).

Defendant contends that his sentence was manifestly excessive. Defendant also asserts that the court failed to consider the Defendant's history, mental health and physical needs along with his age and rehabilitative needs. "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.

Where the sentencing court is informed by a presentence investigation report ("PSI"), it is presumed that the sentencing court was aware of relevant information regarding the defendant's character and weighed those considerations and the appropriate sentencing factors. *Commonwealth v. Harper*, 273 A.3d 1089, 1097-1098 (Pa. Super. 2022); *Commonwealth v. Hill*, 210 A.3d 1104, 1117 (Pa. Super. 2019). "[W]here the court has been so informed, its discretion should not be disturbed." *Harper*, 273 A.3d at 1098. "Further, where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code. *Hill*, *id* (citing *Commonwealth v. Moury*, 992 A.3d 162, 171 (Pa. Super. 2010)).

This Court finds in this case that the Court has properly weighed and considered all of the relevant factors in fashioning Defendant's sentence. The Court has considered all of the factors

set forth in 42 Pa. C.S.A. § 9721(b). At the sentencing hearing the Court discussed the factors that were considered and the specific reasons upon which the Court based its sentence. *See* Sentencing Transcript, 11/26/24, at 22-27. This Court cannot find that Defendant has established that this Court either ignored or misapplied the law, exercised 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 that the sentence imposed was not manifestly unreasonable. Each of the sentences imposed by the Court were within the standard range and were sentenced consecutively based upon the individual actions of the Defendant and interests to be protected. Defendant, while on supervision with another county, damaged the property of the mother of his child and after calling 911 instead of remaining at the scene drove away from the residence ignoring traffic control devices such as speed limits, stop signs and controlled intersections with an improperly secured small child in the vehicle. Due to the manner in which the vehicle was being driven, the Defendant ultimately crashed into a storage building. The Court found that the amount of confinement was consistent with the need to protect the public from individuals operating vehicles in that manner and his past criminal history, the fact that he was on supervision at the time, how serious what he did that evening was and the impact as expressed by one of the victims at the time of the hearing. The Court considered the fact that Defendant waived his preliminary hearing and pled guilty and sentenced him in the standard range despite there being evidence presented by the Commonwealth to justify an aggravated range sentence.

***Conclusion***

Based upon the foregoing, the Court finds no reason upon which to grant Defendant's Post-Sentence Motion. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30)

days of the date of this Order to the Pennsylvania Superior Court; “(b) the right to assistance of counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and (d) the qualified right to bail under Rule 521(B).”

**ORDER**

AND NOW, this 10th day of March, 2025, based upon the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant’s Post Sentence Motion is DENIED.

Based upon the foregoing, the Court finds no reason upon which to grant Defendant’s Post-Sentence Motion. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order to the Pennsylvania Superior Court; “(b) the right to assistance of counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and (d) the qualified right to bail under Rule 521(B).”

By the Court,

Nancy L. Butts, President Judge

xc: DA (PY)  
Taylor Paulhamus, Esq.  
Jerri Rook