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PLJ

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Matthews International Corporation d/b/a Gibraltar Mausoleum Construction Company v. Floral Hills Memory Gardens

Personal Jurisdiction

No personal jurisdiction in Pennsylvania where project site and all work completed in Ohio and where the only Pennsylvania contacts were phone calls, emails and written correspondence.

No. GD-16-016702. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—March 25, 2017.

MEMORANDUM ORDER

After Argument and review of the pleadings and the cases cited, I am of the opinion that personal jurisdiction of this matter is not in Pennsylvania.

Specifically the project is in Ohio and all the work was done in Ohio. The only Pennsylvania contact is telephone calls, e-mails and written correspondence. I do not believe this kind of contact satisfies the cases relied on by Plaintiff, specifically *GMAC v. Keller*, 737 A.2d 279.

I believe that *Hall-Woolford Tank Company vs. R.F. Kilns*, 698 A.2d 80 and *Fidelity Leasing v. Limestone County Board of Education*, 758 A.2d 1207 are more apposite than *Keller*.

Thus, I GRANT the Preliminary Objections of Floral Hills Memory Gardens and DISMISS the Complaint.

SO ORDERED,
/s/O'Reilly, S.J.

Date: April 25, 2017

Richard B. Sandow, Esquire, John P. Corcoran, Jr., Esquire, and Michael A. Carr, Esquire, t/d/b/a Jones, Gregg, Creehan & Gerace, LLP v. Richard Hvizdak

Judgment Non Pros—Waiver

Entry of Judgment of Non Pros on counterclaim correct. Defendant waived counterclaim where he failed to file a Petition Requesting Relief from Judgment of Non Pros under Pa.R.C.P. 3051.

No. GD 16-006580. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—April 28, 2017.

OPINION

This appeal arises from a Judgment of Non Pros entered on February 10, 2017 in favor of Plaintiffs Richard B. Sandow, Esquire, John P. Corcoran, Esquire, Michael A. Carr, Esquire t/d/b/a Jones, Gregg, Creehan & Gerace, LLP ("hereinafter "the law firm") and against Richard Hvizdak, Appellant/Defendant (Appellant/Plaintiff for Appeal/Counterclaim purposes) for his failure to file a Certificate of Merit.

The law firm is a group of attorneys who filed a Complaint against Mr. Hvizdak in April of 2016 for failing to pay legal bills. Mr. Hvizdak filed Preliminary Objections on June 20, 2016. I overruled his Preliminary Objections and ordered him to file an Answer to the law firm's Compliant. Mr. Hvizdak filed an Answer, New Matter and a Counterclaim on September 7, 2016. On February 10, 2017, the law firm filed a "Praecipe for Entry of Judgment of Non Pros on Defendant's Counterclaim Pursuant to Rule 1042.12" for Mr. Hvizdak's failure to file a Certificate of Merit in his Counterclaim. Mr. Hvizdak did not file a Certificate of Merit so this entry was proper. Mr. Hvizdak appealed the Judgment of Non Pros on March 7, 2017.

First and foremost, Mr. Hvizdak has no substantive claims to appeal since he failed to file a Petition requesting Relief from Judgment of Non Pros. Pa. R.C.P. 3051 states:

> (a) Relief from a judgment of Non Pros shall be sought by petition. All grounds for relief, whether to strike off the judgment or open it, must be asserted in a single petition.

The Supreme Court of Pennsylvania concluded in *Sahutsky v. H.H. Knoebel Sons*, 782 A.2d 993 (Pa. 2001), that Rule 3051 requires a petition to open or strike with regard to all types of judgments of non pros. They also examined the consequence of failing to file such a petition. The Supreme Court specifically held that the failure to file a Rule 3051 petition operates as a waiver of any claims of error concerning the judgment of non pros entered by the Court of Common Pleas. In making this determination, the Supreme Court dismissed the appellant's argument that an appellate court should quash an appeal as interlocutory, instead of finding the claims to be waived, when an appellant fails to file a petition to open or strike a judgment of non pros. When an appellant files an appeal directly from a judgment of non pros, "quashal is inappropriate [,] the proper consequence of the failure to file a Rule 3051 petition is a waiver of the substantive claims that would be raised." *Sahutsky*, 782 A.2d at 1001 n. 3.

Therefore, based upon the foregoing, the entry of Judgment of Non Pros on Mr. Hvizdak's Counterclaim was proper. Mr. Hvizdak has waived any substantive claims.

BY THE COURT:
/s/O'Reilly, S.J.

Date: April 28, 2017

Laurel Crest Development, Inc. v.
Timothy Cowan and Margaret Cowan v.
Thomas R. Bueche

Boundary Law—Vacated Street—Evidence of Claims—Local Ordinance (Zoning/Building)

Court dismissed Complaint seeking ownership of entire street and denied reference in order to local ordinance as separate litigation.

No. GD 10-12098. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—May 25, 2017.

MEMORANDUM ORDER

This matter involves a disputed "paper street" that abuts the properties of the parties herein. They are: Laurel Crest Development, Inc. ("Laurel Crest"), Timothy and Margaret Cowan ("the Cowans") and Thomas R. Bueche ("Bueche").

On November 19, 2014 I entered an order wherein I found that the Plaintiffs claim to the entire 40 foot width of a vacated "paper street" known as Tucker Street, was unsupported by sufficient evidence. I did find that Plaintiffs owned 20 feet of the vacated street to the center line thereof and the Defendants herein owned the other 20 feet.

In that Opinion I found that a shed of defendant Cowan was adjacent to the center line of the vacated street and I used that shed as a point of reference for the center line of the vacated street. At that time, I believed that by using that point of reference, Defendant Bueche's shed was over the center line and on Plaintiff's portion of the vacated street *and* that 3 trees that Defendant Bueche had cut were also on Plaintiff's portion.

At that time, I also said "with respect to the encroachment that I found by Bueche, I will take this up after any appeal by Laurel Crest is decides, which I suspect will be filed" **(See Opinion, page 6, attached hereto as Exhibit A.)**

An appeal to the Superior Court was indeed taken but in view of my comment that I would take the Bueche matters up "later", the Superior Court found that there was *not* a Final judgment in the case and therefore remanded the matter back to me.

Thereafter, I held conferences with the parties and counsel for Bueche asserted that a survey of the Bueche property would reveal that he had not encroached on Laurel Crest. Such survey was indeed done on August 30, 2016 and submitted to me. The parties did nothing thereafter until in March 2017, counsel for Laurel Crest inquired of my office the status of the case.

I thereafter scheduled a hearing on April 18, 2017 at which the August 20, 2016 survey was received in evidence. Counsel also argued that the survey showed that Bueche has *not* encroached on Laurel Crest. The Plaintiff argued otherwise and also continued to asset my basic decision was flawed and indicated it would appeal again once this interlocutory matter was resolved.

Based on a review of the specific survey of Bueche's property, which survey was not before initially, I am now satisfied that Bueche's shed is properly located on his portion of the vacated street and his felling of the 3 trees, claimed by Laurel Crest. was indeed lawful.

Thus I find that Laurel Crest does *not* own the 20 feet of Tucker Street on which Bueche has placed his shed and cut down trees. Accordingly, my prior order as to Bueche's ownership of the 20 feet portion is vacated and the complaint of Laurel Crest is dismissed.

At the latest conference, counsel for Laurel Crest asked that I add language to the effect that Bueche is still subject to local ordinance as to this part of the vacated street. I said I would do so.

However, on second thought, I do not believe that to be appropriate since it seems to be seeking pre-judgment determination as to the propriety of the placement of Bueche's shed and fence on the 20 foot portion. If in fact, this shed or fence is in violation of any local ordinance, that would have to be decided in any separate litigation that may ensue and it is totally *de hors* the record in this case.

On April 19, 2017, I gave counsel notice of my "second thought" and offered him an opportunity to respond. He did not and thus this order does not address any local ordinance issue that may apply to where Bueche placed his shed.

BY THE COURT,
/s/O'Reilly, S.J.

Date: May 25, 2017

EXHIBIT A

Laurel Crest Development, Inc. v.
Timothy Cowan and Margaret Cowan v.
Thomas R. Bueche

OPINION

O'Reilly J. November 19, 2014

Plaintiff Laurel Crest Development, Inc., ("Laurel Crest") initiated this action in Ejectment against Defendants Timothy and Margaret Cowan ("the Cowans") and Thomas R. Bueche in an attempt to have them remove items from the Property at issue, a 40 feet wide, paper street known as Tucker Street. Laurel Crest is the owner of the land known as the Laurel Crest Development, a 3.895 acre parcel of land located on the westerly side of Tucker Street, located in Harrison Township. It contains a condominium development. The Defendants own parcels of land located in the Wilburt Park Plan of Acres ("Wilburt Park"). Tucker Street serves as a divider between Laurel Crest and Wilburt Park. Since 1950, pursuant to a written right-of-way Agreement between T.W. Phillips Gas and Oil Company and the then property owners, a main gas line is installed in the easterly half of Tucker Street running adjacent to the Defendants' properties. Laurel Crest claims ownership of the full width of Tucker Street. They allege that even if they only own half of it, the Defendants have encroached upon it.

After a non-jury trial on September 9-10, 2013, I found for Defendants and against Laurel Crest. As to Defendants' Counterclaim, I found in favor of Defendants and against Laurel Crest, my Memorandum Order is attached hereto as Exhibit A. Laurel Crest filed a Motion for Judgment Notwithstanding the Verdict, an amendment or modification of the verdict or a new trial. Laurel Crest asserts in its Motion for Post-Trial Relief certain allegations of error. Each allegation of error is ultimately grounded in Laurel Crest's contention that the Court may not, given the facts of this case, find that the Defendants own half (20 feet) of Tucker Street. They allege that Defendants should be estopped from the use and enjoyment of the Property.

During the trial, the testimony established that the Defendants have maintained and used the easterly 20 feet of Tucker Street for their personal use and enjoyment. The Cowans testified that they had their property surveyed to properly determine the placement of a garden storage shed: They secured a written right-of-way agreement to enable T.W. Phillips Gas and Oil Co. to install, maintain and/or relocate the main gas line located within Tucker Street. That Agreement permitted the Cowans to keep their storage shed and T.W. Phillips re-routed the gas line around it. Mr. Bueche testified that in 2010 he secured a certified survey which reinforced his belief that Tucker Street was adjacent to the westerly line of his property. He noted that he received oral permission from T.W. Phillips Gas and Oil Co. to place decorative fencing on the rear most section of his property on the easterly side of Tucker Street. Charles Means, the Township solicitor, opined that the Defendants own in fee to the center point of Tucker Street. Stanley Graff, a registered surveyor testified that "in, on and over" may be distinguished from "adjacent to" when referencing the language of a right-of-way agreement. He further explained that Tucker Street has never been formally dedicated or developed. Daniel Martone also testified for the Defendants and stated that it is not clear what "adjacent" means in a deed or right-of-way description. He concluded that the totality of the circumstances supports the location of Tucker Street to be fully adjacent to the westerly line of Wilburt Park. The testimony established that Tucker Street was never developed, opened or accepted by the Township as a street or road so it is not a public way.

On December 20, 2013, Laurel Crest filed a Motion for Post-Trial Relief and on May 21, 2014, I heard arguments. Laurel Crest seeks a Judgment Notwithstanding the Verdict, an amendment or modification of the verdict or a new trial.

A JNOV can be entered upon either of two bases: (1) where the movant is entitled to judgment as a matter of law; and/or (2) where the evidence was such that no two reasonable minds could disagree that the verdict should have been rendered for the movant. *Parker v. Freilich*, 803 A.2d 738, 744 (Pa. Super. 2002).

Laurel Crest seeks ejectment of Defendants from their Property and the removal of the Cowans' shed (and other fixtures). They also seek the removal of Mr. Bueche's fence from the right-of-way. In an action in ejectment the plaintiff has the burden of establishing a right to possession of the premises. *Lampenfeld v. Seitz*, 676 A.2d 684 (Pa. Super. 1996).

Laurel Crest first claims that the right-of-way is an easement and therefore, must be located on the parties' lots, rather than on a separate parcel between the parties' lots. They allege that the Court's conclusion that the Tucker Street right-of-way is on a separate property between the parties' properties is not supportable. Laurel Crest also notes that the language of the deeds describes the right-of-way as "covering" a portion of land "within" the Defendants' properties, not separate or adjacent to Defendants' properties. However, the first known reference to what is now known as Tucker Street, comes from the 1914 deed of transfer from George H. Burtner, et. ux. to William F. Burtner. That reference is included in all deeds within the chain of title until the most recent. That chain of title refers to all conveyances made and accepted under and subject to the easement or right-of-way in, on and over the ground abutting or adjacent to the westerly line of the Wilburt Park Plan of Acres at Deed Book Volume 380, Page 722 (Plaintiff's Trial Exhibit 19). Mr. Martone relied on the totality of the circumstances and the information that was available when he determined the location of Tucker Street. He concluded that it is fully adjacent to the westerly line of the Wilburt Park Plan of Acres.

Laurel Crest also argues that the T.W. Phillips right-of-way and location of the Gas Line are irrelevant to a determination of the issues in this case. However, I find that the best determination on how Tucker Street was created is relative to the Cowans' garden shed that was involved when a gas line was installed. Defendants' Exhibit 14, is a drawing of the gas line and the Cowans' garden shed. When the gas line approached the Cowans' garden shed, the line took a "jog" around it and did not require the shed to be moved. The drawing accurately shows the shed, the line and the location of Tucker Street.

Tucker Street is an abandoned public street that has not been opened or accepted by the Township. When a municipality does not open a street within 21 years of its dedication to the public, abutting lot owners acquire in fee in the street to the center line. *Leininger v. Trapizona*, 645 A.2d 437 (Pa. Cmwlth. 1994). It was established in *Rahn v. Hess*, 106 A.2d 461 (Pa. 1954) that the phrase "owner or owners" refers to the abutting lot owners. Additionally, Title 36, Section 1961, recognizes that an abandoned public street or right-of-way is lost after 21 years if it is no accepted by the municipality, but the private right-of-way is not lost to abutting property owners. In the instant case, for over 50 years, the land owners along Tucker Street have maintained and used the land without interruption.

Based upon the foregoing, the Defendants in this case have the right of access to use, cross or enter on and over the abandoned public street commonly known as Tucker Street. The Defendants and other property owners along Tucker Street have maintained the gas line and the Tucker Street right-of-way. They have planted vegetable and flower gardens and constructed storage sheds and fences. It is clear that they recognize and believe that Tucker Street is never going to be developed, opened or accepted by the municipality. Subject to the T.W. Phillips Gas and Oil Co. right-of-way, Defendants are the owners in fee of 20 feet of Tucker Street. As was confirmed by my view of the premises, the edge of the Cowans' shed is adjacent to the center line of Tucker Street. However, my view also suggested to me that Mr. Bueche's shed was over the line and not on his portion of Tucker Street. The center line of Tucker Street is to be established by reference to the Cowans' shed. If Mr. Bueche's shed is beyond the line, then he is into Laurel Crest's land and the shed must be moved back. The Court's ruling will stand.

With respect to the encroachment that I found by Bueche, I will take this up after any Appeal by Laurel Crest is decided, which I suspect will be filed.

SO ORDERED
BY THE COURT:
/s/O'Reilly, J.

Date: November 19, 2014

Commonwealth of Pennsylvania v. Rocky Antill

Criminal Appeal—Sentencing (Discretionary Aspects)—Child Sex Offenses—voir dire Question—Opinion Testimony by Layman—Character Evidence

Court held that voir dire question asking if juror can convict based upon victim testimony alone is not improper.

No. CP-02-CR-08977-2016. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division. Rangos, J.—April 17, 2018.

OPINION

On July 10, 2017[1], a jury convicted Appellant, Rocky Antill, of one count each of Rape of a Child[2], Involuntary Deviate Sexual Intercourse (IDSI) with a Child[3], Aggravated Indecent Assault[4], Unlawful Contact With a Minor[5], Indecent Assault-Person Less than 13 Years of Age[6], Endangering the Welfare of Children[7], and Corruption of Minors.[8] This Court sentenced Appellant on December 11, 2017, to an aggregate term of 200 to 450 months incarceration and a consecutive term of 10 years of probation. On January 3, 2016, this Court denied Appellant's Post-Sentence Motion. Appellant filed a Notice of Appeal on February 2, 2016 and his Statement of Errors Complained of on Appeal on March 12, 2018.

MATTERS COMPLAINED OF ON APPEAL

Appellant alleges four errors on appeal. First, Appellant alleges that this Court abused its discretion by permitting an improper *voir dire* question. Next, Appellant alleges that this Court erred by granting a motion *in* limine to exclude evidence. Appellant further alleges that this Court erred in permitting opinion testimony by a lay witness. Lastly, Appellant alleges that his sentence is excessive and that this Court failed to place on the record the reasons for the sentence imposed. (Statement of Errors to be Raised on Appeal, p. 3-5, unnumbered)

DISCUSSION

Appellant alleges that this Court abused its discretion by permitting the following *voir dire* question: "Under Pennsylvania law, a victim's testimony standing alone, if believed by you, is sufficient proof to find the defendant guilty in a sexual assault case. Are you able to follow this principle of law?" Appellant argued in his "Objection to Commonwealth's Proposed Voir Dire Questions" that this question was improper because *voir dire* is not intended to provide a basis for exercising peremptory challenges. Further, Appellant asserts that *voir* dire may not include questions covering subject matter falling within the province of the court. Appellant asserts that the question is more appropriate as a jury instruction, if reasonably related to the circumstances of the case. Appellant asserts that the question is at best, an incomplete statement of the law, and is confusing to jurors because it suggests that an accuser's testimony should be given greater weight than other witnesses.

This Court allowed the *voir dire* question as it is an accurate statement of the law and, based on prior experience in these types of cases, aides in the selection of competent and fair jurors.

> The singular purpose of *voir dire* examination is to secure a competent, fair, impartial and unprejudiced jury. In pursuit of that objective, the right of a litigant to inquire into bias or any other subject which bear on the impartiality of a prospective juror has been generally recognized. Nevertheless, the scope of *voir dire* examination rests in the sound discretion of the trial judge and [her] decisions will not be reversed unless there is an abuse of that discretion.

Commonwealth v. Futch, 366 A.2d 246, 248 (Pa. 1976). The proposed question delves into the potential bias of a juror who may be unable to follow the law that, in a case like this one, a victim's testimony on its own, if believed, is sufficient to find a defendant guilty. As such, this Court did not abuse its discretion in permitting the question.[9]

Next, Appellant alleges that this Court erred by granting a motion *in* limine to exclude evidence of an occasion in which the victim in this case was escorted home by police officers after having been found near the river with a group a friends. Appellant argues that this evidence, in addition to testimony that Appellant did not physically discipline her afterwards, would undermine her credibility regarding her testimony that she delayed reporting abuse by Appellant because she feared his physical discipline repercussions.

This Court ruled that the probative value of the proposed testimony was outweighed by its danger of unfair prejudice. This Court ruled that counsel was "trying to unduly prejudice the jury by bringing in that she was involved in some murky way. I don't think that it is relevant in any way." (Jury Trial Transcript, Volume I, hereinafter TT1, at 5) This issue is governed by Pa.R.E. Rule 403, which states:

> Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons
>
> The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.
>
> *Comment*: Pa.R.E. 403 differs from F.R.E. 403. The Federal Rule provides that relevant evidence may be excluded if its probative value is "substantially outweighed." Pa.R.E. 403 eliminates the word "substantially" to conform the text of the rule more closely to Pennsylvania law. *See Commonwealth v. Boyle*, 498 Pa. 486, 447 A.2d 250 (1982).
>
> "Unfair prejudice" means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially.

Pa.R.E. 403. Furthermore,

> "Evidence is admissible if it is relevant—that is, if it tends to establish a material fact, makes a fact at issue more or less probable, or supports a reasonable inference supporting a material fact—and its probative value outweighs the likelihood of unfair prejudice." *Commonwealth v. Boczkowski*, 577 Pa. 421, 846 A.2d 75, 88 (2004) (citations omitted). Admissibility of evidence is within the sound discretion of the trial court and we will not disturb an evidentiary ruling absent an abuse of that discretion. *Commonwealth v. Arrington*, 624 Pa. 506, 86 A.3d 831, 842 (2014), *citing Commonwealth v. Flor*, 606

> Pa. 384, 998 A.2d 606, 623 (2010). Moreover, "evidence of prior bad acts, while generally not admissible to prove bad character or criminal propensity, is admissible when proffered for some other relevant purpose so long as the probative value outweighs the prejudicial effect." *Boczkowski*, 846 A.2d at 88. See also Arrington, 86 A.3d at 842, citing Pa.R.E. 404(b)(1); *Commonwealth v. Morris*, 493 Pa. 164, 425 A.2d 715, 720 (1981) (law does not allow use of evidence which tends solely to prove accused has "criminal disposition"). Such evidence may be admitted to show motive, identity, lack of accident or common plan or scheme. Arrington, 86 A.3d at 842, citing Pa.R.E. 404(b)(2); *Commonwealth v. Briggs*, 608 Pa. 430, 12 A.3d 291, 337 (2011) (Rule 404(b)(2) permits other acts evidence to prove motive, lack of accident, common plan or scheme and identity). In order for other crimes evidence to be admissible, its probative value must outweigh its potential for unfair prejudice against the defendant, Pa.R.E. 404 (b)(2), and a comparison of the crimes proffered must show a logical connection between them and the crime currently charged. Arrington, 86 A.3d at 842.

Commonwealth v. Hicks, 156 A.3d 1114, 1125, (Pa. 2017) *cert. denied sub nom. Hicks v. Pennsylvania*, 138 S. Ct. 176, (2017). Appellant argues that the probative value is significant because it established that Appellant was not physically abusive regardless of the circumstances. However, this Court noted that not only is it already of record that Appellant was never physically abusive to the victim, the severity of the incident at the river is unclear. Although the victim was brought home by the police, she was not charged with a crime and may have simply received a ride home for her own safety. This line of questioning would have unnecessarily attacked the character of the victim regarding an unrelated incident to make a point that was already made by other evidence. As the probative value was minimal and outweighed by the prejudicial effect, this Court did not err in precluding the evidence.

Appellant further alleges that this Court erred in permitting opinion testimony by a lay witness. This Court permitted Detective Mayer to testify, based on his training and extensive experience, as to some of the reasons child victims of sexual abuse may not promptly report the abuse. Detective Mayer testified that he has been a police officer for 25 years and has spent the past 11 years investigating "hundreds and thousands" of child sexual and physical abuse cases. (Jury Trial Transcript, Volume II, July 6, 2017, hereinafter "TT2" at 147) This Court permitted the Officer to testify to his experience of past investigations of sexual abuse and the reasons that victims generally gave for failing to promptly to report. The Officer testified that younger victims in previous cases he has investigated felt confused or embarrassed or concerned about what would happen, especially when the perpetrator was a family member. (Jury Trial Transcript, Volume III, July 7, 2017, hereinafter "TT3" at 8) Detective Mayer did not offer an opinion as to any reason this particular victim failed to promptly report. Therefore, this Court properly concluded that his testimony was not impermissible opinion testimony.

Lastly, Appellant alleges that his sentence is excessive and that this Court failed to place on the record the reasons for the sentence imposed. Appellant further alleges that this Court abused its discretion by failing to consider all the required sentencing factors set forth in 42 Pa.C.S. § 9721 (b), which states:

> (b) General standards.--In selecting from the alternatives set forth in subsection (a), the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing and taking effect under section 2155 (relating to publication of guidelines for sentencing, resentencing and parole and recommitment ranges following revocation). In every case in which the court imposes a sentence for a felony or misdemeanor, modifies a sentence, resentences an offender following revocation of probation, county intermediate punishment or State intermediate punishment or resentences following remand, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. In every case where the court imposes a sentence or resentence outside the guidelines adopted by the Pennsylvania Commission on Sentencing under sections 2154 (relating to adoption of guidelines for sentencing), 2154.1 (relating to adoption of guidelines for county intermediate punishment), 2154.2 (relating to adoption of guidelines for State intermediate punishment), 2154.3 (relating to adoption of guidelines for fines), 2154.4 (relating to adoption of guidelines for resentencing) and 2154.5 (relating to adoption of guidelines for parole) and made effective under section 2155, the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines to the commission, as established under section 2153(a)(14) (relating to powers and duties). Failure to comply shall be grounds for vacating the sentence or resentence and resentencing the defendant.

42 Pa.C.S. § 9721 (b).

Appellant alleges that this Court abused its discretion by imposing a manifestly excessive sentence of 200 to 450 months.

In order to address an alleged sentencing error, Appellant must first establish a substantial question that his sentence is 1) inconsistent with a specific provision of the Sentencing Code; or 2) contrary to the fundamental norms which underlie the sentencing process. *Id.* at 364. 42 Pa.C.S. §9781(b); *Commonwealth v. Urrutia*, 653 A.2d 706, 710 (Pa. Super. 1995). This determination is evaluated on a case by case basis. *Commonwealth v. House*, 537 A.2d 361, 364 (Pa. Super. 1988). It is appropriate to allow an appeal "where an appellant advances a colorable argument that the trial judge's actions were: (1) inconsistent with a specific provision of the sentencing code; or (2) contrary to the fundamental norms which underlie the sentencing process." *Commonwealth v. Losch*, 535 A.2d 115, 119-120 n. 7 (Pa. Super. 1987).

Generally, a bald claim of excessiveness will not raise a substantial question. *See Commonwealth v. Moury*, 992 A.2d 162, 171–172 (Pa. Super.2010). However, "[a] claim that a sentence is manifestly excessive such that it constitutes too severe a punishment raises a substantial question." *Commonwealth v. Derry*, 150 A.3d 987, 995 (Pa. Super. 2016). Appellant's allegation that this Court failed to place a statement of reasons on the record for the sentence constitutes a substantial question. As such, this Court will address Appellant's sentence in greater detail.

The standard of review with respect to sentencing is whether the sentencing court abused its discretion. *Commonwealth v. Smith*, 673 A.2d 893, 895 (Pa. 1996). A 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." *Id.* It is not an abuse of discretion if the appellate court may have reached a different conclusion. *Grady v. Frito-Lay, Inc.*, 613 A.2d 1038, 1046 (Pa. 2003). Appellant's mere unhappiness with his sentence does not constitute grounds for relief. "Since the court more than adequately considered the pertinent sentencing factors and merely weighed them in a manner inconsistent with Appellant's desires, we find his [only] issue does not entitle him to relief." *Commonwealth v. Dodge*, 77 A.3d 1263, 1276 (Pa. Super. 2013).

The record reflects that at the sentencing hearing, this Court considered the pre-sentence report, the 42 Pa.C.S. § 9721(b) factors, as well as the totality of information presented to fashion an individualized sentence. (Transcript of Sentencing Hearing, Dec. 11, 2017, hereinafter "ST" at 47) The Pennsylvania Supreme Court has held:

> Where pre-sentence reports exist, we shall continue to presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors…Having been informed by the pre-sentence report, the sentencing court's discretion should not be disturbed.

Commonwealth v. Devers, 546 A.2d 12, 18 (Pa.Super. 1988).

This Court stated its reasons for sentencing Appellant to a standard range sentence as follows:

> I have reviewed the pre-sentence investigation report and considered its history, which does include some evidence of aggressive, assaultive behavior based on the criminal record and the PFA violation. That would be consistent with the trial testimony as well.
>
> I have also considered the memorandum in aid of sentencing [prepared by trial counsel for Appellant] as well as the evaluative report of the SOA[B] as we have discussed.
>
> And the SOA[B] report does note that his behavior is predatory. He violated a position of trust and continued to do so by threats to keep [the victim] quiet.
>
> In light of all of the factors, including the fact that he does not have a history of mental health or drug and alcohol by his report, his rehabilitative needs appear to be centered around his sexually assaultive behavior.

(ST 47-48) As illustrated above, this Court did not impose a manifestly excessive sentence, it considered the sentencing factors of 42 Pa.C.S. § 9721 and placed on record its statement of reasons for the sentence imposed. Therefore, Appellant's final claim is without merit.

CONCLUSION

For all of the above reasons, no reversible error occurred and the findings and rulings of this Court should be AFFIRMED.

BY THE COURT:
/s/Rangos, J.

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[1] On March 10, 2017, a jury found Appellant not guilty of Recklessly Endangering Another Person, 18 Pa.C.S. § 2705, but was unable to reach a verdict on the remaining counts. This Court declared a mistrial and the case proceeded to a second trial.

[2] 18 Pa.C.S. § 3121 (c).

[3] 18 Pa.C.S. § 3123 (b).

[4] 18 Pa. C.S. § 3125 (a) (1) and (b).

[5] 18 Pa.C.S. § 6318 (a) (1) and (b) (1).

[6] 18 Pa.C.S. §3126 (a) (7).

[7] 18 Pa.C.S. § 4304 (a) (1).

[8] 18 Pa.C.S. § 6301 (a) (1).

[9] This Court further notes that this question would not provide a basis for a peremptory challenge, as it relates to a juror's ability to follow the law and this Court's instructions, but rather would lead to a strike for cause.