PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

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PLJ

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Opinions

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Commonwealth of Pennsylvania v. Antoine Harris*

Criminal Appeal

Court properly and adequately considered all relevant sentencing criteria.

No. CC 201900775. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Cashman, J.—October 13, 2021.

OPINION

Appellant, Antoine Harris (hereinafter referred to as, "Harris"), was charged with one count of criminal attempt – homicide (18 Pa.C.S. § 901(a)); one count of aggravated assault – attempt to cause serious bodily injury (18 Pa.C.S. § 2702(a)(1)); one count of persons not to possess a firearm (18 Pa.C.S. § 6105(a)(1)); one count of strangulation (18 Pa.C.S. § 2718(a)(1)); one count of carrying a firearm without a license (18 Pa.C.S. § 6106(a)(1)); one count of terroristic threats (18 Pa.C.S. § 2706(a)(1)); one count of unlawful restraint (18 Pa.C.S. § 2902(a)); and one count of recklessly endangering another person (18 Pa.C.S. § 2705). The charges arose from an incident that occurred in 2018 in the City of Pittsburgh.

On December 9, 2018, at approximately 5:00 p.m., Pittsburgh Police responded to 1148 Woods Run Avenue for a report of a violent domestic. Upon arrival, officers made contact with the victim who was identified as* (hereinafter referred to as, "victim"). The victim told officers that her boyfriend, Antoine Harris, confronted her in the couple's second-floor bedroom and accused her of sleeping with one of his relatives. During the confrontation, Harris pushed the victim onto the bed, produced a .45 caliber semi-automatic handgun from his waistband, pointed it to her temple, and stated, "bitch, I'll kill you."

The victim attempted to grab the firearm from Harris's hand, at which time Harris proceeded to fire one round into the bed directly next to the victim's head. The victim again attempted to grab the firearm from Harris's hand, and, during the struggle, the magazine fell out of the firearm. Not realizing that the magazine had been ejected from the firearm, Harris proceeded to pull the trigger two more times in an attempt to shoot the victim. During the struggle, Harris also placed his hands around the victim's neck, which prevented her from being able to breathe.

At some point during the altercation between Harris and the victim, the victim's juvenile daughter entered the residence and heard the commotion. The victim's daughter pulled Harris off her mother and chased him out of the residence, at which time Harris fled the scene on foot. Officers eventually located Harris walking along the side of the road a short distance from where the incident had occurred and took him into custody.

During their initial interview of the victim, officers observed lacerations on her hand which were consistent with the type of injury one might sustain from coming into contact with a moving firearm slide. Officers also observed redness on the victim's forehead which was consistent with the muzzle of a firearm being placed against her temple. The victim told police that the firearm was still on the mattress in the bedroom and that Harris had taken the magazine with him when he fled. Officers searched the bedroom where the struggle had occurred and discovered the firearm lying on the bed with the magazine missing. Officers also observed dried blood spots on the bed where the incident occurred, as well as on the bedroom window blinds.

On December 16, 2019, Harris pled guilty to all charges. He thereafter proceeded to sentencing before this Court on March 12, 2020. This Court sentenced Harris to a period of ten (10) to twenty-five (25) years' incarceration in relation to the attempted homicide charge; five (5) to ten (10) years' incarceration, followed by five (5) years' probation[1], in relation to the aggravated assault charge; five (5) years' probation in relation to the strangulation charge; and five (5) years' probation in relation to the firearms not to be carried without a license charge. This Court entered determinations of guilt without further penalty on the remaining counts . On the same day that this Court imposed sentencing, Harris filed a motion seeking modification of his sentence, arguing that this Court failed to properly consider mitigating factors when imposing his sentence.

On June 8, 2021, Harris filed a pro se motion pursuant to Pennsylvania's Post Conviction Relief Act (hereinafter referred to as "PCRA"). On July 22, 2021, this Court entered an order denying Harris's PCRA petition by operation of law. Harris thereafter filed a notice of appeal to the Superior Court on July 30, 2021. He subsequently filed his concise statement of matters complained of on appeal pursuant to Pa.R.C.P. 1925(b) on August 24, 2021. In his 1925(b) statement, Harris raises two claims of error, both of which relate to the discretionary aspects of his sentence.

There is no absolute right to appeal when challenging the discretionary aspect of a sentence. Com. v. Cartrette, 83 A.3d 1030, 1042 (2013) (citing Com. v. Crump, 995 A.2d 1280, 1282 (Pa.Super. 2010)). An appellant challenging the discretionary aspects of his sentence must invoke the appellate court's jurisdiction by showing that the issue was properly preserved and that there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code. Com. v. Patterson, 2018 Pa.Super. 24 (2018) (citing Com. v. Moury, 992 A.2d 162, 170 (Pa.Super. 2010)). To establish that a substantial question exists, an appellant must advance a colorable argument that the sentencing court's actions were inconsistent with a specific provision of the Sentencing Code or violated a fundamental norm of the sentencing process. Com. v. Kane, 10 A.3d 327, 335 (2010) (citing Com. v. Feucht, 955 A.2d 377, 383–84 (Pa.Super. 2008)). Specifically, the appellant must explain where the challenged sentence falls in relation to the sentencing guidelines and identify the specific provision of the Code or fundamental norm that was allegedly violated and explain how and why the sentencing court violated that particular provision or norm. Id.

Only after an appellant establishes that a substantial question exists may he challenge the discretionary aspects of his sentence. Id. An abuse of discretion in relation to sentencing is not shown merely by an error in judgment. Com. v. Zirkle, 107 A.3d 127, 132 (Pa.Super. 2014) (citing Com. v. Hoch, 936 A.2d 515, 517–18 (Pa.Super. 2007)). Rather, an appellant 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. Id.; Com. v. Patterson, 2018 Pa.Super. 24 (2018); Com. v. Edwards, 2018 Pa.Super. 230 (2018). If the sentence imposed is within statutory limits, there is no abuse of discretion unless the sentence is manifestly excessive so as to inflict too severe a punishment. Com. v. Gaus, 303 Pa.Super. 372 (1982); see also Com. v. Rooney, 296 Pa.Super. 288 (1982); Com. v. Aviles, 295 Pa.Super. 180 (1982); Com. v. Garrison, 292 Pa.Super. 326 (1981) (sentence must either exceed statutory limits or be manifestly excessive in order for the sentence to constitute an abuse of discretion). In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing judge's discretion, as he or she is in the best position to measure factors such as the nature of the crime, the defendant's character, and the defendant's display of remorse, defiance, or indifference. Com. v. Andrews, 720 A.2d 764 (Pa.Super. 1998), aff'd, 564 Pa. 321 (2001) (citing 42 Pa.C.S. §§ 9721(b), 9725)).

In his first claim, Harris argues that he should have been permitted to reopen and supplement the record for purposes of sentencing, "so that his attorney could introduce evidence of mitigating sentencing factors including [Harris's] mental health

records and additional witnesses that would testify about the length and breadth of [his] mental illness of paranoid schizophrenia." Harris cites no authority supporting his contention that he should have been permitted to reopen the record, nor does he address the fact that this Court ordered and reviewed a presentence report prior to imposing sentencing.

In his second claim, Harris asserts that this Court abused its discretion by failing to comply with 42 Pa.C.S. § 9721 when imposing his sentence. Specifically, Harris argues that his sentence is manifestly unreasonable and excessive because this Court failed to take into account various mitigating factors – including his purported remorse, mental health issues, and employment history – in reaching its sentencing decision. Harris's second claim focuses primarily on his assertion that this Court failed to properly consider his character and capacity for rehabilitation.

Prior to imposing Harris's sentence, this Court reviewed the record in the instant matter and ordered a presentence report. Where pre-sentence reports exist, it is presumed that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors. Com. v. Devers, 519 Pa. 88 (1988). A sentencing court is under no compulsion to employ checklists or any extended or systematic definitions of its punishment procedure. Id. Where it can be demonstrated that the sentencing court had any degree of awareness of the sentencing considerations – as was the case in the instant matter – it is presumed that the weighing process took place in a meaningful fashion. Id.

The record in the instant matter reveals that this Court properly and adequately considered all relevant sentencing criteria, sentenced Harris within the applicable guideline range, and stated the reasons for imposing its sentence on the record. Mar. 12, 2020, Sentencing Hrg. Tr. 10:13-25; 11:1-25. This Court therefore satisfied the statutory requirements of § 9721 and sentenced Harris in accordance with the applicable sentencing guidelines.

Harris has failed to establish that a substantial question exists as to the propriety of his sentence because he has not advanced a colorable argument that this Court's actions were inconsistent with a specific provision of the Sentencing Code or violated a fundamental norm of the sentencing process. Moreover, Harris has adduced no facts which suggest that this Court exhibited bias, malice, or ill will in reaching its sentencing decision. As such, Harris's claims in relation to his sentence are without merit.

For the foregoing reasons, the claims set forth in Harris's 1925(b) statement are meritless and he is not entitled to relief.

BY THE COURT:
/s/Cashman, J.

Dated: October 13, 2021

[1] To run consecutively to the attempted homicide sentence.
[2] Aggravated assault, terroristic threats, unlawful restraint, and recklessly endangering another person.

**This opinion was redacted by the ACBA staff. It is the express policy of the Pittsburgh Legal Journal not to publish the names of juveniles in cases involving sexual or physical abuse and names of sexual assault victims or relatives whose names could be used to identify such victims.*

Commonwealth of Pennsylvania v. Seth Blackman

Criminal Appeal—Direct Appeal—Post-Conviction Relief Act—Validity of Virtual Guilty Plea—Guilty Plea Colloquy—Knowing, Intelligent and Voluntary plea

Defendant's virtual guilty plea was knowing, intelligent and voluntary despite not executing colloquy in presence of defense counsel where Court conducted on the record colloquy with Defendant and where Defendant expressed clear understanding of his rights and declined opportunity to review colloquy in person with counsel.

No. CP-02-CR-03386-2019, CP-02-CR-02933-2019. In the Court of Common Pleas of Allegheny County, PA, Criminal Division. Rangos, J.—December 10, 2021.

OPINION

On July 20, 2020, Appellant, Seth Blackman, entered a general plea of guilty at two petitions. At CP-02-CR-03386-2019, Appellant pled guilty to one count each of Possession of Firearm Prohibited, Receiving Stolen Property, possessing a Firearm without a License, Resisting Arrest, Escape, and Possession of Marijuana.[1] At CP-02-CR-02933-2019, Appellant pled to one count each of Possession of a Firearm Prohibited, Possessing a Firearm Without a License; two counts of Possession of a Controlled Substance, and one count each of Resisting Arrest, False Identification to Law Enforcement Officer, and Possession of Marijuana.[2] This Court sentenced Appellant to 6-12 years incarceration in the aggregate on these charges and further sentenced him to a consecutive 3-6 years for a probation violation. Appellant did not file a direct appeal.

Instead, Appellant filed a pro se "APPEAL: INEFFECTIVE ASSISTANCE OF COUNSEL," on October 4, 2020. This Court appointed counsel, who filed an amended PCRA Petition on March 26, 2021. This Court held a hearing on the Petition on September 27, 2021, and on October 4, 2021, dismissed the Petition. Appellant filed a Notice of Appeal on November 3, 2021 and a Concise Statement of Errors Complained of on Appeal on November 23, 2021.

MATTERS COMPLAINED OF ON APPEAL

Appellant alleges that the plea colloquy was defective in several aspects. Appellant alleges that this "Court did not explain each of the elements of the crimes to which Appellant pled guilty." Appellant specifies that, the Escape charge elements were not explained in sufficient detail. Appellant next asserts that the "Guilty Plea Colloquy was completed outside of Appellant's presence and he did not have the chance to go over it with his lawyer either in person OR [sic] remotely before signing it." Appellant alleges his Due Process rights were violated by his entering a guilty plea that was not intelligently, voluntarily, and knowingly entered. Lastly, Appellant claims that he was not specifically informed as to the details of the plea offer which he rejected. (Concise Statement of Errors Complained Of, 4-5).

DISCUSSION

Appellant alleges that the plea colloquy was defective. The law as it relates to plea colloquies is long settled. "Our law does not

require that an Appellant be totally pleased with the outcome of his decision to plead guilty, only that his decision be voluntary, knowing and intelligent." Commonwealth v. Baldwin, 760 A.2d 883, 885 (Pa.Super. 2000), appeal denied, 781 A.2d 138 (Pa. 2001).

In reviewing the transcript of the plea hearing, the record reflects that the District Attorney offered to withdraw certain charges in exchange for a guilty plea at other charges and a standard range sentence of 6-12 years. (Transcript of Plea Hearing, July 20, 2020, hereinafter "PT" at 4-5). Appellant rejected this offer and chose to plea generally to all the charges. (PT 9). Appellant indicated that he had discussed this matter fully with his counsel, but the decision was entirely Appellant's and not counsel's. Id. This Court restated and clarified a question when Appellant's initial response made it appear as though he did not understand the nature of the question. (PT 12-13). This Court would later stop the proceeding again to further explain to Appellant his RRRI status. (PT 19).

Appellant indicated that he received the Guilty Plea Explanation of Defendants Rights form and the Videoconference Plea form and that he reviewed this paperwork with his caseworker but not with his attorney. (PT 14). This Court asked if he would like time to go over the documents with his attorney. Id. Appellant refused and stated that he understood the forms. Id. This Court noted that Appellant had previously entered a plea and had some prior knowledge of his rights. Id. Appellant stated that he understood all his rights as stated in both colloquies. Id. Appellant completed an eleven-page written colloquy, which he indicated that he read, that he understood fully, that he answered honestly, and that he had discussed with counsel. (PT 14-15).

Appellant stated during the verbal plea colloquy that he did not suffer any mental illness or infirmity which would in any way limit his ability to participate in the plea proceeding. (PT 17-18) He further stated that he was not forced, threatened, or coerced in any way regarding his decision to plead guilty, and that he was satisfied with the representation provided to him by counsel. (PT 17-19) Appellant stated that counsel had reviewed all the charges with him and explained to him each of the elements that the Commonwealth would have had to prove had the case proceeded to a trial. (PT 19).

This Court listed the charges to which Appellant was pleading and explained to him the maximum sentence the Court could impose. (PT 19-21) At no point did Appellant indicate, nor did his behavior or demeanor support his contention, that he did not understand his rights. To the contrary, Appellant stated that he was pleading guilty to the charges as read and was pleading guilty because he was, in fact, guilty. (PT 28)

As indicated above, Appellant completed a written colloquy, fully participated under oath in a verbal plea colloquy, and was represented by counsel throughout the plea proceedings. A defendant is bound by the statements made during the plea colloquy and cannot offer reasons that contradict earlier statements. Commonwealth v. Brown, 48 A.3d 1275, 1277 (Pa. Super. 2012); Commonwealth v. Lewis, 708 A.2d 497 (Pa. Super.1998). Considering the written and oral colloquies, Appellant's acknowledgement that he understood the nature of the charges, that counsel had explained the elements of each offense, and that Appellant was satisfied with his counsel, the totality of circumstances suggests that this plea was knowingly, intelligently, and voluntarily made.

When a lengthy inquiry is done by the presiding judge, a presumption exists that a defendant understands the colloquy he signed. Commonwealth v. Rush, 909 A.2d 805, 808 (Pa. Super. 2006). When a written guilty plea colloquy is supplemented by an oral colloquy on the record, it supports the conclusion that the guilty plea was knowingly and intelligently entered. Commonwealth v. Suter, 567 A.2d 707, 709 (Pa.Super. 1989). The burden then shifts to Appellant to prove that the colloquy was defective. Given the extensive inquiry by this Court to assure that Appellant understood everything, Appellant has not met that burden. Since the guilty pleas was valid, Appellant's claims of error are without merit.

CONCLUSION

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

BY THE COURT:
/s/Rangos, J.

Date: December 10, 2021

[1] 18 Pa.C.S. §§ 6105 (a) (1), 3925 (a), 6106 (a) (1), 5104, 5121 (a), and 35 Pa.C.S. § 780-113 (a) (31), respectively.
[2] 18 Pa.C.S. §§ 6105 (a) (1), 6106 (a) (1), 35 Pa.C.S. § 780-113 (a) (16), 18 Pa.C.S. § 5104, 18 Pa.C.S. § 4914, 5121 (a), and 35 Pa.C.S. § 780-113 (a) (31), respectively.

Commonwealth of Pennsylvania v. Michelle Lee Harris

Criminal Appeal—Motor Vehicle—Traffic Stop—Suppression—Inventory Search

Defendant was pulled over for an expired license and registration at an intersection of the road. The police officer decided that due to the expired registration and license as well as the car impeding traffic, the vehicle had to be towed. The police officer conducted an inventory search of the vehicle which resulted in uncovering drug residue and paraphernalia. Judge Mariani found sufficient probable cause for an inventory search relying on Commonwealth v. Peak, 230 A.3d 1220 (Pa. Super. 2000) because an inventory search is permissible when towing is for public safety. Judge Mariani found that the circumstances in this case justified public safety.

No. CC 2020-03130. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Mariani, J.—January 19, 2022.

OPINION

This is a direct appeal wherein the defendant, Michelle Lee Harris, appeals from the judgment of sentence of August 23, 2021. Germane to this appeal, after a stipulated non-jury trial, this Court found the defendant guilty of possession of a controlled substance and multiple vehicle code violations. This Court sentenced the defendant to a period of two-years' probation on the drug charge. No further penalty was imposed at the vehicle code convictions. On appeal, the defendant alleges that this Court erred by denying the defendant's suppression motion challenging the search of defendant's vehicle and the warrantless arrest of the defendant.

The facts of record adduced in this case are as follows:

On September 10, 2019, Officer Jason Braun of the City of Pittsburgh Bureau of Police conducted a traffic stop of a vehicle operated by defendant because the license plate and registration of the vehicle were expired. The stop occurred in the intersection of North Braddock Avenue and Hamilton Avenue in the City of Pittsburgh. Officer Braun approached the driver's side of the vehicle

and addressed the defendant. The defendant immediately became argumentative with Officer Braun. Because the vehicle was parked in the intersection and was impeding traffic and because the vehicle had an expired registration and license plate, Officer Braun made the determination that the defendant could not continue to drive the vehicle. He determined that the vehicle would have to be towed from the scene. The defendant exited the vehicle and began to walk away from the scene of the traffic stop. After requesting a tow, Officer Braun conducted an inventory search of the vehicle. A black pocket scale with white residue was recovered from an area next to the center console. Pursuant to Officer Braun's training and experience, he believed the scale and white powder indicated that the scale had been used for weighing drugs. Immediately upon discovering the scale, Officer Braun informed Officer Geno Macioce of the discovery of the scale and he requested Officer Macioce to arrest the defendant. Officer Macioce then approached the defendant. The defendant was passively resistant, but she was eventually placed under arrest for possession of drug paraphernalia and transported from the scene in a police vehicle. After the defendant was removed from the police vehicle, a police officer located two crack pipes in a compartment of the police cruiser that transported her. After a search incident to arrest was conducted, a small amount of crack cocaine was located in the defendant's jacket pocket. The defendant was charged and convicted as set forth above.

Defendant first claims that the search of the vehicle was illegal.

Title 75 Pa.C.S.A. §6309.2(a)(2) provides:

> If a motor vehicle or combination for which there is no valid registration or for which the registration is suspended, as verified by an appropriate law enforcement officer, is operated on a highway or trafficway of this Commonwealth, the law enforcement officer shall immobilize the motor vehicle or combination or, in the interest of public safety, direct that the vehicle be towed and stored by the appropriate towing and storing agent pursuant to subsection (c), and the appropriate judicial authority shall be so notified.

The Superior Court, in Commonwealth v. Peak, 230 A.3d 1220 (Pa.Super 2020), held that where a police officer has decided to tow a vehicle under 75 Pa.C.S.A. §6309.2, the police officer may conduct an inventory search of a vehicle when the decision to tow is based on public safety. 230 A.3d at 1227-1228. Where the decision to tow is based on the fact that a vehicle is "impeding the flow of traffic," the decision is based on public safety and a vehicle can be towed and an inventory search conducted. Peak, 230 A.3d 1227 citing Commonwealth v. Lagenalla, 83 A.3d 94, 102 (Pa. 2013). In this case, Officer Braun clearly testified that the registration and license plate of the defendant's vehicle was expired. The vehicle could not be driven from the scene and it was stopped in a public intersection blocking the flow of traffic. Additionally, the vehicle would have been illegally parked if it had remained in the intersection. Based on these facts, this Court believes that Officer Braun acted within the law in conducting an inventory search and on having the vehicle towed from the scene.

Defendant next claims that her warrantless arrest was illegal. Pennsylvania rules of criminal procedure provide that an individual may be subjected to a warrantless arrest (a) when the offense is a murder, felony, or misdemeanor committed in the presence of the police officer making the arrest; or (b) upon probable cause when the offense is a felony or murder; or (c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute." Pa.R.Crim.P. 502.

Officer Braun specifically seized what he determined to be drug paraphernalia from the vehicle operated by the defendant and it was found in an area in close proximity to where the defendant was seated in the driver's seat. After personally observing the drug paraphernalia and making the determination that a misdemeanor was committed in his presence, Officer Braun decided to arrest the defendant and he directed Officer Macioce, who was also at the scene, to effectuate the arrest. There clearly was probable cause to arrest in this case. Whether probable cause exists to justify an arrest "is determined by considering the totality of the circumstances." Commonwealth v. Holton, 906 A.2d 1246, 1249 (Pa. Super. Ct. 2006) (citing Illinois v. Gates, 462 U.S. 213 (1983)). "Under the totality of the circumstances, a police officer must make a practical common sense decision whether, given all of the circumstances known to him at that time, including hearsay information, there is a fair probability that a crime was committed and that the suspect committed the crime." Id. (quoting Commonwealth v. Taylor, 850 A.2d 684, 687 (Pa. Super. Ct. 2004)).

The Pennsylvania Superior Court has explained:

> Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances. Probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent men act. It is only probability and not a prima facie showing of criminal activity that is a standard of probable cause. To this point on the quanta of evidence necessary to establish probable cause, the United States Supreme Court recently noted that finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the probable cause decision.

Id. (quoting Commonwealth v. Dommel 885 A.2d 998, 1002 (Pa. Super. Ct. 2005)).

Based on Officer Braun's seizure of the scale containing residue, the probable cause standard is easily satisfied in this case.

The recovery of the crack cocaine from a pocket of the defendant's jacket was similarly permissible. The search of defendant's jacket was incident to her arrest. "The search incident to arrest exception allows arresting officers, in order to prevent the arrestee from obtaining a weapon or destroying evidence, to search both the person arrested and the area within his immediate control." Commonwealth v. Simonson, 148 A.3d 792, 799 (Pa. Super. 2016) (citation omitted; emphasis added). Furthermore, this "exception to warrantless searches permits police to search an arrestee's person as a matter of course, without a case-by-case adjudication of whether such search is likely to protect officer safety or evidence." Commonwealth v. Yorgey, 188 A.3d 1190, 1198 (Pa. Super. 2018) (en banc) (emphasis added; citation omitted). "Stated another way, in all cases of lawful arrests, police may fully search the person incident to the arrest." Commonwealth v. Ingram, 814 A.2d 264, 272 (Pa. Super. 2002) (emphasis added; citation omitted). Because the defendant's arrest was legal, the search of her jacket incident to her arrest, was legal.

For the foregoing reasons, the judgment of sentence should be affirmed.

BY THE COURT:
/s/Mariani, J.

Date: January 19, 2022