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Criminal appeal

The sentencing record contained a sufficient written justification for the Court's sentence in this case, imposing consecutive sentences in this case was not an abuse of discretion. The court also properly explained its reasons for the sentence and it considered all relevant factors. Accordingly, the judgment of sentence should be affirmed.

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OPINIONS

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COMMONWEALTH OF PENNSYLVANIA vs. WILLIAM EBERLE, Defendant*Criminal appeal*

The sentencing record contained a sufficient written justification for the Court's sentence in this case, imposing consecutive sentences in this case was not an abuse of discretion. The court also properly explained its reasons for the sentence, and it considered all relevant factors. Accordingly, the judgment of sentence should be affirmed.

CC No. 2021-09500. In the Court of Common Pleas of Allegheny County, Pennsylvania. Criminal Division. Mariani, J. June 26, 2023.

OPINION

This is a direct appeal wherein the defendant, William Eberle, appeals from the Judgment of Sentence imposed on March 8, 2023 which became final upon this Court's denial of a post-sentencing motion to reconsider his sentence on March 27, 2023. On December 13, 2022, the defendant pled guilty to Burglary, DUI-Highest Rate of Alcohol, Simple Assault and Criminal Mischief. On March 8, 2023, this Court sentenced the defendant to a term of imprisonment of not less than 20 months nor more 60 months relative to the conviction for Burglary. Relative to the conviction for Simple Assault, this Court imposed a sentence of imprisonment of not less than 12 months nor more than 24 months. Relative to the conviction for DUI, this Court imposed a sentence of imprisonment of three days. Relative to the conviction for Criminal Mischief, this Court imposed a one-year term of probation. All sentences were imposed consecutively. The aggregate sentence was a term of imprisonment of not less than 33 months nor more than 84 months. The defendant filed a timely Notice of Appeal. Defendant filed a Concise Statement of Matters Complained of on Appeal alleging that this Court imposed an excessive sentence by imposing consecutive sentences and by focusing only on the gravity of the offense in determining the sentence. For the following reasons, the judgment of sentence should be affirmed.

The credible facts at trial established that the defendant and the victim had been in a long-term relationship that turned sour. On November 25, 2021, the defendant was fully aware that the victim did not want the defendant near her. She had ended her relationship with him and moved to an apartment but did not inform the defendant of the location. On the date of the incident, the defendant repeatedly called and sent text messages to the victim. While the victim was lying on her mattress in her residence, the defendant entered her residence through a ground floor window and mounted her. The defendant held the victim down and restrained her from moving. The defendant yelled "Get ready! You're coming home with me!" The defendant struck the victim in the head and retrieved a knife or scissors. He knocked over a flat screen television and stomped on it. He stabbed a window air conditioner, breaking it. He also damaged blinds covering a window. The defendant again mounted the victim and held her down. He stabbed the mattress near her head. She screamed for help and soon neighbors arrived to help her. The defendant fled the scene. He was later arrested while driving his vehicle away from the scene. His blood alcohol level was .193.

Defendant claims that the imposition of consecutive sentences was inappropriate. A sentencing judge is given a great deal of discretion in the determination of a sentence, and that sentence will not be disturbed on appeal unless the sentencing court manifestly abused its discretion." *Commonwealth v. Boyer*, 856 A.2d 149, 153 (Pa. Super. 2004), citing *Commonwealth v. Kenner*, 784 A.2d 808, 811 (Pa. Super. 2001) appeal denied, 568 Pa. 695, 796 A.2d 979 (2002); 42 Pa.C.S.A. §9721. An abuse of discretion is not a mere error of judgment; it involves bias, partiality, prejudice, ill-will, or manifest unreasonableness. See *Commonwealth v. Flores*, 921 A.2d 517, 525 (Pa. Super. 2007), citing *Commonwealth v. Busanet*, 817 A.2d 1060, 1076 (Pa. 2002).

The imposition of consecutive rather than concurrent sentences lies within the sound discretion of the sentencing court. *Commonwealth v. Lloyd*, 878 A.2d 867, 873 (Pa. Super. 2005), appeal denied, 585 Pa. 687, 887 A.2d 1240 (2005) (citing *Commonwealth v. Hoag*, 665 A.2d 1212, 1214 (Pa. Super. 1995)). Title 42 Pa.C.S.A. §9721 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. *Commonwealth v. Marts*, 889 A.2d 608, 612 (Pa. Super. 2005) (citing *Commonwealth v. Graham*, 661 A.2d 1367, 1373 (1995)). "In imposing a sentence, the trial judge may determine whether, given the facts of a particular case, a sentence should run consecutive to or concurrent with another sentence being imposed." *Commonwealth v. Perry*, 883 A.2d 599 (Pa. Super. 2005), quoting *Commonwealth v. Wright*, 832 A.2d 1104, 1107 (Pa. Super. 2003); see also *Commonwealth v. L.N.*, 787 A.2d 1064, 1071 (Pa. Super. 2001), appeal denied 569 Pa. 680, 800 A.2d 931 (2002).

Furthermore, the "[s]entencing court has broad discretion in choosing the range of permissible confinements which best suits a particular defendant and the circumstances surrounding his crime." *Boyer*, supra, quoting *Commonwealth v. Moore*, 617 A.2d 8, 12 (1992). Discretion is limited, however, by 42 Pa.C.S.A. §9721(b), which provides that a sentencing court must formulate a sentence individualized to that particular case and that particular defendant. Section 9721 (b) provides: "[t]he 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..." "Boyer, supra at 153, citing 42 Pa.C.S.A. §9721(b). Furthermore,

In imposing sentence, the trial court is required to consider the particular circumstances of the offense and the character of the defendant. The trial court should refer to the defendant's prior criminal record, age, personal characteristics, and potential for rehabilitation. However, where the sentencing judge had the benefit of a presentence investigative report, it will be presumed that he or she was aware of the relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors.

Boyer, supra at 154, citing *Commonwealth v. Bums*, 765 A.2d 1144, 1150-1151 (Pa. Super. 2000) (citations omitted).

Moreover, "the sentencing court must state its reasons for the sentence on the record." *Boyer*, supra at 154, citing 42 Pa.C.S.A. §9721(b). The sentencing judge can satisfy the requirement that reasons for imposing sentence be placed on the record by indicating that he or she has been informed by the pre-sentencing report; thus properly considering and weighing all relevant factors. *Boyer*, supra, citing *Bums*, supra, citing *Commonwealth v. Egan*, 451 Pa. Super. 219, 679 A.2d 237 (1996). In fashioning an appropriate sentence, courts must be mindful that the sentencing guidelines "have no binding effect, in that they do not predominate over individualized sentencing factors and

that they include standardized recommendations, rather than mandates, for a particular sentence.” *Commonwealth v. Walls*, 592 Pa. 557, 567, 926 A.2d 957, 964 (2007). A sentencing court is, therefore, permitted to impose a sentence outside the recommended guidelines. If it does so, however, it “must provide a written statement setting forth the reasons for the deviation....” *Id.*, 926 A.2d at 963.

A sentencing judge can satisfy the requirement of placing reasons for a particular sentence on the record by indicating that he or she has been informed by the presentencing report; thus properly considering and weighing all relevant factors. *Boyer*, *supra*, citing *Bums*, *supra*, citing *Commonwealth v. Egan*, 451 Pa. Super. 219, 679 A.2d 23 7 (1996). See also *Commonwealth v. Tirado*, 870 A.2d 362, 368 (Pa. Super. 2005) (if sentencing court has benefit of pre-sentence investigation, law expects court was aware of relevant information regarding defendant’s character and weighed those considerations along with any mitigating factors).

The standard range of the sentencing guidelines relative to the burglary conviction was 15-21 months’ imprisonment. This Court imposed a sentence within that range. The standard range of the sentencing guidelines relative to the DIUI conviction was 72 hours. This Court imposed that specific sentence. The standard range of the sentencing guidelines relative to the Simple Assault conviction was 3-12 months’ imprisonment. This Court imposed a sentence within that range. A probationary sentence was imposed at the Criminal Mischief conviction and that sentence was within the standard range. The sentencing record demonstrates that the Court considered all relevant information. The record indicates that the Court also reviewed the presentence report.

This Court imposed the sentence it did because the record indicated that the defendant has had lengthy involvement in the court system because he has repeatedly committed violence on women. The defendant shot and killed his wife in 1999. He was convicted of Third-Degree Murder and served a lengthy state prison sentence and parole term for that crime. Prior to the instant offenses of conviction, the defendant was subject to three separate Protection From Abuse Orders as a result of abuse he committed against three different women. Despite his prior domestic homicide conviction, the defendant continued to refuse to conform his conduct to the dictates of the law. This Court considered the defendant’s failure to learn from the previous conviction and the PFA orders and that he continued to engage in criminal conduct.

This Court also considered the serious nature of the defendant’s conduct in this case. The defendant entered the victim’s apartment while he was fully aware that the victim did not want the defendant near her. Upon breaking into the apartment, the defendant mounted the victim and restrained her from moving. He threatened to take her from her apartment against her will and he then assaulted her. He grabbed a knife or scissors and terrorized her by stabbing the mattress multiple times just next to her head. He then damaged her personal property. This Court believes that the defendant’s conduct demonstrated that he is an ongoing serious physical threat to the victim in this case and to women in general. In this Court’s view, the defendant’s conduct requires his incapacitation to protect the public safety and to serve as a general deterrent to society and a specific deterrent to the defendant.

This Court also considered the victim impact information contained in the presentence report. The defendant repeatedly assaulted and terrorized the victim over a period of eight years. The victim suffered injuries as a result of the assaults and the victim was afraid to leave her residence, fearing that the defendant was lying in wait to attack her.

This Court also considered the defendant’s personal history and the words of the defendant’s mother who testified in support of the defendant. While this Court sympathized with the defendant’s mother, the defendant’s conduct in this case and his prior record warranted the sentence imposed in this case. As a result, this Court’s imposition of consecutive standard range sentences was permissible.

The sentencing record contains a sufficient written justification for the Court’s sentence in this case. Imposing consecutive sentences in this case was not an abuse of discretion. This Court also properly explained its reasons for the sentence and it considered all relevant factors. Accordingly, the judgment of sentence should be affirmed.

BY THE COURT:
The Hon. Anthony Mariani