

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION - LAW

COMMONWEALTH OF PENNSYLVANIA, :
:
Appellee :
:
v. : No. CR-507-2018
:
RUSSELL L. FRANKENFIELD, :
:
Appellant :

Seth E. Miller, Esquire Counsel for Appellee
Assistant District Attorney

Matthew P. Kelly, Esquire Counsel for Appellant

MEMORANDUM OPINION

Serfass, J. - January 12, 2022

Russell L. Frankenfield (hereinafter "the Appellant") appeals from this Court's Order of October 19, 2021, pursuant to which he was sentenced to a period of incarceration of not less than one (1) month nor more than two (2) years less one (1) day. We file the following Memorandum Opinion in accordance with Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be denied and that our Order of October 19, 2021 be affirmed.

FACTUAL AND PROCEDURAL HISTORY

Appellant was charged with Simple Assault - Attempt (18 Pa.C.S.A. §2701 §§A1); Simple Assault - Attempt by Menace (18 Pa.C.S.A. §2701 §§A3); Recklessly Endangering Another Person (18 Pa.C.S.A. §2705); Terroristic Threats with Intent to Terrorize Another (18 Pa.C.S.A. §2706 §§A1); Harassment - Subject Other to

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Physical Contact (18 Pa.C.S.A §2709 §§A1); and Strangulation - Applying Pressure to Throat or Neck (18 Pa.C.S.A. §2718 §§A1) with regard to an incident which occurred on March 17, 2018 involving Appellant's girlfriend, Jodi Mihalik. On July 6, 2021, Appellant entered into a guilty plea to Simple Assault - Attempt (18 Pa.C.S.A. §2701 §§A1) and the remaining charges were dismissed. On October 19, 2021, Appellant was sentenced to a period of incarceration of not less than one (1) month nor more than two (2) years less one (1) day at the Carbon County Correctional Facility.

On October 21, 2021, Appellant filed a motion requesting that this Court reconsider its sentence and reduce the sentence from a period of incarceration to a period of probation. On November 18, 2021, we entered an order denying Appellant's motion for reconsideration but permitting Appellant to serve the incarceration component of his sentence on consecutive weekends beginning at 6:00 p.m. on Fridays through 6:00 p.m. on Sundays and requiring him to report to the Carbon County Correctional Facility to begin serving said incarceration component at 6:00 p.m. on January 7, 2022.

On December 10, 2021, Appellant filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's October 19, 2021 sentencing order. That same day, we entered an order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b).

In compliance with our order, Appellant filed his "Statement of Matters Complained of on Appeal Pursuant to Pa. R.A.P. 1925(b)" on December 23, 2021.¹

ISSUES

In his Concise Statement, Appellant raises the following issues:

1. Whether the Trial Court abused its discretion in sentencing the Appellant to a period of incarceration with said sentence being on the high end of the standard sentencing guidelines for the charge of Simple Assault;
2. Whether the Trial Court erred in making reference to the Probable Cause Affidavit as a basis for imposing the sentence when the Appellant did not plead guilty to all of the facts in the Probable Cause Affidavit; and
3. Whether the Trial Court erred in making reference to alleged factual events that have not been proven or admitted to by the Appellant in the Guilty Plea Colloquy.

DISCUSSION

We first note that:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this

¹ We also note that Appellant filed an "Application for Bail Pending Appeal" on December 13, 2021. On January 4, 2022, we entered an order reinstating Appellant's bail pending disposition of the instant appeal and further ordered that Appellant would not be required to report to the Carbon County Correctional Facility on January 7, 2022, thereby staying the execution of sentence pending appellate disposition.

context, an abuse of discretion is not shown merely by an error in judgment. Rather, the 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.

Commonwealth v. Wallace, 244 A.3d 1261, 1278-79 (Pa.Super. 2021) (quoting Commonwealth v. Raven, 97 A.3d 1244, 1253 (Pa.Super. 2014)).

In the instant matter, Appellant's sentence to a period of incarceration of not less than one (1) month nor more than two (2) years less one (1) day is within the standard range of the applicable sentencing guidelines based on his prior record score and the offense gravity score. See 204 Pa. Code §303.16(a).

We next turn to the issues of whether it was error to reference alleged facts within the affidavit of probable cause in imposing Appellant's sentence where Appellant had not pled guilty to all of the alleged facts. In Commonwealth v. Miller, an appellant argued that the trial court abused its discretion when, at the time of sentencing for third degree murder, it considered an arson charge that was dismissed as part of his plea agreement. Commonwealth v. Miller, 965 A.2d 276, 277 (Pa.Super. 2009). The Superior Court found that the trial court's "mere reference" to the fire did not indicate "that the court

specifically considered the charge of arson and enhanced [the appellant's] sentence based thereon." Id. at 280.

Here, Appellant pled guilty to facts that he "attempted to cause, or intentionally, knowingly or recklessly cause bodily injury to another, that being Jodi Mihalik." Our reference to the affidavit of probable cause during the sentencing hearing was not meant to imply that the imposed sentence was based on the entirety of the affidavit, but rather on these specific factual allegations. Specifically, this Court stated "the nature of this offense ... the gravity of the offense and the impact on the life of the victim as relayed here in the affidavit" as the basis for the imposed sentence. (See N.T. 10/19/21 p. 7). Furthermore, the sentence imposed in this matter was within the standard range of the applicable sentencing guidelines and was not an enhanced sentence based on other factual allegations.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Order of October 19, 2021, sentencing Appellant to a period of incarceration in the Carbon County Correctional Facility of not less than one (1) month nor more than two (2) years less one (1) day, be affirmed accordingly.

BY THE COURT:



Steven R. Serfass, J.