

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

COMMONWEALTH OF PENNSYLVANIA, :  
: Appellee :  
v. : No. CR-1185-2019  
MATTHEW E. HAMMEL, :  
: Appellant :

Seth E. Miller, Esquire Counsel for Appellee  
Assistant District Attorney  
Michael P. Gough, Esquire Counsel for Appellant

MEMORANDUM OPINION

Serfass, J. - February 22, 2022

Matthew E. Hammel (hereinafter "Appellant") appeals from this Court's Order of December 29, 2021, pursuant to which we denied the "Post-Sentence Motions Submitted by Defendant". 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 December 29, 2021 be affirmed.

FILED IN OFFICE  
2022 FEB 22 PM 2:34  
TYRONE-BMI  
CARBON COUNTY  
CLERK OF COURTS

FACTUAL AND PROCEDURAL HISTORY

Appellant was charged with Robbery - Threat of Immediate Serious Injury (18 Pa.C.S.A. §3701 §§(a)(1)(ii)); Theft by Unlawful Taking - Movable Property (18 Pa.C.S.A. §3921 §§(a)); Receiving Stolen Property (18 Pa.C.S.A. §3925 §§(a)); and Recklessly Endangering Another Person (18 Pa.C.S.A. §2705) with regard to an incident which occurred at a Domino's Pizza restaurant in Lehighton, Pennsylvania. On October 1, 2019, Mandy Hamm, in her capacity as a Domino's Pizza

employee, was robbed by Appellant brandishing what appeared to be a gun while attempting to take a nightly cash deposit to a local bank. On February 21, 2020, Appellant filed an "Omnibus Pre-Trial Motion" in which he challenged his arrest and the search of his residence. On December 11, 2020, we issued our Memorandum Opinion and Order denying Appellant's "Omnibus Pre-Trial Motion", finding that Officer Joel Gulla of the Lehighton Borough Police Department had probable cause to detain Appellant at his residence and conduct a warrantless search based on the totality of the circumstances and that exigent circumstances existed which justified the entry of Appellant's home to detain him and conduct a search. (Court's Memorandum Opinion and Order of 12/11/20).

On June 22, 2021, Appellant pled guilty to Robbery - Threat of Immediate Serious Injury (18 Pa.C.S.A. §3701 §§(a)(1)(ii)) and the remaining charges were dismissed. That same day, Appellant was sentenced to a period of incarceration of not less than sixty (60) months nor more than one hundred twenty (120) months at a State Correctional Institute. On June 25, 2021, a "Stipulation to Amend Order of Sentence" was filed requesting that the sentencing order be amended to include restitution in the amount of sixty dollars (\$60.00) to Domino's Pizza, which this Court granted on June 28, 2021.

On July 13, 2021, Appellant filed the "Post-Sentence Motions Submitted by Defendant", which included a motion for modification of his sentence. Appellant requested that this Court vacate his sentence and impose a sentence based on an Offense Gravity Score of eight (8)

in consideration of the Commonwealth's willingness to reduce the Offense Gravity Score from a ten (10) to a nine (9) as well as his age, substance abuse history and purported risk to the community.<sup>1</sup> (Appellant's Post-Sentence Motion, 7/13/21). On December 29, 2021, we entered an order denying the "Post-Sentence Motions Submitted by Defendant" stating that the imposed sentence was within the standard range of the applicable sentencing guidelines. (Court's Order of 12/29/21).

On January 18, 2022, Appellant filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's December 29, 2021 Order denying his post-sentence motion. 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 "Concise Statement of Matters Complained of on Appeal" on February 7, 2022.

#### ISSUES

In his Concise Statement, Appellant raises four (4) related issues which can be summarized as follows:

1. Whether the Court abused its discretion in refusing to modify Appellant's sentence where the Commonwealth admitted that the victim would be satisfied with a minimum sentence at the low end of the applicable standard range and testimony indicated

---

<sup>1</sup> That same day, Appellant also filed a "Motion for Leave to Withdraw Guilty Plea". Following a hearing held on October 25, 2021 wherein Appellant stated that he no longer desired to pursue the aforesaid motion, we entered an order dismissing the motion as moot.

that Appellant had longstanding addiction issues at the time of the offense.

### 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 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 sixty (60) months nor more than one hundred twenty (120) months 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). Appellant's plea agreement calls for a minimum sentence between forty-eight (48) and sixty (60) months. Both the Commonwealth and Ms. Hamm indicated that they would defer to the Court's discretion so long as the minimum sentence was within the aforesaid range as this was the basis for the plea agreement. (See N.T. 10/25/21 p. 18-19). The minimum sentence imposed by this Court is within the aforesaid range as contemplated

by the plea agreement, and therefore we see no reason warranting modification on this basis.

Appellant also argues that his sentence should be modified in consideration of his drug addiction issues. We see no reason warranting modification on this basis either. "When imposing a sentence, a court is required to consider the particular circumstances of the offense and the character of the defendant." Commonwealth v. Griffin, 804 A.2d 1, 10 (Pa.Super. 2002), *appeal denied*, 868 A.2d 1198 (Pa. 2005), *cert. denied*, 545 U.S. 1148 (2005)) (*quoting Commonwealth v. Burns*, 765 A.2d 1144, 1150-51 (Pa.Super. 2000), *appeal denied*, 782 A.2d 542 (Pa. 2001)). "In particular, the court should refer to the defendant's prior criminal record, his age, personal characteristics and his potential for rehabilitation." Id. at 1151. "[A]n allegation that the sentencing court 'failed to consider' or 'did not adequately consider' various factors ... does not raise a substantial question that the sentence imposed was in fact inappropriate." Commonwealth v. Wellor, 731 A.2d 152, 155 (Pa.Super. 1999) (*quoting Commonwealth v. Rivera*, 637 A.2d 1015, 1016 (Pa.Super. 1994)).

Appellant's history of drug addiction was discussed at his sentencing. Specifically, we noted:

Well, as I've indicated, this is a set of facts in a situation that regardless of the fact that it was driven by your drug addiction and you have taken steps I believe from what you are saying here to address that. I'm sure you have during the lengthy period of time you already spent incarcerated here in Carbon County. The

Court has to consider the nature of your offense, the gravity of the offense as it relates [to] the impact on the victim and on the community as a whole here ...

(See N.T. 6/22/21 p. 12).

While this Court acknowledges Appellant's drug addiction and his attempts to address that addiction, we find that the imposed sentence is appropriate given the nature of the offense and the impact that Appellant's criminal act had on the life of the victim and the community.

**CONCLUSION**

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Order of December 29, 2021, sentencing Appellant to a period of incarceration of not less than sixty (60) months nor more than one hundred twenty (120) months at a State Correctional Institute, be affirmed accordingly.

BY THE COURT:



Steven R. Serfass, J.

FILED IN OFFICE  
2022 FEB 22 P 2:34  
TYRAL L. BONI  
CLERK OF COURTS  
CARBON COUNTY