

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

COMMONWEALTH OF PENNSYLVANIA, :
: Appellee :
: v. : No. CR-946-2020 :
: KAITLYN M. YOUMANS, :
: Appellant :

Jennifer L. Rapa, Esquire Counsel for Appellee
Assistant District Attorney

Eric T. Wiltrout, Esquire Counsel for Appellant
Assistant Public Defender

MEMORANDUM OPINION

Serfass, J. - August 22, 2022

Kaitlyn M. Youmans (hereinafter "the Appellant") appeals from this Court's Order of May 23, 2022, pursuant to which she was sentenced to a term of supervised probation for a period of twelve (12) months. We file the following Memorandum Opinion in accordance with Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be dismissed and that our sentencing order of May 23, 2022 be affirmed accordingly.

FACTUAL AND PROCEDURAL HISTORY

Appellant was charged with Obstructing Administration of Law or Other Government Function (18 Pa.C.S.A. §5101); Disorderly Conduct (18 Pa.C.S.A. §5503 §§A4); and Harassment (18 Pa.C.S.A. §2709 §§A3) with regard to an incident which occurred on August 11, 2020 where Appellant attempted to involuntarily commit Deric Tomasovich to a

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mental health facility, which would have obstructed a custody proceeding scheduled on August 12, 2020 in the Carbon County Court of Common Pleas. That custody proceeding involved both Appellant and Mr. Tomasovich. On May 23, 2022, Appellant entered a guilty plea to the charge of Disorderly Conduct (18 Pa.C.S.A. §5503 §§A4) and the remaining charges were dismissed. That same day, Appellant was sentenced to serve twelve (12) months' probation under the supervision of the Carbon County Adult Probation and Parole Department to run concurrently with her Schuylkill County sentence. As part of her sentence in the instant matter, Appellant was directed to pay restitution in the amount of one thousand seven hundred sixteen dollars (\$1,716.00) to Mr. Tomasovich.

On June 21, 2021, Appellant filed an Appeal to the Superior Court of Pennsylvania seeking review and reversal of this Court's May 23, 2022 sentencing order. On June 30, 2022, 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 her "Concise Statement of Errors" on July 11, 2022.

ISSUES

In her Concise Statement, Appellant raises the following issues:

1. Whether this Court had jurisdiction to sentence Appellant;
2. Whether Appellant knowingly and voluntarily entered into her guilty plea;
3. Whether Appellant had criminal immunity from prosecution; and

4. Whether Appellant is responsible to pay the restitution amount sought by Mr. Tomasovich.

DISCUSSION

1. Subject Matter Jurisdiction and Venue

Appellant argues that this Court did not have jurisdiction to sentence her. We first note that "all courts of common pleas have statewide subject matter jurisdiction in cases arising under the Crimes Code." Commonwealth v. Bethea, 828 A.2d 1066, 1074 (Pa. 2003). "Controversies arising out of violations of the Crimes Code are entrusted to the original jurisdiction of the courts of common pleas for resolution." Id. As this Court has subject matter jurisdiction, the proper question is whether this Court is the appropriate venue for the instant matter.

To the extent that Appellant now tries to argue improper venue, we find that she has failed to preserve that issue for appellate review. See Pa.R.A.P. 302 (stating that "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal"); see also Commonwealth v. Kelley, 664 A.2d 123, 126 (Pa.Super. 1995) (holding that change of venue issue was waived because it was not raised in omnibus pre-trial motion).

2. Guilty Plea

Appellant argues that she did not knowingly and voluntarily plead guilty to Disorderly Conduct (18 Pa.C.S.A. §5503 §§A4) because she was in the infirmary on May 23, 2022 prior to sentencing. "Our law is clear that, to be valid, a guilty plea must be knowingly,

voluntarily and intelligently entered.'" Commonwealth v. Rush, 909 A.2d 805, 808 (Pa.Super. 2006) (quoting Commonwealth v. Pollard, 832 A.2d 517, 522 (Pa.Super. 2003)). "'Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise.'" Id. (quoting Pollard, 832 A.2d at 523)). "'[W]here the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.'" Id. (quoting Commonwealth v. McCauley, 797 A.2d 920, 922 (Pa.Super. 2001)).

We first note that the parties entered into a stipulation for a guilty plea on May 17, 2022 and Appellant was sentenced on May 23, 2022. Appellant was represented by Carbon County Assistant Public Defender Eric T. Wiltrout, Esquire at the time of sentencing and had an opportunity to review the matter with Attorney Wiltrout prior to the sentencing hearing. (See N.T., 5/23/22, p. 3). Appellant understood and completed the guilty plea colloquy form of her own free will and had an opportunity to review the questions with Attorney Wiltrout. (See N.T., 5/23/22, p. 4). Appellant was not promised anything in return for or forced into entering the plea. (See N.T., 5/23/22, p. 5-6). Based upon the foregoing, we find that Appellant knowingly and voluntarily pled guilty to the charge of Disorderly Conduct (18 Pa.C.S.A. §5503 §§A4).

3. Criminal Immunity

Appellant argues that she is immune from criminal prosecution because she acted as the power of attorney for Mr. Tomasovich and had the authority to involuntarily commit him to a mental health facility. We note that Appellant raised the same issue in her "Pretrial Motion to Dismiss" filed on November 16, 2021 and that on January 20, 2022, this Court dismissed Appellant's motion with prejudice based on her failure to appear at the scheduled hearing. (See Court's Order of January 20, 2022).

There is no evidence indicating that Appellant was the attorney in fact for Mr. Tomasovich at the time of the underlying incident. Even so, Appellant's status as attorney in fact would not grant her immunity from criminal liability. Additionally, there is no applicable provision of the Crimes Code that grants immunity to defendants charged with disorderly conduct. Appellant cites Section 7114 of the Mental Health Procedures Act, which provides:

In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person who participates in a decision that a person be examined or treated under this act, or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced, or a county administrator or other authorized person who denies an application for voluntary treatment or for involuntary emergency examination and treatment, shall not be civilly or criminally liable for such decision or for any of its consequences.

50 P.S. §7114 §§A.

We find that Appellant's reliance on Section 7114 of the Mental Health Procedures Act is misplaced. Section 7114 "protects from civil and criminal liability those individuals and institutions that provide treatment to mentally ill patients, and thus promotes the statutory goal of ensuring such treatment remains available." Dean v. Bowling Green-Brandywine, 225 A.3d 859, 869 (Pa. 2020) (citing Farago v. Sacred Heart General Hospital, 562 A.2d 300, 304 (Pa. 1989)). We cannot find that Appellant is an individual who provided mental health treatment within the context of the statute. See McNamara by McNamara v. Schleifer Ambulance Service, Inc., 556 A.2d 448 (Pa.Super. 1989) (holding that ambulance attendants were not "authorized persons" within the meaning of Section 7114 granting immunity from liability).

4. Restitution

Finally, Appellant argues that she is not responsible to pay restitution in the amount of one thousand seven hundred sixteen dollars (\$1,716.00) to Mr. Tomasovich. We note that Appellant questioned the Commonwealth's request for restitution at the sentencing hearing. (See N.T., 5/23/22, p. 7). Because Appellant stated her desire to be sentenced immediately rather than following a restitution hearing, we included the full restitution amount in our order of sentence subject to the filing of a post-sentence motion on Appellant's behalf. No such motion was filed.

"Where a claim concerns the sentencing court's exercise of discretion in fashioning a sentence, the defendant must preserve and

present the claim at trial by way of a contemporaneous objection and/or a post-trial motion and on appeal through the process provided by 42 Pa.C.S. § 9781(b) and Pa.R.A.P. 2119(f)." Commonwealth v. Weir, 239 A.3d 25, 34 (Pa. 2020). We find that Appellant's restitution claim presents a challenge to the discretionary aspects of her sentence and, as such, she has failed to preserve this issue for appellate review.

If, however, the Honorable Superior Court finds that Appellant's challenge goes to the legality of her sentence, such a challenge may be heard on direct appeal even if it was not raised in a post-sentence motion in the trial court. See In re M.W., 725 A.2d 729, 731 (Pa. 1999) (holding that when a court's authority to impose restitution is challenged, it pertains to the legality of a sentence and as such cannot be waived). "An appeal from an order of restitution based upon a claim that it is unsupported by the record challenges the legality, rather than the discretionary aspects, of sentencing; as such, it is a non-waivable matter." Commonwealth v. Rotola, 173 A.3d 831, 834 (Pa.Super. 2017) (citing Commonwealth v. Atanasio, 997 A.2d 1181, 1183 (Pa.Super. 2010)).

When imposing an order of probation, the sentencing court may attach conditions of probation as it deems necessary, including "[t]o make restitution of the fruits of the crime or to make reparations, in an affordable amount and on a schedule that the defendant can afford to pay, for the loss or damage caused by the crime." 42 Pa.C.S.A. §9763 §§B10. Moreover, our courts are "traditionally and

properly invested with a broader measure of discretion in fashioning conditions of probation appropriate to the circumstances of the individual case." Commonwealth v. Walton, 397 A.2d 1179, 1184 (Pa. 1979). "[W]hen restitution is a condition of probation under [42 Pa.C.S.A. §9763 §§B10], rather than a direct sentence under the Crimes Code, there need not be a direct nexus between offense and loss." Commonwealth v. Harriot, 919 A.2d 234, 238 (Pa.Super. 2007) (citing Commonwealth v. Popow, 844 A.2d 13, 19 (Pa.Super. 2004)).

Such sentences are encouraged and give the trial court the flexibility to determine all the direct and indirect damages caused by a defendant and then permit the court to order restitution so that the defendant will understand the egregiousness of his conduct, be deterred from repeating this conduct, and be encouraged to live in a responsible way.

Commonwealth v. Harner, 617 A.2d 702, 707 (Pa. 1992).

"Thus, the requirement of a nexus between the damage and the offense is relaxed where restitution is ordered as a condition of probation." In re M.W., 725 A.2d at 732. "While restitution cannot be indiscriminate, an indirect connection between the criminal activity and the loss is sufficient." Harriot, 919 A.2d at 238 (citing Commonwealth v. Kelly, 836 A.2d 931, 934 (Pa.Super. 2003)).

As a part of her sentence to a period of probation, Appellant was directed to pay restitution in the amount of one thousand seven hundred sixteen dollars (\$1,716.00) to Mr. Tomasovich. This reflects the Commonwealth's requested amount based on lost wages sought by Mr. Tomasovich sustained as a result of Appellant's criminal conduct.

(See N.T., 5/23/22, p. 7). Thus, we set restitution based on information received from the victim and submitted by the Commonwealth during the sentencing hearing. Here we note that a trial court has wide latitude to "fashion probationary conditions designed to rehabilitate the defendant and provide some measure of redress to the victim." Commonwealth v. Deshong, 850 A.2d 712, 724 (Pa.Super. 2004). Appellant questioned the Commonwealth's request for restitution at the sentencing hearing, but failed to file a post-sentence motion challenging restitution or seeking a restitution hearing. Because a restitution hearing was neither requested nor convened, the record does not contain any victim testimony or documentary evidence supporting the restitution amount. Rather, restitution was ordered based upon the recommendation of the Commonwealth. Should the Superior Court determine that Defendant's claim concerning restitution implicates the legality of her sentence rather than the discretionary aspects thereof, we respectfully recommend that the restitution portion of Defendant's sentence be vacated and the matter remanded for re-sentencing following a restitution hearing.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our sentencing order of May 23, 2022 be affirmed in all respects. In the alternative, if upon review, it is determined that Defendant's claim concerning restitution presents a non-waivable challenge to the legality, rather than the discretionary aspects, of her sentencing, we respectfully recommend

that the Honorable Superior Court remand this matter for re-sentencing with respect to restitution only with instructions to conduct a full restitution hearing.

BY THE COURT:

A handwritten signature in black ink, appearing to read "S.R. Serfass", written over a horizontal line.

Steven R. Serfass, J.