

to one count of Aggravated Assault [18 Pa.C.S.A. §2702(a)(4)] and one count of Prohibited Offensive Weapon [18 Pa. C.S.A. §908(A)]. All other charges would be dismissed. Additionally, the parties agreed to concurrent sentences of "9-23 months", with "no opposition to work release" noted by the Commonwealth.

On April 8, 2024, Leto entered those guilty pleas and received a total sentence¹ of not less than nine months nor more than twenty-three months in the Carbon County Correctional Facility. He was also made "eligible for immediate work release." At the Defendant's request, we set the effective date of this sentence as May 10, 2024, so that the Defendant could take care of some personal matters.

Thereafter, on May 3, 2024, Leto filed the instant appeal after which we directed him to file a concise statement of errors complained of on appeal, which he did timely on May 20, 2024.

In this concise statement, Leto alleges a number of outlandish errors and abuses on the Court's part along with some misstated claims. From what we can glean we categorized them as follows:

1) Despite the Court making him eligible for immediate work release, the Defendant was "wrongfully" denied work release;

2) Errors and/or abuses in sentencing the Defendant to a term of incarceration of 9-23 months as follows by:

¹ As the sentencing guidelines on the Prohibited Offensive Weapon charge was "RS-3", he was given a one-year concurrent probationary sentence.

- a) failing to consider the sentencing guidelines;
 - b) failing to state on the record the reasons for the sentence;
 - c) imposing a sentence that was unreasonable and excessive;
 - d) failing to consider mitigating circumstances and hereafter reduce the sentence;
 - e) failing to give weight to the circumstances of the offense along with the Defendant's background; and
- 3) Imposing sentences that were against the evidence, against the weight of the evidence and contrary to law.

We will address each issue accordingly.

LEGAL DISCUSSION

A. Work Release

As part of the stipulation entered into between the Commonwealth and the Defendant, the Commonwealth noted that it had "no opposition to work release." At sentencing, the Court noted that it would make the Defendant "eligible for immediate work release", however, the ultimate decision of whether the Defendant would actually be eligible to participate in the work release program at the Carbon County Correctional Facility was up to the Work Release Director, Frank Shubeck in accordance with the Carbon County Correctional Facility's Work Release Policy. Unfortunately for the Defendant, a Defendant who pleads guilty to a charge of

Aggravated Assault is not eligible for any work release under the Carbon County Correctional Facility Work Release Program. Thus, the Defendant was not wrongfully denied work release by the Court as he claims. Further, the Defendant should have investigated whether or not his eligibility for work release was even a possibility before he ever agreed to enter his guilty plea if that was in fact a condition thereof.

B. Discretionary Sentence/Agreed Upon Sentence

Many of the issues set forth by Leto in his concise statement challenge the discretionary aspect of the sentences. When a Defendant enters a guilty plea without an agreed upon sentence, he may challenge the discretionary aspect of the sentence imposed. *Comm. v. Brown*, 240 A.3d 970, 972 (Pa. Super 2020). However, "where a plea agreement contains a negotiated sentence which is accepted and imposed by the sentencing court, there is no authority to permit a challenge to the discretionary aspects of that sentence. "If either party to a negotiated plea agreement believed the other side could, at any time following entry of sentence, approach a judge and have the sentence unilaterally altered, neither the Commonwealth nor any defendant would be willing to enter into such an agreement. Permitting a discretionary appeal following the entry of a negotiated plea would undermine the designs and goals of plea bargaining, and would make a sham of the negotiated plea process[.] For these reasons, we dismiss the appellant's appeal of

the discretionary aspects of sentence." *Comm v. Reichle*, 589 A.2d 1140, 11141 (Pa. Super. 1991). (Internal citations and quote marks omitted.)

Consequently, to the extent Leto challenges the discretionary aspects of our sentence, those too shall be dismissed by the Appellate Court.

C. Other Miscellaneous Challenges

Leto also claims that the Court erred by failing to consider the guidelines. The sentences were wholly within the standard guideline ranges.

Leto contends that the Court did not put on the record adequate reasons for imposing this sentence. Leto seems to forget that the Court noted "I am going to go along with the agreement. I am going to sentence you in accordance with the stipulation here."

Lastly, Leto alleged that the Court's sentences were "against the evidence", "against the weight of the evidence" and "were contrary to law." Without more specificity as to what the Defendant is alleging here, we are in no position to ever begin to know what frivolous claims Leto is raising.²

² "When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review. When an appellant fails adequately to identify in a concise manner the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a legal analysis which is pertinent to those issues. In other words, a Concise Statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all." *Comm. v. Dowling*, 778 A.2d 685, 687 (Pa. Super. 2001). (Internal citations and quote marks omitted.)

CONCLUSION

For the reasons stated herein, this Court requests that the Defendant's Appeal be dismissed and the sentences affirmed.

BY THE COURT:



Joseph J. Matika, J.