NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
ALYSSA MILANA ARJUN	:	
Appellant	:	No. 1629 EDA 2021

Appeal from the Judgment of Sentence Entered July 12, 2021
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0003733-2020

BEFORE: OLSON, J., KING, J., and McCAFFERY, J.

MEMORANDUM BY KING, J.: **FILED JUNE 29, 2022**

Appellant, Alyssa Milana Arjun, appeals from the judgment of sentence entered in the Bucks County Court of Common Pleas, following her guilty plea to five counts each of tampering with records or identification, tampering with public records or information, and false swearing.[1] We affirm.

The relevant facts and procedural history of this case are as follows. On July 12, 2021, Appellant entered an open guilty plea to the above-mentioned crimes. At the hearing, the Commonwealth summarized the facts supporting Appellant's guilty plea as follows:

> [Appellant] was married to Andre Agard, [("Father")] and in September of 2016, [Appellant] gave birth to [A.A. ("Child")].
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> A shared 50/50 custody order was entered on May 22nd of

[1] 18 Pa.C.S.A. §§ 4104(a), 4911(a)(2), and 4903(a)(1), respectively.

2018. And on March 11th of 2019, [Appellant] filed a petition to modify the custody order. On June 10th of 2019, a hearing was held [at] the Bucks County Court of Common Pleas in Doylestown, Bucks County.

[Appellant] represented herself during this proceeding. [Appellant] was sworn in, and she testified under oath and entered documents into the record as court exhibits. [Appellant] testified that she wanted the custody changed and wanted [Father] to have custody every other weekend and one overnight during the week, but wanted the weekday visit as a dinner visit only. [Appellant] entered a number of medical treatment and evaluation documents into the record in support of her petition for custody modification.

During this hearing and while under oath, [Appellant] presented a letter to the [c]ourt which purported to be from a representative of the Partnership for Community Supports who specializes in early intervention. This document was marked as [E]xhibit M-1 and was entered into the record. The letter urged the [c]ourt to modify the agreement because "[Father] is not consistent with the information he provides medical providers" and the need for consistent structures and routines for the minor child. The letter ended with a recommended custody schedule of one dinner visit during the week and every other weekend with times not to conflict with [Child]'s therapy sessions.

[Appellant] also submitted a 15-page document titled, "Individualized Family Service Plan and Individualized Education Program." This was marked as [c]ourt Exhibit M-2, and it purported to be prepared by the Partnership for Community Supports team overseeing [Child]'s intellectual and educational development.

Detective Beidler noted the summary of family information section consisted largely of praise and support for the [care] provided to [Child] by [Appellant]. Additionally, [Father's] care of [Child] is described as inconsistent.

[Appellant] also entered into evidence a document titled, "General Encounter Notes," purported to have been authored by [Child]'s allergy and asthma specialist, Dr. Patrick Vannelli. That document was marked and admitted

as [c]ourt Exhibit M-3. It purported to be Dr. Vannelli's opinions on the effects of gymnastic chalk dust on someone with asthma. Father … is a gymnastics coach, and he does at times take [Child] to his team's practice.

[Appellant] also entered into the record two reports that were purportedly authored by [Child]'s pediatrician, Dr. Kathleen Pitterle of Nemours DuPont Pediatrics. These reports were marked and admitted as Exhibits M-6 and M-7. [Appellant] used these exhibits in court during her cross-examination of [Father]. [Appellant] handed [Father] these documents and asked him to read certain highlighted portions that generally called into question [Father]'s acceptance of the diagnosis of [Child] and the need for more consistency.

Detective Beidler spoke with Dr. Pitterle upon reviewing the [E]xhibits M-6 and M-7. Dr. Pitterle confirmed that both of these documents were changed and altered reproductions of her actual notes. She provided Detective Beidler with a true and correct copy of her original notes concerning her care and observations of [Child]. Detective Beidler noted numerous changes and alterations to the doctor's true and correct notes. Most notably, the highlighted portions that [Appellant] had Father read in open court were largely altered or changed from Dr. Pitterle's two reports.

Detective Beidler also spoke to representatives from the Partnership for Community Supports, a senior unit manager of the early intervention service coordination program and an intervention service coordinator. They stated that the Partnership for Community Supports is a nonprofit social service agency that supports children and adults in Philadelphia, Bucks County, and other counties. Both individuals work in the early intervention unit which specializes in treating individuals with disabilities.

They were shown [c]ourt Exhibit M-1. The representative who was purported to have written that indicated she did not write the letter. She did not approve or authorize the writing of the letter. This representative also noted that the letter was not written on the Partnership letterhead and instead simply had the Partnership for Community Supports logo affixed across the top.

> They were also shown [c]ourt Exhibit M-2. The representative stated that this was not created by her or [Child]'s treatment team. She indicated that M-2 was a complete forgery and was not the correct document used for this purpose. She noted that M-2 had glaring inaccuracies in its format as well as the information contained in the document. She provided Detective Beidler with historical copies of [Child]'s true and correct reports printed from the computer system of the Partnership. Upon comparison, Detective Beidler noted that [c]ourt Exhibit M-2 was not true and accurate.
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> Detective Beidler also spoke with allergy and asthma specialist Dr. Patrick Vannelli. Dr. Vannelli advised that he was [Child]'s treating asthma doctor and that he did see [Child] on August 31st of 2019. He had, in fact, prepared a report regarding his office visit. Detective Beidler showed Dr. Vannelli the general encounter notes which were entered as [c]ourt Exhibit M-3. Dr. Vannelli stated that M-3 has been changed and altered without his knowledge or approval. Numerous lines and wording were added, and he pointed out that his general encounter notes would not contain a signature line or his signature as was represented in [c]ourt Exhibit M-3.
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> Additionally, ... Detective Beidler interviewed [Appellant] and she denied knowledge of the alterations of these documents.

(N.T. Sentencing Hearing, 7/12/21, at 7-14).

Appellant testified that the Commonwealth's recitation of facts was accurate and took responsibility for her actions. Appellant further stated that she was diagnosed with bipolar disorder with mixed psychotic episodes, general anxiety, post-traumatic stress disorder, trauma, and major depressive disorder. Appellant reported that she has been treating with a psychiatrist to address her mental health diagnoses and submitted a report authored by her

doctor summarizing her treatment. After considering Appellant's statements, the court sentenced Appellant to 6 to 23 months' incarceration with a concurrent probation period of 48 months.

Appellant timely filed a post-sentence motion on July 13, 2021, which the court denied on July 19, 2021. On August 11, 2021, Appellant filed a timely notice of appeal. The next day, the court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and Appellant complied on September 6, 2021.[2]

Appellant raises the following issue for our review:

> Did the sentence imposed by the [trial] court, in excess of the aggravated range of the Sentencing Guidelines, adequately take into account the Appellant's efforts at rehabilitation?

(Concise Statement of Errors Complained of on Appeal, filed 9/6/22).[3]

On appeal, Appellant argues the trial court imposed a sentence above

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[2] Per the trial court's order, Appellant was directed to file a Rule 1925(b) concise statement by September 2, 2021. Appellant did not file her concise statement until September 6, 2021. In her brief, Appellant explains that she was unable to file her Rule 1925(b) statement on September 2, 2021 because the Bucks County Courthouse was closed on that date as a result of Hurricane Ida. Due to the closure, Appellant served the statement on the court by e-mail and first-class mail on September 2, 2021, prior to formally filing the Rule 1925(b) statement on September 6, 2021. Under these circumstances, we decline to find waiver.

[3] Appellant's brief does not include a statement of issues presented on appeal in violation of Pa.R.A.P. 2116. Nevertheless, it is clear from her concise statement and her arguments on appeal that she is challenging the discretionary aspects of her sentence.

the aggravated range even though she did not have a criminal history. Appellant asserts the court failed to adequately consider Appellant's remorse for her criminal actions and her history of mental health struggles which contributed to her behavior. Appellant claims the court failed to give enough weight to Appellant's efforts at rehabilitation, specifically the steps Appellant has taken with a psychiatrist to address her mental health struggles. Appellant concludes the court imposed an excessive sentence under the circumstances of this case, and this Court must remand for resentencing. We disagree.

Challenges to the discretionary aspects of sentencing do not entitle an appellant to an appeal as of right. ***Commonwealth v. Sierra***, 752 A.2d 910 (Pa.Super. 2000). Prior to reaching the merits of a discretionary sentencing issue:

> [W]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, ***see*** Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Commonwealth v. Evans, 901 A.2d 528, 533 (Pa.Super. 2006), *appeal denied*, 589 Pa. 727, 909 A.2d 303 (2006) (internal citations omitted).

Under Pa.R.A.P. 2119(f), an appellant must invoke the appellate court's jurisdiction by including in her brief a separate concise statement

demonstrating a substantial question as to the appropriateness of the sentence under the Sentencing Code. ***Commonwealth v. Mouzon***, 571 Pa. 419, 812 A.2d 617 (2002); Pa.R.A.P. 2119(f). "The requirement that an appellant separately set forth the reasons relied upon for allowance of appeal furthers the purpose evident in the Sentencing Code as a whole of limiting any challenges to the trial court's evaluation of the multitude of factors impinging on the sentencing decision to **exceptional** cases." ***Commonwealth v. Williams***, 562 A.2d 1385, 1387 (Pa.Super. 1989) (*en banc*) (emphasis in original) (internal quotation marks omitted).

"The determination of what constitutes a substantial question must be evaluated on a case-by-case basis." ***Commonwealth v. Anderson***, 830 A.2d 1013, 1018 (Pa.Super. 2003). A substantial question exists "only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Sierra, supra*** at 913. This Court does not accept bald assertions of sentencing errors as substantial questions. ***Commonwealth v. Malovich***, 903 A.2d 1247 (Pa.Super. 2006). Rather, an appellant must articulate the bases for her allegations that the sentencing court's actions violated the sentencing code. ***Id.*** A claim of excessiveness can raise a substantial question as to the appropriateness of a sentence under the Sentencing Code, even if the sentence is within the statutory limits. ***Mouzon, supra*** at 430,

812 A.2d at 624. Bald allegations of excessiveness, however, do not raise a substantial question to warrant appellate review. ***Id.*** at 435, 812 A.2d at 627. Rather, there is a substantial question "only where the appellant's Rule 2119(f) statement sufficiently articulates the manner in which the sentence violates either a specific provision of the sentencing scheme set forth in the Sentencing Code or a particular fundamental norm underlying the sentencing process…." ***Id.***

An allegation that the sentencing court ignored or did not accord proper weight to an appellant's rehabilitative needs does not raise a substantial question. ***Commonwealth v. Berry***, 785 A.2d 994 (Pa.Super. 2001). Nevertheless, "an excessive sentence claim—in conjunction with an assertion that the court failed to consider mitigating factors—raises a substantial question." ***Commonwealth v. Raven***, 97 A.3d 1244, 1253 (Pa.Super. 2014), *appeal denied*, 629 Pa. 636, 105 A.3d 736 (2014). ***See also Commonwealth v. Trimble***, 615 A.2d 48 (Pa.Super. 1992) (holding defendant's claim that court failed to consider factors set forth under Section 9721(b) and focused solely on seriousness of defendant's offense raised substantial question).

Here, Appellant timely filed a notice of appeal, and preserved her sentencing issue in a timely filed post-sentence motion and in a Rule 2119(f) statement. ***See Evans, supra***. As presented, Appellant's claim concerning an excessive sentence in combination with the court's failure to consider

certain mitigating factors arguably raises a substantial question. ***See Raven, supra***.

On appeal, this Court will not disturb the judgment of the sentencing court absent an abuse of discretion. ***Commonwealth v. Fullin***, 892 A.2d 843 (Pa.Super. 2006).

> [A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. In more expansive terms, …: An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.
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> The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that the sentencing court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it. Simply stated, the sentencing court sentences flesh-and-blood defendants and the nuances of sentencing decisions are difficult to gauge from the cold transcript used upon appellate review. Moreover, the sentencing court enjoys an institutional advantage to appellate review, bringing to its decisions an expertise, experience, and judgment that should not be lightly disturbed. Even with the advent of the sentencing guidelines, the power of sentencing is a function to be performed by the sentencing court. Thus, rather than cabin the exercise of a sentencing court's discretion, the guidelines merely inform the sentencing decision.
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> [W]e reaffirm that the guidelines have no binding effect, create no presumption in sentencing, and do not predominate over other sentencing factors—they are advisory guideposts that are valuable, may provide an

> essential starting point, and that must be respected and considered; they recommend, however, rather than require a particular sentence. …

Commonwealth v. Walls, 592 Pa. 557, 564-70, 926 A.2d 957, 961-65 (2007) (internal quotation marks, footnotes, and citations omitted).

> [I]n exercising its discretion, the sentencing court may deviate from the guidelines, if necessary, to fashion a sentence that takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community, so long as the court also states of record the factual basis and specific reasons which compelled the deviation from the guidelines. This Court must remand for resentencing with instructions if we find that the sentencing court sentenced outside the guidelines and the sentence was unreasonable.

Commonwealth v. Kenner, 784 A.2d 808, 811 (Pa.Super. 2001), *appeal denied*, 568 Pa. 695, 796 A.2d 979 (2002) (internal citations omitted). ***See also*** 42 Pa.C.S.A. § 9721(b) (stating sentence imposed must be consistent with protection of public, gravity of offense as it relates to impact of life of victim and community, and rehabilitative needs of defendant).

Additionally, "[t]he Sentencing Code requires a trial judge who intends to sentence outside the guidelines to demonstrate, on the record, his awareness of the guideline ranges." ***Commonwealth v. Griffin***, 804 A.2d 1, 7 (Pa.Super. 2002), *appeal denied*, 582 Pa. 671, 868 A.2d 1198 (2005), *cert. denied*, 545 U.S. 1148, 125 S.Ct. 2984, 162 L.Ed.2d 902 (2005). "[T]he sentencing judge must state of record the factual basis and specific reasons which compelled him…to deviate from the guideline ranges. When evaluating

a claim of this type, it is necessary to remember that the sentencing guidelines are advisory only." ***Id.*** at 8.

Instantly, the court explained its reasoning for departing from the guidelines on the record as follows:

> What [Appellant] did was deliberate, well planned, well thought out, and intentionally designed to affect the custody rights of [Father].
>
> What she did was impede the truth determining process, or attempted to impede the truth determining process in custody court. Had she succeeded, who knows what long-term effects this would have had upon the child and the child's relationship with [Father].
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> * * *
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> … Not only did [Appellant] lie but [she] presented false information to the judge that [she] knew she was going to rely upon.
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> I understand she has some mental health issues, but she has a bachelor's degree in accounting and a master's degree … and she's a Ph.D. candidate. So, we know that she's highly intelligent, and we know she is well versed in accounting principles and certainly with respect to what she does for a living, well versed in how to present documents to a court.
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> [Appellant] falsified medical records. We all know the judges rely heavily upon those medical records. And [she] did it because [she] wouldn't let the judge decide what was best for [her] child. And [she] did it because [she] wanted to take the child from the child's father. There's no other explanation.

(N.T. Sentencing at 21-22). The court also indicated that it read and credited the report of Appellant's psychiatrist concerning Appellant's mental health struggles. (***Id.*** at 22).

The court's statements at sentencing demonstrate that it considered the general principles of sentencing, including Appellant's rehabilitative efforts and needs, in crafting its sentence. ***See Kenner, supra***. Notwithstanding Appellant's mental health struggles and rehabilitative efforts, the court decided that the circumstances of Appellant's offenses warranted a departure from the sentencing guidelines. The court clearly explained its reasoning for deviating from the guideline range on the record. ***See Griffin, supra***. Accordingly, we see no abuse of discretion concerning the sentence imposed and affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/29/2022