

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

FRANCISCO ORTIZ

Appellant

: No. 2898 EDA 2023

Appeal from the Judgment of Sentence Entered October 13, 2023
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0009373-2019

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

FRANCISCO ORTIZ

Appellant

: No. 2909 EDA 2023

Appeal from the Judgment of Sentence Entered October 13, 2023
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0005043-2022

BEFORE: STABILE, J., KING, J., and COLINS, J.*

JUDGMENT ORDER BY STABILE, J.:

FILED DECEMBER 20, 2024

Appellant, Francisco Ortiz, appeals from the trial court's judgments of sentence entered October 13, 2023. We affirm at Number 2909 EDA 2023, vacate at number 2898 EDA 2023, and remand for resentencing.

* Retired Senior Judge assigned to the Superior Court.

The records from these consolidated appeals reveal that, at Philadelphia County docket number 9373 of 2019, Appellant was arrested and charged with four counts each of attempted murder, aggravated assault,¹ and related offenses for firing a gun into to the victims' vehicle after receiving fake \$20 bills in a drug transaction. One of the victims, 11-month-old Yaseem Jenkins, was paralyzed, unable to speak, and required a feeding tube as a result of his wounds. At the age of three, Jenkins suffered an aspiration after eating through his feeding tube and died. On May 9, 2022, Appellant was arrested and charged with third degree murder² at docket number 5043 of 2022.

After a four-day bench trial in June of 2023, the trial court found Appellant guilty of third degree murder at number 5043, and three counts of attempted murder, aggravated assault, and related offenses at number 9373. On October 23, 2023, the trial court imposed 20 to 40 years of incarceration for third degree murder and a consecutive, aggregate total of 17½ to 35 years of incarceration for the convictions at number 9373. The trial court denied Appellant's motion for reconsideration and this timely appeal followed.

The sole issue before us is the legality of Appellant's sentence at docket number 9373. In specific, the trial court imposed 17½ to 35 years of incarceration for the attempted murder of victim Krystal Ortiz-Pabon.

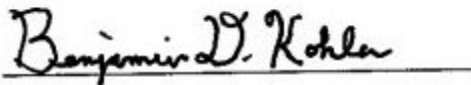
¹ 18 Pa.C.S.A. §§ 901, 2502, 2702.

² 18 Pa.C.S.A. §§ 2502(c).

Appellant argues, and the Commonwealth concedes, that Ortiz-Pabon did not suffer serious bodily injury. The statutory maximum for an attempted murder that does not result in serious bodily injury is 20 years. 18 Pa.C.S.A. § 1102(c). Appellant and the trial court have requested a remand for resentencing. The Commonwealth does not oppose that request. We agree that the sentence is illegal and therefore vacate the judgment of sentence and remand for resentencing at 2898 EDA 2023, Philadelphia County docket number 9373 of 2019. We affirm the judgment of sentence at 2909 EDA 2023, Philadelphia County docket number 5043 of 2022.

Judgment of sentence affirmed at 2909 EDA 2023. Judgment of sentence vacated at 2898 EDA 2023. Case remanded for resentencing at number 2898 EDA 2023. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 12/20/2024