



On September 27, 1996, the defendant appeared before this court and pleaded guilty to nine counts of robbery arising from nine separate incidents which occurred over a period of approximately eight months from December of 1995 to July of 1996. The later offenses occurred while the defendant was on bail awaiting trial on the earlier offenses. Three of these robbery counts were subject to mandatory minimum sentences of five years incarceration because they were committed with a visible firearm. Additionally, the defendant had four prior convictions (three felonies and a misdemeanor), giving him a prior record score of “5” under the Pennsylvania Sentencing Guidelines, 204 Pa. Code §§ 303.1-303.16 (effective 8/12/1994) (“the Guidelines”).

Pursuant to the Guidelines, the aggregate sentence which could have been imposed for these nine robberies ranged from a minimum mitigated sentence of 252 months (21 years) to a maximum aggravated sentence of 504 months (42 years), had each sentence been imposed consecutively. Instead, this court imposed the three mandatory sentences consecutively and the remaining six sentences, each five to ten years, were ordered to be served concurrently. Hence, the final sentence imposed was fifteen to thirty years incarceration plus restitution and costs.

The procedural history of this case, briefly, is as follows. In September of 1996, the defendant waived his right to a trial and entered guilty plea to all nine bills. Following a presentence investigation and a mental health evaluation, he was sentenced in December, 1996. Defendant’s timely motion for reconsideration of sentence was denied. Subsequently, a motion to vacate sentence was also denied by this court. Defendant appeal the denial, which was dismissed by the Superior Court due to a clerical error by the Department of Corrections which had incorrectly recorded the sentence imposed. Upon discovery of the error, a petition was filed

on defendant's behalf pursuant to the Pennsylvania Post Conviction Relief Act, 42 Pa.C.S.A. § 9541 et seq. After a hearing on the merits of the PCRA petition, the Honorable Barbara Joseph found that at the original sentencing defendant was denied his right of allocution because his attorney, not he, was asked if he had anything to say. The matter was remanded to this court for resentencing, reinstating defendant's right of allocution. The resentencing hearing was held on June 14, 2001, at which time the original sentence was reimposed.

The sole basis for the defendant's appeal is that he believes that the court erred at the resentencing by not reducing the sentence based on evidence of defendant's rehabilitation efforts during the intervening five years. Defendant relies on Commonwealth v. Losch, 369 Pa. Super. 192, 535 A.2d 115 (1987) for the proposition that when a case is remanded for resentencing, the sentencing court is required to consider evidence of defendant's good conduct while in prison. Defendant's reading of the case is correct, but the court in Losch goes on to say that a defendant's "favorable adjustment to life in the penitentiary is *only one of several factors* upon which the trial judge should focus; there is no right to have this one factor take precedence over all others." 369 Pa. Super. at 209, 535 A.2d at 123 (emphasis added). This court did consider the personal advances made by defendant while incarcerated, but weighing that evidence with the nature of the crimes and the comparative leniency of the original sentence, found that a reduction in that sentence was not warranted.

For all of the above reasons, the Judgment of Sentence as entered on June 14, 2001, imposing the sentence of fifteen (15) to thirty (30) years incarceration plus restitution and costs, was proper and should be affirmed.

By the Court:

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Myrna Field, J.