

The defendant pled guilty to murder in the third degree and conspiracy to commit robbery. The defendant filed an Appeal on the grounds that the Trial Court Abused its discretion by refusing to transfer the Defendant's case to Juvenile Court and that the sentence imposed is contrary to the fundamental norms which underlie the sentencing process.

1. A juvenile bears the burden of demonstrating that he is amenable to treatment, supervision or rehabilitation under the juvenile system. 42 Pa.C.S. Section 6322(a)
2. Even where amenability to treatment is shown, the court may nevertheless deny the transfer to juvenile court if the crime was brutal and premeditated and there is serious doubt about whether the juvenile could be rehabilitated within the time available under juvenile court jurisdiction.
3. To prevail on appeal where the application for transfer is denied, the juvenile must show that the hearing judge abused his discretion.
4. In certifying the charges to adult court, the court need not make formal findings of fact or offer detailed, intricate explanations of the rationale for certification.
5. A certification decision which is supported by evidence on the factors enumerated in 42 Pa.C.S. Section 6355 should not be reversed merely because the hearing judge's statement could have been lengthier or more eloquent.
6. Within certain procedural guidelines, the imposition of a sentence is within the sound discretion of the trial court.
7. Unless the defendant can establish that an abuse of discretion has occurred by way of a manifestly excessive sentence or a sentence that exceeds the prescribed statutory limits, the trial court's sentences should remain unchanged.

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OPINION

HERMAN, J., May 26, 1995:

OPINION

The defendant was charged with criminal homicide, conspiracy to commit criminal homicide, robbery and conspiracy to commit robbery. After plea negotiations and a complete plea colloquy during which he was represented by counsel, the defendant pled

3. Respect other lawyers' schedules as your own. Seek agreement on meetings, depositions, hearings and trial dates. A reasonable request for a scheduling accommodation should never be unreasonably refused.

4. Be punctual in appointments, communications and in honoring scheduled appearances. Neglect and tardiness are demeaning to others and to the judicial system.

5. Procedural rules are necessary to judicial order and decorum. Be mindful that pleadings, discovery processes and motions cost time and money. They should not be heedlessly used. If an adversary is entitled to something, provide it without unnecessary formalities.

6. Grant extensions of time when they are reasonable and when they will not have a material, adverse effect on your client's interest.

7. Resolve differences through negotiation, expeditiously and without needless expense.

8. Enjoy what you are doing and the company you keep. You and the world will be better for it.

Beyond all this, the respect of our peers and the society which we serve is the ultimate measure of responsible professional conduct.

guilty to murder in the third degree and conspiracy to commit robbery. On November 9, 1994 the defendant was sentenced to undergo imprisonment at a state correctional institution for 108-240 months for third-degree murder and 12-120 months for conspiracy to commit robbery, with sentences to run concurrently.

The defendant filed a timely notice of appeal and we ordered the transcription of the sentencing proceeding. On December 9, 1994 we directed the defendant to file a concise statement of matters complained of appeal.¹ The grounds for appeal are as follows:

1. The Trial Court abused its discretion by refusing to transfer Defendant's case to Juvenile court. *Commonwealth v. Kocher*, 529 Pa. 303, 602 A.2d 1408 (1992).
2. The Trial Court erred in not providing sufficiently specific reasons for its refusal to transfer Defendant's case to Juvenile Court. *Commonwealth v. Deppeller*, 314 Pa. Super. 368, 460 A.2d 1184 (1983).
3. The sentence imposed by the Trial Court is contrary to the fundamental norms which underlie the sentencing process. *Commonwealth v. Tuladziecki*, 513 Pa. 508, 522 A.2d 17 (1987).

The Court must weigh the following factors when considering a juvenile defendant's motion to transfer a murder charge to juvenile court:

... that the child is not amenable to treatment, supervision or rehabilitation as a juvenile through available facilities, even though there may not have been a prior adjudication of delinquency. In determining this court shall consider the following factors: age, mental capacity, maturity, the degree of criminal sophistication exhibited by the child, previous records, if any, the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the Juvenile Court to rehabilitate the child, whether the child can be rehabilitated prior to the expiration

¹ On January 11, 1995 we gave the defendant an extension of time in which to file his statement due to a change in counsel. We also permitted him to file an amended statement following the transcription of the proceedings concerning whether the case should be transferred to Juvenile Court, held before the Honorable John R. Walker on January 31, 1994.

of the Juvenile Court jurisdiction, probation or institutional reports, if any, [and] any other relevant factor.

42 Pa.C.S. § 6355(a)(4)(iii)(A). The juvenile bears the burden of demonstrating that he is amenable to treatment, supervision or rehabilitation under the juvenile system. 42 Pa.C.S. §6322(a); *Commonwealth v. Morningwake*, 407 Pa. Super. 129, 595 A.2d 158 (1991); *Commonwealth v. Pyle* 462 Pa. 613, 342 A.2d 101 (1975). Even where amenability to treatment is shown, the court may nevertheless deny the transfer to juvenile court if the crime was brutal and premeditated and there is serious doubt about whether the juvenile could be rehabilitated within the time available under juvenile court jurisdiction. *Commonwealth v. Zoller*, 345 Pa. Super. 350, 498 A.2d 436 (1985).

The decision to grant or deny an application for transfer is within the sound discretion of the hearing judge, whose decision will not be disturbed absent a gross abuse of his broad discretion. *Commonwealth v. Morningwake*, 407 Pa. Super. 129. To prevail on appeal where the application for transfer is denied, the juvenile must show that the hearing judge abused his discretion. However, such abuse "may not merely be an error in judgment, but must be a misapplication of the law or an exercise of manifestly unreasonable judgment based upon partiality, prejudice or ill will." *Commonwealth v. Reed*, 435 Pa. Super. 304, 315, 645 A.2d 872 (1994), citing *Commonwealth v. Romeri*, 314 Pa. Super. 279, 291, 460 A.2d 1139, 1145 (1983).

In certifying the charges to adult court, the court need not make formal findings of fact or offer detailed, intricate explanations of the rationale for certification. *Commonwealth v. McDonald*, 399 Pa. Super. 250, 582 A.2d 328 (1990). The certification must indicate the basis for transfer with sufficient specificity to permit meaningful appellate review. *Id.* A reviewing court may presume that the certification judge considered all the evidence presented. *Commonwealth v. Devers*, 519 Pa. 88, 546 A.2d 12 (1988). A certification decision which is supported by evidence on the factors enumerated in 42 Pa.C.S. §6355 should not be reversed merely because the hearing judge's statement could have been lengthier or more eloquent. *Commonwealth v. McDonald*, 399 Pa. Super. 250.

Dr. Paul F. Phillips, a board certified psychiatrist, testified at the transfer hearing before Judge John R. Walker. In order to render an opinion as to whether the defendant was amenable to treatment, supervision or rehabilitation under the juvenile system, Dr. Phillips interviewed the defendant and reviewed records from the State of Florida where the defendant lived until approximately May of 1992. He also examined the records generated in Pennsylvania as a result of the murder charge. Florida records indicated that the defendant had been physically and sexually abused in an on-going fashion but had not received adequate treatment for the abuse.

Dr. Phillips testified that the defendant's manner during the interview was pleasant and cooperative, that he expressed a degree of remorse for the murder and was under psychological stress due in part to past abuse and in part to his legal predicament. However, the defendant suffered from no significant mental disease or disorder, and understood right from wrong during the planning stage of the robbery.

The defendant's version of the incident was that the victim had a reputation for fondling younger persons in a sexual manner. The defendant and his friend planned to rob the victim and brought a hammer to the victim's residence, where the three played cards. The defendant maintained that the victim began fondling his leg under the table and referred in a threatening manner to a rifle or shotgun leaning against the wall. The defendant rose from the table and left the room for a moment. The victim began to approach and the defendant struck him 18 times in the head with the hammer. The defendant and his companion then took the victim's radio and other personal effects.

Under pointed cross-examination, Dr. Phillips was unable to state to a reasonable degree of medical or psychiatric certainty whether the defendant was amenable to treatment, supervision or rehabilitation within the juvenile system. Dr. Phillips reluctantly retracted his previous more optimistic prognosis, which presumed that the defendant would be able to continue to undergo structured treatment and group therapy after age 21. The defendant was born December 2, 1975. The murder was committed August 29, 1992 when he was 16 years and 9 months old. At the time of the

transfer hearing, the defendant was 18 years and 61 days old, with fewer than three full years until his 21st birthday, the outer parameters of the juvenile court's authority. Dr. Phillips could not unequivocally state that the defendant would be able to successfully re-enter society at that time without a structured follow-up care plan.

Following the transfer hearing, the court denied the defendant's application for transfer. In his Opinion he stated:

The court after reviewing the evidence and the brutality of the murder of striking the victim sixteen or seventeen times in the head with a hammer commonly used in carpentry, the defendant's age at the time of the offense, the fact that Dr. Phillips testified that the juvenile does not suffer from any significant mental disease and the need of society for its own protection, the court denied the juvenile's request for transfer of his case from adult court to juvenile court.

The court provided sufficiently specific reasons for his refusal to transfer the defendant's case to juvenile court and did not abuse his discretion in reaching that decision.

The defendant cites *Commonwealth v. Kocher*, 529 Pa. 303, 602 A.2d 1408 (1992) for his assertion that the Court abused his discretion. In that case, the Pennsylvania Supreme Court held that a transfer court must weigh all the factors set forth in 42 Pa.C.S. §6355 in determining the juvenile's amenability to treatment within the juvenile system, not only whether the juvenile has shown that a mental disease caused the killing. The transfer court was held to have abused its discretion because it failed to weigh all other factors once it found that the juvenile did not suffer from a mental defect. A determination that a juvenile's mental capacity is unclouded does not, in itself, demand retention of his case in adult criminal court.

There was ample evidence to support this Court's decision. The defendant was three months shy of his 17th birthday at the time of the killing, which was marked by extreme brutality. The victim's death was the result of being struck in the head 18 times with a hammer. There was no evidence that he was below average in intelligence or maturity or had difficulty understanding the nature of the crime he committed. The defendant was fully aware that a

hammer was being brought to the victim's home and that the intent was to rob him.² In addition, the defendant exhibited no significant mental disease or defect and was capable of forming the requisite intent and distinguishing between right and wrong before committing the murder. Dr. Phillips was unable to say with any degree of certainty that the defendant would be amenable to treatment, supervision or rehabilitation under the juvenile system. It is clear that the Court carefully weighed many factors in reaching its decision not to transfer the case to juvenile court. One of these factors was that the defendant does not suffer from any significant mental disease or defect. Such was not, however, the only factor considered, and we conclude that the Court did not abuse its discretion in denying the defendant's transfer application.

The defendant also argues that the court erred in not providing sufficiently specific reasons for the denial of his transfer request. As we previously stated, the court's statement must be specific enough to permit meaningful appellate review of the hearing court's rationale for its decision, but detailed, lengthy findings of fact and intricate explanations are not necessary. *Commonwealth v. McDonald*, 399 Pa. Super. 250. In *Commonwealth v. Deppeller*, 314 Pa. Super. 368, 460 A.2d 1184 (1983) cited by the defendant, the juvenile hearing judge did not provide any reasons for certifying the juvenile defendant to adult court, thus precluding appellate review of his decision. This Court's Opinion, while not lengthy, provides the essential elements of the decision and allows for meaningful appellate review.

The defendant's final ground for appeal is that the sentence we imposed was contrary to the fundamental norms underlying the sentencing process. We sentenced the defendant to serve 108-240 months for the third degree murder charge and 12-120 months for the conspiracy to commit robbery charge. These sentences are to run concurrently. The sentences are in the aggravated range, and we acknowledged that fact at the sentencing hearing. We reviewed the presentence investigation report and considered the defendant's age, intelligence and level of maturity. We also

² The defendant and co-defendant each had a different view of which of them brought the hammer to the murder scene.

considered the extreme brutality of the killing, which despite the prior abuse he may have experienced, was without adequate justification or provocation. As for the sentence imposed for conspiracy to commit robbery, we indicated at the sentencing hearing that the defendant and his companion specifically discussed robbing the victim the night before and both knew a hammer would be brought to the victim's residence.

Within certain procedural guidelines, the imposition of a sentence is within the sound discretion of the trial court. *Commonwealth v. Green*, 494 Pa. 406, 431 A.2d 918 (1981). Unless the defendant can establish that an abuse of discretion has occurred by way of a manifestly excessive sentence or a sentence that exceeds the prescribed statutory limits, the trial court's sentences should remain unchanged. *Commonwealth v. White*, 341 Pa. Super. 261, 491 A.2d 252 (1985). The sentencing judge's discretion must be given great weight, as he is in the best position to weigh various factors such as the nature of the offense, the defendant's character and his display of remorse, defiance or indifference. *Commonwealth v. Duffy*, 341 Pa. Super. 217, 491 A.2d 230 (1985). There is a strong presumption that the sentencing judge imposed sentence with an awareness of the information in the presentence report and any other relevant information presented at the sentencing hearing. *Commonwealth v. Devers*, 519 Pa. 88, 546 A.2d 12 (1988).

A sentencing judge must state his reasons for imposing a particular sentence. He must explain any deviation from the guidelines. 42 Pa.C.S. §9721(b). However, where the court sentences *within* the guidelines, although in the aggravated range, "[t]he sentencing court is *not* required to state its reasons for sentencing within one *guideline range* over another." *Commonwealth v. Hill* 427 Pa. Super. 440, 449, 629 A.2d 949 (1993), citing *Commonwealth v. Wright*, 411 Pa. Super. 111, 115, 600 A.2d 1289 (1991) (emphasis in original).

The defendant's appeal from the sentences is merely an expression of his dissatisfaction and disagreement with the length and type of sentences imposed, and constitutes an attack on the discretionary aspects of the sentencing. Since there is no evidence or allegation that the sentences we imposed fell outside the ranges

established by the guidelines, the defendant has not articulated a sufficient basis for his objection to those sentences. *Commonwealth v. Tuladziecki*, 513 Pa. 508, 522 A.2d 17 (1987); *Commonwealth v. John*, 408 Pa. Super. 234, 596 A.2d 834 (1991).

In our judgment, lesser sentences would depreciate the seriousness of the crimes. We respectfully submit that no error was made by the Court in any aspect of the defendant's sentences.*

* Editor's Note: Original Opinion adds a paragraph, as follows: "A copy of the presentence investigation is attached hereto".

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