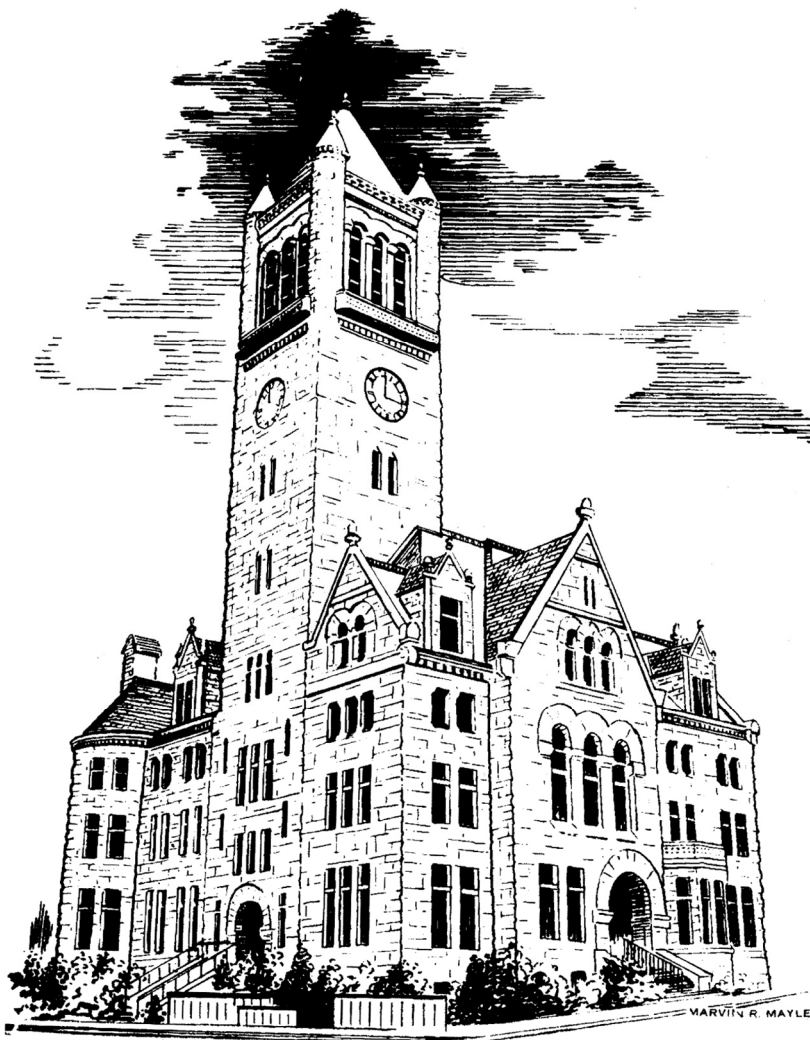


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

MICHAEL ABBOTT, a/k/a MICHAEL J. ABBOTT, a/k/a MICHAEL J. ABBOTT, SR., late of Connellsville, Fayette County, PA (3)

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Attorney: Jeremy J. Davis

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Attorney: Robert A. Gordon

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO. 53 OF 2022, G. D.

SHEILA PETERSON,
Plaintiff,
vs.
JEANNE L. MOORE,
Defendant.

**NOTICE TO DEFENDANT,
JEANNE L. MOORE**

You have been named as a defendant in an
ejectment action instituted by plaintiff, Sheila
Peterson, against you in this Court. Plaintiff
alleges in the Complaint in Ejectment immediate
and exclusive possession of the property at 1304
Hawthorn Street, Connellsville, Fayette County,
Pennsylvania, Tax Parcel Number 06-02-0111,
be granted to plaintiff, Sheila Peterson.

The service of this Complaint by
publication is made pursuant to an Order of
Court dated May 23, 2022 and filed at the above
term and number.

You are hereby notified to plead to the
Complaint in this action of which the above is a
brief summary within twenty (20) days from
today.

You have been sued in court. If you wish to
defend against the claims set forth in the
following pages, you must take action within
twenty (20) days after this complaint and notice
are served, by entering a written appearance
personally or by attorney and filing in writing
with the court your defenses or objections to the
claims set forth against you. You are warned that
if you fail to do so the case may proceed without
you and a judgment may be entered against you
by the Court without further notice for any
money claimed in the complaint or for any other
claim or relief requested by the plaintiff. You
may lose money or property or other rights
important to you.

**YOU SHOULD TAKE THIS PAPER
TO YOUR LAWYER AT ONCE. IF YOU
DO NOT HAVE A LAWYER, GO TO OR
TELEPHONE THE OFFICE SET FORTH
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**TO PROVIDE YOU WITH INFORMATION
ABOUT AGENCIES THAT MAY OFFER
LEGAL SERVICES TO ELIGIBLE
PERSONS AT A REDUCED FEE OR NO
FEE.**

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PHONE: 1-800-692-7375

By: David D. Tamasy, Esquire
Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Phone: 724-626-8882

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
NO. 4 ADOPT 2022

IN RE: ADOPTION OF
Zion Packe

NOTICE

TO: Emily Packe and Diosangeles Medina

A petition has been filed asking the Court
to put an end to all rights you have to your child,
Zion Packe. The last name of the mother is
Packe. The child was born on August 4, 2020, of
the male gender, at Ruby Memorial Hospital,
Morgantown, Monongalia County, WV. The
court has set a hearing to consider ending your
rights to your child. That hearing will be held in
Courtroom No. 4 of the Fayette County
Courthouse, Uniontown, Fayette County,
Pennsylvania, on Friday, July 22, 2022 at 9:30
a.m. Your presence is required at the hearing.
You should contact Fayette County Children and
Youth Services or their counsel Attorney
Anthony S. Dedo la Jr., to obtain a copy of the
petition prior to the hearing. You are warned that
even if you fail to appear at the scheduled
hearing the hearing will go on without you and
your rights to your child may be ended by the
court without your being there.

Your rights may also be subject to
termination pursuant to subsection (d) if you fail
to file wither an acknowledgement of paternity
or claim of paternity pursuant to Section 5103
(relating to acknowledgment and claim of

paternity), and fail to either appear at the hearing for the purpose of objecting to the termination of your rights or file a written objection to such termination with the court prior to the hearing.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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ACCEPTING NEW CLIENTS

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :
V. :
ANDREW MARK KAWECKI, :
Appellant. : No. 1922 of 2020

OPINION

Linda R. Cordaro, J.

May 20, 2022

SUMMARY

Appellant pled nolo contendere on October 25, 2021 to a first degree misdemeanor charge of indecent assault of a person less than thirteen (13) years of age. He was sentenced on March 3, 2022 to two and one-half (2 ½) to five (5) years of incarceration, and he now appeals his sentence as excessive, unreasonable, and having been imposed without adequate justification on the record.

PROCEDURAL BACKGROUND

Appellant pled nolo contendere on October 25, 2021 to a first degree misdemeanor charge of indecent assault of a person less than thirteen (13) years of age (18 Pa.C.S.A. § 3126(a)(7)). The plea was entered pursuant to an agreement with the Commonwealth, and a full plea colloquy was conducted on the record. A finding was made that Appellant entered his plea knowingly and voluntarily, and on March 3, 2022, this Court sentenced Appellant to two and one-half (2 ½) to five (5) years of incarceration, a sentence that deviates from the standard guidelines of the Sentencing Commission but is still within the legal maximum. At the sentencing hearing, this Court read the reasons supporting this sentence into the record and submitted a contemporaneous written statement to the Sentencing Commission. On March 11, 2022, Appellant's counsel filed a timely Post-Sentence Motion to modify sentence which this Court denied. Appellant's counsel thereafter timely filed a Notice of Appeal on March 30, 2022 and responded to this Court's order for a Concise Statement with a timely filing on April 22, 2022.

FACTUAL BACKGROUND

The facts as read at Appellant's plea hearing include that, between the years 2004 and 2007, the Appellant was a Roman Catholic priest who had indecent contact with an altar server who was under thirteen (13) years of age, either by having contact with the boy with his penis or by forcing the boy to have contact with his penis.

ISSUES ON APPEAL

Appellant's Concise Statement raises several issues on appeal. The Statement itself repeats some of the same points at issue more than once, and so the issues are summarized below:

- 1) The Court abused its discretion in the imposition of an unreasonable and exces-

sive sentence;

- 2) The Court did not properly consider all relevant factors, including: the underlying circumstances of the offense; Appellant's age, background, character, and lack of criminal record; the criteria enumerated in the Sentencing Code; and the fundamental norms underlying the sentencing process;
- 3) The Court did not adequately and properly justify, on the record, its reasons for deviating from the range set forth in the Sentencing Commission guidelines;
- 4) The Court focused solely on either the serious nature of the crime to which Appellant pled *nolo contendere* or the nature of other crimes with which he had been charged but did not plead to;
- 5) The Court should have known that Appellant is likely to serve the full five (5) years of incarceration, as *nolo contendere* pleas present a hurdle for incarcerated persons to obtain parole.

DISCUSSION

Appellant's Statement claims discretionary and procedural error: that the sentence imposed was unreasonable and excessive; that this Court failed to properly consider all factors in making its decision and failed to justify that decision on the record; that it focused only on the nature of crime charged or it considered other crimes with which Appellant was charged (but did not plead to); and that it ignored (or did not know) that Appellant is likely to remain incarcerated until the maximum sentence term.

The sentence imposed was legal, reasonable, and not excessive

The sentence imposed was neither unreasonable nor excessive. On the contrary, the sentence was within the statutory limits, it complied with the minimum-maximum statutory rule, and it was imposed after Appellant entered a knowing, voluntary, and intelligent plea negotiated to include the agreement that this Court would impose sentence.

A court must consider the guidelines of the Pennsylvania Commission on Sentencing when determining the appropriate sentence for both felonies and misdemeanors. 204 Pa.Code § 303.1. {1} However, the sentencing guidelines do not mandate a particular sentence or range of sentences, as "Pennsylvania's statutory sentencing scheme is indeterminate, advisory, and guided." *Commonwealth v. Yuhasz*, 923 A.2d 1111, 1117 (Pa. 2007). Under 42 Pa.C.S.A. § 9756(b)(1), a minimum sentence of confinement cannot exceed one-half of the maximum sentence imposed, and under 18 Pa.C.S.A. § 1104(1), the maximum term of imprisonment for misdemeanors of the first degree is five (5) years. {2} In Pennsylvania, a judge has broad discretion in determining what sentence to impose, provided the sentence does not exceed the statutory maximum. *Commonwealth v. Gordon*, 942 A.2d 174, 182 (Pa. 2007).

{1} Revised sets of guidelines became effective June 13, 1997 and again on June 3, 2005. Appellant was charged with criminal activity that spanned 2004-2007. The later date is applied to offenses for which specific dates cannot be determined. 204 Pa.Code § 303.1(c)(1).

{2} 18 Pa.C.S.A. § 1104(1) was effective June 6, 1973.

Here, Appellant was sentenced to two and one-half (2 ½) to five (5) years of incarceration, a sentence that is within the legal minimum and maximum parameters. The sentence itself was therefore legal.

Furthermore, a plea of *nolo contendere* is treated as a guilty plea for purposes of sentencing, and a defendant authorizes the court to use this approach when entering the plea. *Commonwealth v. V.G.*, 9 A.3d 222,226 (Pa. Super. Ct. 2010). Here, Appellant acknowledged on the record that he understood the maximum penalties, that his plea would be considered the same as if he had pled guilty, and that he had not been promised, for example, probation instead of incarceration. {3} Tr. of Plea Proceedings at 5-8.

Appellant's sentence was within statutory limits as determined by the Pennsylvania legislature, and it was imposed only after his own sworn statement of full understanding. As such, the sentence was neither unreasonable nor excessive, and there was no abuse of discretion.

All relevant factors were considered and discussed on the record

Under 42 Pa.C.S.A. § 9721(b), a court must consider various factors in determining a sentence, including: the protection of the public, the gravity of the offense as related to the life of the victim and the community, and any rehabilitative needs of the defendant. Appellant argues that this Court did not properly consider these factors, but the transcript of the sentence proceedings and the statement of reasons on record show otherwise.

First, this Court specifically discussed that the Appellant was a Roman Catholic priest at the time of the charged offenses, one who had "abused his power and position as the victim's spiritual leader for his own sexual gratification." Tr. of Sentence Proceedings at 17-18. The need to protect the public from abuse by one in such a position of power and spiritual leadership therefore was obviously part of this Court's consideration.

Second, the gravity of the offense as it related to the victim and the community also was clearly considered. The victim in this case gave a statement at the sentencing hearing. Id. at 6-8. This Court took that statement into account and referred to it in its own statement of reasons. Id. at 18-19. This Court also weighed the victim's statement against the letters of support it received from members of Appellant's church and community and even disclosed that it had received eighteen (18) such letters. Id. at 19. Ultimately, however, this Court discussed that while it had no reason to disbelieve any of Appellant's supporters, any "kindness, generosity, and compassion" that others experienced could not make up for the devastating impact Appellant's actions had upon the victim. Id. at 19-20.

{3} In fact, the Commonwealth specifically stated that there was no agreed-upon sentence, and that the court would ultimately determine what sentence to impose. Transcript of Plea Proceedings at 3.

Third, Appellant's rehabilitative needs also were discussed. This Court stated that it had assessed the appropriateness of probation instead of incarceration and acknowledged that Appellant claimed he had been wrongfully accused and did not admit guilt. Id. at 17, 19. However, despite the fact that Appellant did not actually admit to any conduct, a nolo contendere plea is treated the same as a guilty plea for sentencing purposes. This Court could not ignore the serious and lifelong harm the victim suffered, Appellant's lack of any showing of remorse or regret, and the important factor that the conduct occurred multiple times over a period of three years. Id. at 19-20. After balancing all the relevant factors, this Court determined that a sentence of less than total confinement "would depreciate from the very serious nature " of the crime committed. Id. at 20-21 (quoting the statutory language of 42 Pa.C.S.A. § 9725(3)).

As to the consideration of circumstantial factors, Appellant argues that this Court did not properly consider Appellant's age, background, character, lack of a criminal record, or the underlying circumstances. In fact, this Court specifically mentioned Appellant's age and his lack of prior criminal record. Id. at 17. It also discussed why, under the circumstances, Appellant's conduct was especially heinous. Id. at 17-20. It is precisely because this Court considered all the circumstantial factors that it determined indecent assault by a priest on a child serving in his church was a particularly grievous crime, and it imposed the maximum sentence of incarceration.

The statement of reasoning was adequate and it justified the decision

A court is required, by statute, to make a statement of the reasons for the sentence imposed as part of the record, and it must disclose those reasons in open court. 42 Pa.C.S.A. § 9721(b). When a court imposes a sentence that is outside the guidelines, it must also provide "a contemporaneous written statement of the reason or reasons for the deviation from the guidelines to the [Sentencing C]ommission" Id.

Here, this Court did disclose its reasons in open court as the transcript of the sentencing proceedings shows. In addition, this Court forwarded a written copy of the statement for entry into the Sentencing Guidelines Software Web application (SGS Web) on March 3, 2022. {4} There is no requirement that a court recite its reasoning in exhaustive detail, and the statement of reasoning on record is clearly sufficient to justify the decision.

{4} On May 2, 2022, it came to this Court's attention that although 204 Pa.Code § 303.1(e)(1) requires that all guideline-required sentencing information be prepared via SGS, a character count limitation in SGS made it impossible to enter the full statement of reasons. Therefore, on May 4, 2022, the Court edited the statement to fit to the limited space provided in SGS, and the edited statement was entered. The same day, a written copy of the full, unedited statement was mailed to the Commission, and also filed on the record.

Multiple factors were taken into consideration, limited to only the relevant charge

As already discussed, this Court balanced multiple factors in reaching a decision on the imposition of sentence, and its statement of reasoning is on record. Nevertheless, its consideration was limited only to the specific facts, circumstances, and charge as pled. This Court made no reference to any other facts, circumstances, or charges at the sentencing proceedings. {5} There was no reason to do so, because the single charge to which Appellant pled and the circumstances surrounding it were sufficient for this Court to impose the sentence it did. Appellant's claim that either this Court focused only on the conduct charged (and not any other relevant factors) or that it allowed other conduct to influence its decision is completely unfounded.

This Court is aware of the import of a sentence of incarceration at a state institution

This Court is aware that an inmate in a state institution does not automatically receive parole upon completing the minimum sentence, and so it understands that a defendant at such an institution may serve the full term of the sentence, up to the maximum. If it had determined that the needs of the public, the victim, the community, and Appellant's own rehabilitation would still be served by imposing a lesser sentence, then it would have imposed such a sentence.

CONCLUSION

This Court carefully and thoroughly considered the relevant statutory and circumstantial factors in its sentencing decision. The sentence was within the legal limits and complied with all statutory requirements. This Court also set forth its considerations and reasoning on the record, in open court, and submitted a written statement of the same to the Sentencing Commission. For the foregoing reasons, it is respectfully submitted that the judgment and sentence of Andrew Mark Kawecky should be AFFIRMED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

{5} Appellant's November 18, 2020 Information shows charges of a first-degree felony involuntary deviate sexual intercourse, a second-degree misdemeanor indecent assault, a first-degree misdemeanor indecent assault, and a first-degree misdemeanor corruption of minors. By specific agreement between Appellant and the Commonwealth, the Commonwealth nol prossed all but the first-degree misdemeanor indecent assault and agreed not to prosecute Appellant for any other crimes related to known allegations at the time. Tr. of Plea Proceedings at 2-4.

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, July 20th from 12:00 p.m. to 1:00 p.m.**
- Location: Courtroom No. 3 of the Fayette County Courthouse
- Discussion topics: **Pro bono and low bono needs and opportunities**
- Presenter: **Brian V. Gorman, Esquire -**
Southwestern Pennsylvania Legal Aid

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1.0 hours of Substantive CLE credit for the program. The fees are as follows:

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- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2017

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****
A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbar.org on or before Monday, July 18th.

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