

*Erie
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Legal
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Commonwealth v. Gunter

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Administrator of Publications: Paula J. Gregory

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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, MAY 22, 2017

ECBA Board of Directors Meeting
Noon
ECBA Headquarters

THURSDAY, MAY 25, 2017

Solo/Small Firm Division Meeting
Noon
Calamari's

THURSDAY, MAY 25, 2017

AKT Kid Konnection Event
Bowling at Eastland Bowl
5:30 p.m. - 7:00 p.m.

MONDAY, MAY 29, 2017

ECBA Office Closed
Erie County & Federal Courthouses Closed

WEDNESDAY, MAY 31, 2017

Defense Bar Meeting
Noon
ECBA Headquarters

FRIDAY, JUNE 2, 2017

Citizenship Ceremony
10:00 a.m.
Federal Courthouse

FRIDAY, JUNE 2, 2017

Law Day Committee Meeting
Noon
ECBA Headquarters

WEDNESDAY, JUNE 14, 2017

AKT Kid Konnection
Niagara Falls Trip
8:00 a.m. - 5:00 p.m.

To view PBI seminars visit the events calendar
on the ECBA website
<http://www.eriebar.com/public-calendar>



2017 BOARD OF DIRECTORS

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May 19

LIVE
LUNCH-N-LEARN
SEMINAR

ECBA
ERIE COUNTY BAR ASSOCIATION
In cooperation with its Real Estate Section



CLEAN and green

Tuesday, June 20, 2017

Sheraton Bayfront Hotel

11:45 a.m. - 12:15 p.m. - Lunch/Registration
12:15 p.m. - 2:15 p.m. - Seminar

\$94 (ECBA member/non-attorney staff)
\$120 (nonmember)
\$65 (member Judge not needing CLE)

THIS SEMINAR HAS BEEN APPROVED BY THE PA CLE BOARD FOR 2 HOURS SUBSTANTIVE CREDITS.

TOPICS OF DISCUSSION

- ✓ What is the Clean and Green Tax Abatement Program?
- ✓ Definitions of Categories (Ag use; Ag reserve; Farmland) and their respective subcategories
- ✓ What it means to be enrolled in any of the categories
 - Rights and responsibilities of the landowner when applying for and being enrolled in C&G or when a buyer is being transferred property already enrolled
 - Liability issues
- ✓ Forms and Procedures for enrolling and transferring
- ✓ Rollback Taxes including,
 - Subdivision Issues
 - Violations of the Obligations that can cause Rollbacks
- ✓ When Rollback Taxes become due and payable:
 - When are the taxes levied against the property, and;
 - Who's responsibility is it to pay the same when a transfer causes a rollback
- ✓ Other situations/scenarios that may occur that Real Estate Practitioners should know

Our Speaker

AMY FRANCIS



Amy has worked for Erie County for the last 12 years. In 2006, she joined Assessment as a Clerk and obtained the Assessor position in 2008. Amy is currently a Certified Pennsylvania Evaluator (CPE) and has managed the Erie County Clean and Green Program since 2008. The most recent Reassessment started in 2008 which taught her more than she could ever ask for in this field of work. In 2017, Amy was promoted to the GIS Coordinator/Appraiser position where she currently helps train new employees, coordinates all GIS requests and processes in the office, manages Clean and Green and values real property for Ad Valorem purposes. Most of her time in Assessment has been spent doing appraisal work, educating the public on the appraisal process and managing the Clean and Green Program.

Reservations due to the ECBA office by Wednesday, June 14

Cancellation Policy for ECBA Events/Seminars:

Cancellations received on or before the last reservation deadline will be fully refunded. Cancellations received after the deadline or non-attendance will not be refunded. If you register for an event without payment in advance and don't attend, it will be necessary for the ECBA to send you an invoice for the event.

Online!
REGISTRATION
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COMMONWEALTH OF PENNSYLVANIA

v.

TREY DARON GUNTER

*CRIMINAL PROCEDURE / WITHDRAWAL OF COUNSEL /
ANDERS BRIEF REQUIREMENTS*

When court-appointed counsel seeks to withdraw on direct appeal, he or she must submit an *Anders* brief. The *Anders* brief must set forth the procedural history and facts, refer to anything in the record that supports the appeal, set forth counsel’s conclusion that the appeal is frivolous, and provide the reasons for concluding that the appeal is frivolous. Counsel should cite both the record and controlling case law and/or statutes.

*CRIMINAL PROCEDURE / WITHDRAWAL OF COUNSEL /
OBLIGATIONS TO CLIENT*

When court-appointed counsel seeks to withdraw on direct appeal, he or she must provide the client with a copy of the *Anders* brief and a letter that advises the client that he or she has the right to retain new counsel to pursue the appeal, proceed with the appeal *pro se*, or raise any points the client deems worthy of the court’s attention that are not contained in the *Anders* brief.

CRIMINAL PROCEDURE / GUILTY PLEAS / WAIVER

Where an appellant asserts that he did not enter a knowing, voluntary, and intelligent guilty plea, but fails to raise the issue of the validity of his guilty plea orally before the trial court or in a post-sentence motion, the issue is waived for purposes of appeal.

*CRIMINAL PROCEDURE / SENTENCING / CHALLENGES
TO DISCRETIONARY ASPECTS*

An appellant is not entitled to appellate review of challenges to the discretionary aspects of a sentence as a matter of right. For discretionary aspects of a sentence to be reviewed by an appellate court, the appeal must be timely, the issue must be properly preserved, there must not be a fatal defect in the appellant’s brief, and the appellant must raise a substantial question that the sentence is not appropriate under the Sentencing Code.

*CRIMINAL PROCEDURE / SENTENCING / CHALLENGES
TO DISCRETIONARY ASPECTS*

An argument that the sentencing court failed to consider mitigating favors in favor of a lesser sentence does not present a substantial question appropriate for appellate review.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY PENNSYLVANIA
CRIMINAL DIVISION No. 3499 – 2014

Appearances: Brandon J. Bingle, Esquire for the Commonwealth
Emily M. Merski, Esquire for the Defendant

MEMORANDUM OPINION

Trucilla, J.

August 8, 2016: This matter is before the Court upon the appeal of Trey Daron Gunter (hereinafter “Appellant”) from this Court’s Order dated September 23, 2015. For the reasons set forth below, the appeal should be dismissed.

FACTUAL & PROCEDURAL HISTORY

On January 20, 2015, Appellant was charged by Criminal Information with Criminal Homicide,¹ Aggravated Assault,² Recklessly Endangering Another Person,³ Possessing Instruments of Crime,⁴ and Criminal Conspiracy to commit Criminal Homicide.⁵ These charges stem from an incident that occurred on November 17, 2014 at an apartment off-campus of Edinboro University. Appellant, a Pittsburgh native, was an Edinboro University student one semester away from graduating. The victim, Tobiah Johnson, had taken Appellant's gun several days earlier. Appellant obtained another gun and, as alleged by the Commonwealth, with the help of Ryan Andrews and Michael Barron, confronted the victim outside of the victim's apartment. The Commonwealth further alleged that Mr. Barron was waiting outside of the victim's apartment, and that when the victim came out, Mr. Barron punched him in his head, knocking him to the ground. Appellant and Mr. Andrews got out of their vehicle and assaulted the victim. When the victim tried to get up, Appellant shot him in his back, killing him.

The Commonwealth and Appellant reached a plea agreement, and a plea colloquy was held on September 23, 2015. Further detail of this plea and its legal merit are set forth *infra* in the "Discussion" portion of this Memorandum Opinion. Following this Court's acceptance of Appellant's plea as knowing, voluntary, and intelligent, the Court ordered a pre-sentence investigative report be completed and a sentencing date was scheduled for February 9, 2016.

At the February 9, 2016 sentencing hearing, the Court made the following items part of the record: post-sentencing and appellate rights form; Pennsylvania Commission on Sentencing guideline calculation; pre-sentence investigative report; Appellant's sentencing memorandums; and the Commonwealth's sentencing memorandum. *Sentencing Transcript* (hereinafter "*S.T.*"), February 9, 2016 at 8-10. The Court also concluded that Appellant was not Recidivism Risk Reduction Incentive (RRRI) eligible. *Id.* at 9. Appellant's counsel, Christopher Capozzi, Esquire, did not object to any of these matters. *Id.* at 8-10.

The Court then called upon Attorney Capozzi, who presented mitigating evidence and character witnesses to supplement his comprehensive sentencing memorandums. Attorney Capozzi first read in to the record a letter written by Appellant's younger sister, Tralaya Trice. *Id.* at 14. He also presented testimony from two character witnesses: Cheryl Rettger, a longtime family friend, and Sandra Trice, Appellant's grandmother who raised him. *Id.* at 15, 34.

In her letter, Tralaya Trice stated that Appellant has had a positive impact on her life. *Id.* at 14. She stated that he was successful at everything he did, from playing sports to attending college. *Id.* Ms. Trice stated that Appellant's actions in the instant matter were out of character. *Id.*

Cheryl Rettger testified that she has known Appellant for over ten years. *Id.* at 16, 19-20. She first met Appellant when he was a fourth grade student at Knoxville Middle

¹ 18 P.S. § 2501(a).

² 18 P.S. § 2702(a)(1).

³ 18 P.S. § 2705.

⁴ 18 P.S. § 907(a).

⁵ 18 P.S. § 903; 18 P.S. § 2501(a).

School, where she was a counselor. *Id.* at 17. The relationship grew from a mentor/mentee relationship into a familial-like relationship. *Id.* at 16, 20. Ms. Rettger stated her family truly embraced Appellant as family. *Id.* at 16, 20-21. Ms. Rettger described Appellant as a peaceful, loving, compassionate, hardworking, personable, and helpful person. *Id.* at 20-21. Appellant participated in team sports and was a team player. *Id.* at 21-22. Ms. Rettger stated that things were often difficult for Appellant. *Id.* at 22. Appellant worked hard to be the first person in his family to attend college. *Id.* at 23. Appellant worked at a summer camp, as a lifeguard, and at a restaurant. *Id.* at 24. She also provided insight into Appellant's conduct while incarcerated on this offense. *Id.* at 26. In prison, Appellant is reading books, working on improving his vocabulary, writing his own book, and looking into obtaining education/job training in prison. *Id.* at 26-27. According to Ms. Rettger, Appellant wants to graduate college and get a good job. *Id.* at 27. Ms. Rettger stated that Appellant's actions in the instant matter were not indicative of his nature, history, or potential, and that she believes he can still be a productive member of society. *Id.* at 19, 27-28. Ms. Rettger indicated her willingness to continue to support Appellant. *Id.* at 28.

Following Ms. Rettger's narrative statement to the Court, some of which referenced her letter to the Court, the Court confronted her about how well she really knew Appellant. *Id.* at 28-32. When asked if she knew the victim, who Appellant said was a longtime friend, or Ryan Andrews or Michael Barron, who were also friends, Ms. Rettger said that she did not know any of them. *Id.* at 28-29. The Court pressed Ms. Rettger as to why she did not know Appellant's friends, who were all from Pittsburgh, where she resides. *Id.* at 29. Ms. Rettger could not answer this question. *Id.* at 29-30. While Ms. Rettger may have suspected that Appellant occasionally used marijuana, she did not know that Appellant actually used marijuana on a daily basis. *Id.* at 31-32.

Sandra Trice, Appellant's maternal grandmother, testified that she raised Appellant from age eleven in Pittsburgh, Pennsylvania, along with his brother and sisters. *Id.* at 34. In 2004, the Allegheny County Office of Children and Youth Services (hereinafter "OCY") took custody of Appellant and his siblings and placed them in kinship care. *Id.* at 36. Ms. Trice obtained custody of Appellant and his siblings after five months, and OCY ceased involvement. *Id.* at 37. Appellant lived in public housing with Ms. Trice in rough neighborhoods in Pittsburgh, where he was exposed to violence. *Id.* at 38-40. Ms. Trice testified that several children from their neighborhood were killed as a result of gun violence and that this troubled Appellant. *Id.* at 39-41. According to Ms. Trice, Appellant did not want to live in that environment. *Id.* at 41. Appellant wanted to better himself and remove himself from exposure to gangs, drugs, and violence. *Id.* Ms. Trice stated that Appellant spent a lot of time at school, and also spent a lot of time working. *Id.* As a result, other children would call Appellant "bookworm" and similar names. *Id.* Ms. Trice was disappointed and angry at Appellant for his actions in the instant matter, but said that she would continue to support him upon his release. *Id.* at 41-42.

Attorney Capozzi advocated at the sentencing hearing that Appellant should be sentenced in the mitigated range of the Sentencing Guidelines because Appellant is in many ways an exceptional young man, he lived life as part of society, he accepted responsibility for his conduct, he came from meager and challenging economic circumstances and difficult emotional circumstances, he had only a minor criminal history, and he was on a positive

trajectory before this incident. *Id.* at 51-52, 54. Counsel for Appellant conceded, however, that Appellant did not have a significant or specific mental health diagnosis. *Id.* at 52. Counsel also acknowledged that Appellant had overcome the obstacle of not having a father or mother consistently in his life through the support of his grandmother (Ms. Trice) and family friends like the Rettgers. *Id.* at 53. Attorney Capozzi also asserted that the victim, Tobiah Johnson, had bullied Appellant, his longtime friend, by demeaning him through social media, calling him names, and making other derisive comments. *See Appellant's Sentencing Memorandum* at p. 4-5. Attorney Capozzi argued that because Appellant was called a "runt" and a "bookworm," his foolish and misguided pride led him to eventually murder his longtime friend. *Id.*

When asked by the Court about the impact a murder like this would have on a small town and a close college community, Counsel for Appellant admitted that he could not find a prior shooting that had occurred on or near Edinboro University's campus within the last twenty years. *S.T.*, February 9, 2016 at 64. After Attorney Capozzi made his address, the Court then heard from Appellant. Appellant read a letter onto the record, stating he was sorry for his actions and that he takes full responsibility for his actions. *Id.* at 69-70.

Next, the Court called upon the Commonwealth, who was represented at the sentencing hearing by Brandon J. Bingle, Esquire. *Id.* at 72. Assistant District Attorney Bingle argued that despite the circumstances of Appellant's earlier life, he had a network of support, including Ms. Trice and the Rettgers, to help him succeed and ultimately gain admission into college. *Id.* Attorney Bingle asserted that Appellant's crime had an impact on the Edinboro community and the students of Edinboro University, who were not accustomed to violent crimes occurring in their community. *Id.* at 77-78. The Commonwealth further stated that Appellant was not a law abiding citizen, and that he was engaged in illegal drug activity, including selling illegal drugs, at or near the time of the murder. *Id.* at 81-82. The Commonwealth included in its Sentencing Memorandum a log of text messages to and from Appellant's phone, indicating that Appellant was selling illegal drugs around the time of the murder. *See Exhibit 1 to Commonwealth's Sentencing Memorandum.* The Commonwealth argued that Appellant was likely to reoffend because past behavior is indicative of future behavior. *S.T.*, February 9, 2016 at 86.

The Court then addressed Appellant and engaged in a more detailed colloquy with Appellant. *Id.* at 88-104. Appellant testified that he bought a gun, a .40 caliber, in March of 2014 at Edinboro Outdoors. *Id.* at 88. This was the first gun that he had ever purchased, and Appellant stated that he purchased it with the intention to shoot it at a shooting range. *Id.* at 101. Appellant testified that he shot the gun at a shooting range weekly, and that this was during the same time period that he smoked marijuana. *Id.* at 101-102. On November 17, 2014, Appellant went to the Edinboro Police Department and reported his .40 caliber stolen. *Id.* at 88. Appellant believed that the gun had been stolen almost a week earlier, on or about November 10, 2014 or November 11, 2014. *Id.* at 90. When Appellant reported his gun stolen, he did not tell the police who he believed had taken the gun, even though he believed the victim, Tobiah Johnson, had taken it. *Id.* at 88. The Court asked Appellant to explain why he did not provide the Edinboro Police Department with the name of Tobiah Johnson. *Id.* at 89. He said that because he and Mr. Johnson were longtime friends, he felt they could work it out. *Id.* Appellant further admitted that he never thought about the

consequence of someone else using his gun to harm someone or that his gun could be used in other criminal activity. *Id.* at 89.

The Court confronted Appellant with information regarding his attempt to replace his stolen .40 caliber prior to reporting to the police that the firearm had been stolen. *Id.* at 90. It was revealed that Appellant tried to buy a .38 caliber Smith and Wesson and ammunition at Edinboro Outdoors on November 13, 2014 and again on November 14, 2014, four and three days, respectively, prior to the murder. *Id.* Appellant was not able to buy a gun or ammunition at Edinboro Outdoors because he was put on a “research hold.” *Id.* at 91. Appellant then went to the Keystone Armory, which was another gun shop not far from Edinboro, to try to purchase a .38 caliber Smith and Wesson, but was again denied. *Id.* When asked by the Court why he wanted to buy a .38 caliber handgun, instead of a .40 caliber as he had previously owned, Appellant admitted that he wanted a smaller handgun so that he could conceal the handgun on his person. *Id.* at 91-92.

In response to a question asked by the Court, Appellant testified that on November 17, 2014, he made the decision to get his gun back. *Id.* at 92. The Court asked Appellant who went with him to the apartment to confront Mr. Johnson. *Id.* at 93. Appellant refused to answer the question and invoked his privilege against self-incrimination. *Id.* The Court recognized that Appellant is of slight physical size: Appellant testified that he is five feet and four inches tall and 145 pounds. *Id.* at 93-94. Further, the police reports reveal, and Appellant stated, that Mr. Johnson was much bigger than him. *Id.* at 94. In fact, Tobiah Johnson was approximately five feet and ten inches tall and over 200 pounds. *Id.* The size difference became relevant because the Court was curious as to how this much smaller Appellant was able to get the much larger victim, Tobiah Johnson, to the ground and in a position to shoot him in the back. The Court asked Appellant how he got Mr. Johnson to the ground, and Appellant again invoked his privilege against self-incrimination. *Id.* The Court asked if Appellant knew Michael Barron, who the Commonwealth alleges “sucker punched” Mr. Johnson in the face and got him to the ground on the night of the murder, and Appellant again invoked his privilege against self-incrimination. *Id.* at 94-95. The Court, knowing that Mr. Barron was listed as six feet and four inches tall and approximately 256 pounds from the police report, reasonably inferred that Mr. Barron was present to physically assist Appellant. *Id.* at 95. Appellant admitted that he used a handgun and shot Mr. Johnson in the back, but denied that he hit the victim in the head with the butt of his gun as the Commonwealth alleges. *Id.* at 97-98. The Court asked what gun he used to murder Mr. Johnson. *Id.* at 98. Appellant testified that he shot the victim with a 9mm. *Id.* at 99. However, Appellant then refused to tell the Court where he obtained the 9mm or where he believed the 9mm was now located. *Id.* at 99-101. Again, Appellant displayed an ongoing reluctance to provide details of the murder to the Court.

With regard to his illegal drug activity, Appellant stated that he first tried marijuana when he was twelve years old, and that it became a daily habit once he became a junior in high school. *Id.* at 103. He stated that the Rettgers did not know that he smoked marijuana daily. *Id.* Appellant’s maternal grandmother, Ms. Trice, knew that Appellant smoked marijuana, and asked him to stop. *Id.* at 104. Appellant admitted that he did not stop, and that he continued to smoke marijuana on a daily basis throughout college. *Id.* The Court also offered Appellant an opportunity to provide his version or explain the text messages provided by

the Commonwealth that indicated a likelihood of drug dealing. *Id.* at 92. When questioned about the Commonwealth's allegation that Appellant was dealing drugs around the time of the murder, Appellant invoked his privilege against self-incrimination, and refused to offer an explanation for the text messages. *Id.* The Court, as stated on the record, was left with the plain meaning of the text messages, which were clearly indicative of Appellant being engaged in drug activity. *Id.*

The Court stated that it considered the statements of counsel, references of character, the record of those in attendance at the sentencing hearing, the Sentencing Guidelines, the pre-sentence investigative report, OCY records, Appellant's sentencing memorandums, and the Commonwealth's sentencing memorandum. *Id.* at 104. The Court stated that it considered the nature of the offense, the gravity of the offense, the need for public protection, Appellant's level of remorse and likelihood of rehabilitation, and the impact on this small community. *Id.* at 104-105. Based on these facts and evidence, the Court found that Appellant was not committed to living a crime free life. *Id.* at 105. Appellant demonstrated he is beholden to the culture of drug activity, involving drug use and gun violence, and those who are immersed in it. *Id.* Appellant's unwillingness to answer the Court's questions regarding the circumstances of the murder forced the Court to conclude that Appellant was neither remorseful nor prepared to fully accept responsibility for his actions. *Id.* at 105-106.

The Court then sentenced Appellant to incarceration for a minimum period of fifteen years (180 months) and a maximum period of forty years (480 months). *Id.* at 106. This sentence was in the standard range of the Sentencing Guidelines. *Id.* Appellant was also ordered to pay costs and restitution in the amount of \$2,517.00. *Id.*

On February 18, 2016, Appellant, through Attorney Capozzi, filed a Motion to Modify Sentence, requesting a downward modification of the sentence imposed. Appellant claimed that the Court manifestly abused its discretion in sentencing Appellant, improperly considered Appellant's assertion of his Fifth Amendment privilege against self-incrimination, and did not consider Appellant's fear of retaliation. On March 11, 2016, the Court issued a Memorandum Opinion and Order denying Appellant's Motion to Modify Sentence, exhaustively addressing these issues.

At the same time that Attorney Capozzi filed the Motion to Modify Sentence, he also filed a Motion to Withdraw or Be Appointed as Counsel for the Defendant. On February 19, 2016, the Court issued an Order granting Attorney Capozzi's Motion to Withdraw or Be Appointed as Counsel for the Defendant and allowing Attorney Capozzi to withdraw. The Order provided that counsel was to be appointed for Appellant. Appellant filed a *pro se* Petition for Appointment of Counsel for Appeal Purposes on February 18, 2016. On February 22, 2016, the Court issued an Order granting Appellant's *pro se* Petition. Appellant filed two additional *pro se* motions seeking the appointment of counsel, one on March 19, 2016 and one on April 4, 2016. In an April 21, 2016 Order, the Court denied these motions as moot.

Emily M. Merski, Esquire was appointed as Appellant's counsel. On May 10, 2016, Appellant, through Attorney Merski, filed a Petition for Reinstatement of Right to Appeal. Appellant asserted that the Erie County Public Defender's Office did not receive a copy of the February 22, 2016 Order granting his Petition for Appointment of Counsel for Appellate Purposes. Therefore, no appellate attorney was assigned and a timely Notice of Appeal was

not filed. Out of fairness to Appellant, the Court granted Appellant's Petition and reinstated Appellant's rights to appeal on May 11, 2016. Appellant filed a Notice of Appeal on June 9, 2016. On June 15, 2016, the Court issued an Order directing Appellant to file a concise statement of matters complained of on appeal within twenty-one days. Appellant timely filed his Statement of Matters Complained of on Appeal on June 28, 2016.

DISCUSSION

Appellant raises two issues on appeal. The Court will address each issue in seriatim.

A. Guilty Plea

In his first issue raised on appeal, Appellant states:

The Defendant/Appellant argues that his plea of guilty made before this Honorable Court was not made knowingly or voluntarily.

Appellant's Statement of Matters Complained of on Appeal at ¶ 6.

"One who pleads guilty consents to a waiver of treasured rights." *Commonwealth v. Shekerko*, 639 A.2d 810, 813 (Pa. Super. Ct. 1994). For a guilty plea to be valid, the law is clear that it must be knowingly, voluntarily, and intelligently entered. *Commonwealth v. Pollard*, 832 A.2d 517, 522 (Pa. Super. Ct. 2003); *Shekerko*, 639 A.2d at 813. For a court to accept a defendant's guilty plea, the court "is required to conduct an on-the-record inquiry during the plea colloquy." *Pollard*, 832 A.2d at 522. The Superior Court of Pennsylvania has held:

A guilty plea colloquy must include an inquiry into whether: (1) the defendant understands the nature of the charge to which he is pleading guilty; (2) there is a factual basis for the plea; (3) the defendant understands that he has the right to a jury trial; (4) the defendant understands that he is presumed innocent until found guilty; (5) the defendant is aware of the permissible range of sentences; and (6) the defendant is aware that the court is not bound by the terms of any plea agreement unless it accepts the agreement.

Shekerko, 639 A.2d at 813; *see also Commonwealth v. Willis*, 369 A.2d 1189, 1189-90 (Pa. 1977). "Our law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise." *Pollard*, 832 A.2d at 523 (internal citations omitted). Accordingly:

[w]here the record clearly demonstrates that a guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established. A defendant is bound by the statements he makes during his plea colloquy, and may not assert grounds for withdrawing the plea that contradict statements made when he pled.

Commonwealth v. Stork, 737 A.2d 789, 790-91 (Pa. Super. Ct. 1999) (internal citations omitted).

In the case *sub judice*, the Commonwealth, represented at the plea colloquy by Roger Bauer, Esquire, informed Appellant of his rights. *Plea Transcript* (hereinafter "*P.T.*"), September 23, 2015 at 2-4. The Understanding of Rights Prior to Guilty Plea was signed by Appellant, his attorney, and Assistant District Attorney Bauer and was made part of the record. *Id.* at 10-11, 14-15. The Commonwealth, on the record, informed Appellant, *inter alia*, of his right to trial by jury, that he was presumed innocent until proven guilty,

that the Court was not bound by the terms of the plea agreement, and that the maximum penalties were a \$50,000.00 fine and forty years of incarceration. *Id.* at 2-4, 9. These rights were set forth in the Understanding of Rights Prior to Guilty Plea. *See* Appellant's Statement of Understanding of Rights Prior to Guilty Plea is attached to this Memorandum Opinion as Exhibit 1. Then, in the presence of the Court, Attorney Bauer reviewed with Appellant his rights, the maximum penalty he faced (\$50,000.00 in fines and forty years of incarceration), and the plea agreement. *Id.* at 9. The plea agreement was to amend Count One, criminal homicide, to murder of the third degree and *nolle prosequi* the remaining charges. *Id.* Additionally, for purposes of the Sentencing Guidelines, the deadly weapons enhancement would apply. *Id.* at 9-10. Attorney Bauer then reviewed Appellant's Statement of Understanding of Rights Prior to Guilty Plea with Appellant in the presence of the Court. *Id.* Appellant stated that he reviewed the Statement of Understanding of Rights Prior to Guilty Plea with his attorney, that he did not have any questions about his rights, and that he understood everything in the document. *Id.* at 10. Further, Appellant acknowledged that he signed the form that day in the presence of his attorney. *Id.*

The Court then conducted a colloquy to determine whether the plea was knowingly, voluntarily, and intelligently entered. *Id.* at 7-8. Appellant testified that he was not on any medication that would cloud his judgment. *Id.* at 7. Appellant stated that he was twenty-two years old and was a senior in college at the time of his arrest. *Id.* Appellant indicated that he did not have any difficulty understanding the English language and that he was able to communicate completely with his attorney. *Id.* Attorney Capozzi stated that he did not question Appellant's competency or Appellant's ability to understand him. *Id.* at 8. The Court also noted that Appellant was appropriately responsive to the Court's questions. *Id.* at 7. Based on these facts, the Court found Appellant to be competent and thus capable of entering a plea knowingly, voluntarily, and intelligently. Additionally, Appellant was represented by his counsel, Attorney Capozzi, at the plea colloquy. *Id.* at 5. When the Court asked Appellant if he was satisfied with his attorney's representation, Appellant indicated that he was satisfied. *Id.* at 6-7, 14. Appellant also stated that he had sufficient time to discuss the plea with his attorney. *Id.* at 6.

Appellant then pleaded guilty to murder in the third degree:

MR. BAUER: Mr. Gunter, I have to advise you on the legal and factual basis for your plea. The Commonwealth alleges that on or about November 17, 2014, that you, Trey Darrin [sic] Gunter, did directly or by virtue of your complicity, intentionally, knowingly, or recklessly, and with malice, at 123 Water Street in a parking lot behind apartment number 27-E in the borough of Edinboro, Erie County, cause the death of another human being, specifically Tobiah Johnson, in that you, Trey Darrin [sic] Gunter, did shoot the victim, Tobiah Johnson, resulting in his death, thereby committing the crime of murder in the third degree.

Malice under the law is defined as wickedness of disposition, hardness of heart, cruelty, a recklessness of the consequences, and an extreme indifference to the value of human life.

Do you understand the legal and factual basis for Count One as amended to murder in the third degree?

MR. GUNTER: Yes, sir.

MR. BAUER: How do you plead to Count One?

MR. GUNTER: Guilty.

Id. at 11-12. The Court then engaged in the following colloquy with Appellant:

THE COURT: ... Looking at the now amended charge at Count One, Mr. Gunter, you had indicated your plea of guilty and I want to ask you now, is that what you, in fact, did on that date in question as read in this Court?

MR. GUNTER: Yes, sir.

THE COURT: Has anyone in any way promised you something or coerced you in any way to tell me something that wasn't true?

MR. GUNTER: No, sir.

THE COURT: Have there been any promises made to you outside of what has been identified here in this courtroom?

MR. GUNTER: No, sir.

THE COURT: I'm satisfied there's a legal and factual basis to support Count One. I'm also satisfied that his plea of guilty was knowingly and voluntarily entered.

Let me also ask you, with respect to the first sheet, the Understanding of Rights Prior to the Guilty Plea, Mr. Gunter, again, did you have the opportunity to discuss this matter with your attorney, Attorney Capozzi?

MR. GUNTER: Yes, sir.

THE COURT: And outside of the agreement as set forth in paragraph five, has anyone made any other promises not written in that paragraph?

MR. GUNTER: No, sir.

THE COURT: Did you have questions about that?

MR. GUNTER: No, sir.

THE COURT: And again, by signing your name above the word "defendant," does that mean that on this guilty plea and understanding of rights sheet, these rights were read to you, that you understood them, and acknowledged that by signing this plea sheet?

MR. GUNTER: Yes, sir.

THE COURT: Attorney Capozzi, you were present when this plea sheet was explained to him.

MR. CAPOZZI: I was, Judge.

THE COURT: All right. Are you satisfied that there was a thorough explanation of those rights provided to him?

MR. CAPOZZI: I am.

THE COURT: I see your signature. I also note Attorney Bauer's. After reading and reviewing this and listening to the answers provided to me here, I am also satisfied again that this plea was knowingly and voluntarily made and entered, and I will accept it and sign it.

Id. at 13-15. Additionally, Appellant signed the Criminal Information pleading guilty to Count 1, Murder of the Third Degree. *See* signed Criminal Information, attached as Exhibit 2.

Appellant's plea colloquy included all six relevant inquiries. *See Shekerko, supra.* Appellant was informed of the legal and factual basis for his plea. *Id.* at 11-12. Appellant stated that he understood the legal and factual basis. *Id.* at 12. Appellant was also informed of his right to trial by jury, that he was presumed innocent until proven guilty, that the Court was not bound by the terms of the plea agreement, and that the maximum penalties were a \$50,000.00 fine and forty years of incarceration. *Id.* at 2-4, 9. Appellant stated that he understood these rights. *Id.* at 9. When the Court asked Appellant if he fully understood the maximum penalties, Appellant responded affirmatively. *Id.* at 14. When Court asked if Appellant had any questions about the penalties, Appellant stated that he did not. *Id.* The Court confirmed that Appellant signed his name on the guilty plea and understanding of rights sheet, Appellant's rights were read to him, and Appellant understood those rights. *Id.* at 14-15. Appellant's counsel stated he was satisfied that there was thorough explanation of rights. *Id.* at 15. Moreover, the Court twice asked Appellant if he was satisfied with his representation, and both times Appellant stated that he was satisfied. *Id.* at 6-7, 14. Therefore, the Court did not err in finding that Appellant's guilty plea was knowing, voluntarily, and intelligently entered.

Appellant may not be pleased with his sentence. However, "[o]ur law does not require that a defendant be totally pleased with the outcome of his decision to plead guilty, only that his decision be voluntary, knowing and intelligent." *Pollard*, 832 A.2d at 524. The plea colloquy in this case clearly demonstrates that Appellant's guilty plea was knowing, voluntary, and intelligent. Consequently, Appellant's first issue is without legal merit.

B. Sentence

In his second issue raised on appeal, Appellant argues:

Secondly, the Defendant/Appellant argues the trial court abused its discretion and that the sentence is manifestly excessive, clearly unreasonable and inconsistent with the objections [sic] of the Sentencing Code.

Appellant's Statement of Matters Complained of on Appeal at ¶ 7.

This issue concerns a discretionary aspect of Appellant's sentence, and has been exhaustively addressed in this Court's March 11, 2016 Opinion. Specifically, the Superior Court of Pennsylvania does not have jurisdiction to address this issue because Appellant has not demonstrated that there is a substantial question as to the appropriateness of his sentence under the Sentencing Code. *See Commonwealth v. Mouzon*, 812 A.2d 617 (Pa. 2002) (For jurisdictional purposes, an appellant must demonstrate that there is a substantial question as to the appropriateness of the sentence under the Sentencing Code.); *see also* March 11, 2016 *Memorandum Opinion* at 10-11.

Assuming *arguendo* that Appellant raised a substantial question, Appellant's issue is without legal merit as Appellant received a standard range sentence consistent with the objectives of the Sentencing Code. *See Commonwealth v. Moury*, 992 A.2d 162 (Pa. Super. Ct. 2010) (“[W]here a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code.”); *see also* March 11, 2016 *Memorandum Opinion* at 11.⁶

Further, this Court considered several matters before imposing the sentence, to include: Defendant's sentencing memorandum, the pre-sentence investigative report, the presentence guideline calculation, statements of defendant's character witnesses, statements of counsel, and the Appellant's statement. These items were read, reviewed, and made part of the record without objection. There was absolutely no abuse of discretion and the standard range sentence imposed should thereby be upheld.

CONCLUSION

For the reasons set forth above, Appellant's appeal should be dismissed.

BY THE COURT:

/s/ **Hon. John J. Trucilla, President Judge**

⁶ The March 11, 2016 Memorandum Opinion is hereby incorporated by reference as though fully set forth herein.

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

COMMONWEALTH OF PENNSYLVANIA, Appellee
v.
TREY GUNTER, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 830 WDA 2016

Appeal from the Judgment of Sentence entered February 9, 2016
in the Court of Common Pleas of Erie County,
Criminal Division, at No(s): CP-25-CR-0003499-2014.

BEFORE: OLSON and RANSOM, JJ., and STEVENS,* P.J.E.,
MEMORANDUM BY RANSOM, J.:

FILED MAY 08, 2017

Appellant Trey Gunter appeals from the judgment of sentence of fifteen to forty years of imprisonment, imposed February 9, 2016, after he pleaded guilty to third-degree murder.¹ Appellant's counsel has filed a petition to withdraw, alleging that this appeal is wholly frivolous, accompanied by an *Anders* brief.² We grant counsel's withdrawal petition and affirm the judgment of sentence.

The trial court summarized the pertinent facts as follows:

[Appellant's conviction stems] from an incident that occurred on November 17, 2014, at an apartment off-campus of Edinboro University. Appellant, a Pittsburgh native, was an Edinboro student one semester away from graduating. The victim, Tobiah Johnson, had taken Appellant's gun several days earlier. Appellant obtained another gun, and, as alleged by the Commonwealth, with the help of Ryan Andrews and Michael Barron, confronted the victim outside of the victim's apartment. The Commonwealth further alleged that Mr. Barron was waiting outside of the victim's apartment, and that when the victim came out, Mr. Barron punched him in his head, knocking him to the ground. Appellant and Mr. Andrews got out of their vehicle and assaulted the victim. When the victim tried to get up, Appellant shot him in his back, killing him.

Trial Court Opinion, 8/8/16, at 1-2.

Following his arrest, the Commonwealth and Appellant's trial counsel reached a plea agreement, and Appellant completed a written plea colloquy form. The trial court conducted an oral colloquy with Appellant at an evidentiary hearing on September 23, 2015, and at its conclusion, the trial court accepted Appellant's plea as knowing, voluntary and intelligent. On February 9, 2016, the trial court sentenced Appellant as outlined above. The court denied Appellant's timely-filed motion to modify sentence. This appeal follows. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Within her *Anders* brief, Appellant's counsel addresses the following issues Appellant wished to raise on appeal:

¹ 18 Pa.C.S. § 2502(c).

² See *Anders v. California*, 386 U.S. 738 (1967).

*Former Justice specially assigned to the Superior Court.

A. WHETHER THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION IN ACCEPTING [APPELLANT’S] PLEA OF GUILTY WHEN [HE] DID NOT ENTER THE PLEA FREELY, KNOWINGLY AND INTELLIGENTLY?

B. WHETHER [APPELLANT’S] SENTENCE IS MANIFESTLY EXCESSIVE, CLEARLY UNREASONABLE AND INCONSISTENT WITH THE OBJECTIVE OF THE PENNSYLVANIA SENTENCING CODE?

Appellant’s Brief at 4.

“When presented with an *Anders* brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw.” *Commonwealth v. Daniels*, 999 A.2d 590, 593 (Pa. Super. 2010). An *Anders* brief shall comply with the requirements set forth by our Supreme Court in *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009);

[W]e hold that in the *Anders* brief that accompanies court-appointed counsel’s petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel’s conclusion that the appeal is frivolous; and (4) state counsel’s reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Id. at 361.

Counsel seeking to withdraw on direct appeal must meet the following obligations to his or her client:

Counsel also must provide a copy of the *Anders* brief to his client. Attending the brief must be a letter that advises the client of his right to: (1) retain new counsel to pursue the appeal; (2) proceed *pro se* on appeal; or (3) raise any points that the appellant deems worthy of the court[’]s attention in addition to the points raised by counsel in the *Anders* brief.

Commonwealth v. Orellana, 86 A.3d 877, 880 (Pa. Super. 2014) (citations omitted).

Upon review of counsel’s petition to withdraw, the supporting documentation, and her *Anders* brief, we conclude that counsel has satisfied the procedural requirements of *Anders/Santiago*.

“Once counsel has satisfied the above requirements, it is then this Court’s duty to conduct its own review of the trial court’s proceedings and render an independent judgment as to whether the appeal is, in fact, wholly frivolous.” *Commonwealth v. Goodwin*, 928 A.2d 287, 291 (Pa. Super. 2007) (*en banc*) (citation omitted). Finally, “this Court must conduct an independent review of the record to discern if there are any additional, nonfrivolous issues overlooked by counsel.” *Commonwealth v. Flowers*, 113 A.3d 1246, 1250 (Pa. Super. 2015) (footnote and citations omitted).

Appellant first asserts that he did not enter a knowing, voluntary, and intelligent guilty plea. He failed to raise the issue of the validity of his guilty plea either orally before the trial court or in a post-sentence motion. Accordingly, this issue is waived for purposes of appeal. *See generally*, Pa.R.Crim.P. 720(B); *Commonwealth v. D’Collanfield*, 805 A.2d 1244

(Pa. Super. 2002). Moreover, absent waiver, our review of the record refutes Appellant's assertions that he was not informed of the elements of third-degree murder or the legal and factual basis for his guilty plea. *See generally, Commonwealth v. Yeomans*, 24 A.3d 1044 (Pa. Super. 2011).

In his second issue, Appellant challenges the discretionary aspects of his sentence. As we recently observed in *Commonwealth v. McLaine*, 150 A.3d 70, 76 (Pa. Super. 2016) (citation omitted), “[a]n appellant is not entitled to the review of challenges to the discretionary aspects of a sentence as a matter of right.” Instead, to invoke our jurisdiction involving a challenge to the discretionary aspects of a sentence, an appellant must satisfy the following four-part test:

- (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).

Id.

Because Appellant's has met the first three requirements, we must determine whether he has raised a substantial question. The presence of a substantial question is determined on a case-by-case basis and only exists 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. *Commonwealth v. Diehl*, 140 A.3d 34, 44-45 (Pa. Super. 2016) (citations omitted). Although Appellant acknowledges that he received a standard-range minimum sentence, he essentially argues that the trial court did not properly consider the sentencing factors found at 42 Pa.C.S. § 9721, because it imposed a lengthy sentence despite his presentation of many mitigating factors. An argument that the sentencing court failed to consider mitigating factors in favor of a lesser sentence does not present a substantial question appropriate for our review. *Commonwealth v. Hanson*, 856 A.2d 1254, 1257-58 (Pa. Super. 2004) (citing *Commonwealth v. McNabb*, 819 A.2d 54, 57 (Pa. Super. 2003)).

Sentencing is a matter vested in the sound discretion of the sentencing court, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion, which in this context, is not shown merely by an error in judgment; rather the appellant must establish by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision. *Commonwealth v. Shull*, 148 A.3d 820 (Pa. Super. 2016).

Even if we were to find a substantial question to exist, we would conclude that the trial court adequately explained at sentencing why it chose a lengthy sentence despite Appellant's evidence of mitigation.

As sentencing, the trial court stated:

THE COURT: All right. I have considered the statements of counsel. I've considered the references of character, the record of those in attendance. As stated previously, I have thoroughly read the Pennsylvania Commission on Sentencing Guidelines and I have read the pre-sentence investigative report. I have made it a part of the record. I

have spent exhaustive time going through your prior history, [Appellant] through the Allegheny Office of Children and Youth and Families. I have also read extensively and incorporated your entire sentencing memorandum as advocated by [trial counsel], and I've also considered the government's comments in balance, including their sentencing memorandum.

So here's what I am left with. I do have to consider the nature of the offense, the gravity, the need for public protection, the chances of rehabilitation, several of the other factors as outlined by [trial counsel]. Those are all fair. But I do have a lot of discretion here. Let me first start by telling you there is no chance you're getting a sentence in the mitigated range. I was perhaps open to the idea until I heard further from you. You are not committed to living a crime-free life. Somehow, somewhere, you appear to me to be beholden to this whole arena of, I think, gun violence, gun use, and to some extent, drug use. You had an opportunity to explain the texts that were attributed to your phone. As a former local and federal prosecutor, and as a Judge now in my fourteenth year, there is no question what is going on in those messages. And it is at a time that is within three days of this murder.

Also, I've considered your level of remorse. I'm not completely convinced how remorseful you are, because if you were, you would have thought about the consequences of not only the gun that was stolen from you being in the hands of perhaps [the victim] or perhaps others in the Edinboro community, but also the whereabouts of a 9 millimeter, the murder weapon, if you will, and where that ended up. And we still don't have that accounted for. Those are very concerning elements to me.

N.T., 2/9/16, at 104-106.

After imposing costs and restitution, and declining to impose a fine, the trial court then stated:

I believe that a standard range sentence is appropriate and it will be as follows: There will be a minimum sentence of fifteen years to a maximum of forty years.

I will consider any request based upon your conduct in prison as to whether or not you will be and can be persuaded to be released after serving your minimum, but that is a matter of state parole review. You see, [Appellant], you held the keys to your sentence and you refused to turn the lock. And I am convinced this is the least restrictive way to accomplish the sentencing factors that are before me.

Id. at 106-107.

In arguing an abuse of discretion, Appellant essentially asks this court to reweigh the legitimate sentencing factors presented. This we cannot do. *See Commonwealth v. Griffin*, 804 A.2d 1, 9 (Pa. Super. 2002) (citing *Commonwealth v. Williams*, 562 A.2d 1385, 1388 (Pa. Super. 1989) (*en banc*) (explaining that an allegation that the sentencing court did not adequately consider various factors is, in effect, a request that this Court substitute its judgment for that of the trial court in fashioning a defendant's sentence); *see also Commonwealth v. Fullin*, 892 A.2d 843, 849-580 (Pa. Super. 2006) (where the sentencing court had the benefit of a presentence investigation report, we can assume the sentencing court was aware of relevant information regarding the defendant's character and weighed

those considerations along with mitigating statutory factors).

Thus, given the above, we agree with counsel's assessment that the issues Appellant wished to raise on appeal are frivolous. Moreover, our independent review of the record reveals no other non-frivolous issue. We therefor grant counsel's petition to withdraw and affirm Appellant's judgment of sentence.³

Petition to withdraw granted. Motion for Remand denied. Judgment of sentence affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq.

Prothonotary

Date: 5/8/2017

³ Given this disposition, we deny Appellant's *pro se* motion for remand without prejudice to his ability to raise his claim of newly-discovered evidence in post-conviction proceedings.

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CERTIFICATE OF AUTHORITY

Muddy Boots USA INC. filed a foreign registration statement with the Commonwealth of Pennsylvania. The address of the principal office is Suite 950-555 4th Ave SW Calgary, Alberta, Canada T2P 357. The commercial registered office provider is in care of Corporate Creations Network, Inc. in Dauphin County. The Corporation is filed in compliance with the requirements of the applicable provisions of 15 Pa. C.S. 412.

May 19

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on December 12, 2016 for Faith for Today Recovery Group located at 113 High Street, Edinboro, PA 16412. The name and address of each individual interested in the business is Cathy Snider, 20 Jones Street, Stoneboro, PA 16153. This was filed in accordance with 54 Pa.C.S. 311.

May 19

INCORPORATION NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, with respect to a corporation which has been incorporated under the provisions of the Business Corporation Law of 1988. The name of the corporation is: WICKER AND ASSOCIATES PI, INC.

May 19

LEGAL NOTICE

ATTENTION: TIMOTHEY JOHN SIMON JR

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

IN THE MATTER OF THE ADOPTION OF MINOR MALE CHILD B.B.J. AKA T.S. III

DOB: 01/22/2016

BORN TO: EMILY ELIZABETH ROSE JOHNSON

19 IN ADOPTION 2017

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Senior Judge Shad Connelly., Court Room No. I-217, City of Erie on June 9, 2017 at 1:30 p.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and your failure to appear may affect the Court's decision on whether to end your rights to your child. 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 present.

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. Family/Orphan's Court Administrator Room 204 - 205

Erie County Court House
Erie, Pennsylvania 16501

(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742.

This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

May 19

LEGAL NOTICE

NOTICE OF ACTION IN

MORTGAGE FORECLOSURE IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
DITECH FINANCIAL LLC,
Plaintiff

vs.

UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JACK G. KOON A/K/A JACK GAYLORD KOON, SR. A/K/A JACK SR. KOON, DECEASED, Defendant
COURT OF COMMON PLEAS CIVIL DIVISION
ERIE COUNTY
No. 10707-17

NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JACK G. KOON A/K/A JACK GAYLORD KOON, SR. A/K/A JACK SR. KOON, DECEASED

You are hereby notified that on March 9, 2017, Plaintiff, DITECH

FINANCIAL LLC, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ERIE County Pennsylvania, docketed to No. 10707-17. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 12801 SHARP ROAD, A/K/A 12801 ROUTE 86, WATERFORD, PA 16441 whereupon your property would be sold by the Sheriff of ERIE County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Notice to Defend:
Lawyer Referral
& Information Service
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Erie, PA 16507
Telephone (814) 459-4411

May 19

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schedule of events

11:00 a.m. - Registration

12:00 p.m. - Shotgun Start

4:30 p.m. - Cocktails

5:00 p.m. - Dinner and Awards Presentation

50/50 will be drawn during awards presentation

trophies and awards

- ECBA Low Gross (male/female)
- John E. Britton Trophy (low net)
- Will J. Schaaf Senior Trophy (low net age 60+)
- Team Scramble
- Closest to the Pin (male/female)
- Longest Drive (male/female)
- Longest Putt (male/female)

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Reservations are due to the ECBA office by Friday, June 16.

Participants are responsible for forming their own foursomes.

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**AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE**

**Clerk of Records,
Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania**

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, May 10, 2017** and confirmed Nisi.

June 21, 2017 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2017 ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
123. David T. McMillan a/k/a..... David Thomas McMillan	David Lindsey, Executor.....	Joan M. Fairchild, Esq.
124. Rosemary Emery	James P. Emery, Executor	Robert J. Jeffery, Esq.
125. Agnes H. Olesky	Mark E. Oleskey, Cynthia M. Olesky, Co-Executors ...	Gary H. Nash, Esq.
126. Maynard G. Sanders.....	Kimberly Hall, Administratrix	Robert C. Ward, Esq.
127. Laurinda Rae Harouff	Jackie Harouff, Administratrix	Grant M. Yochim, Esq.

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

May 19, 26

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

**BENACCI, LORI A.,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**BOWMAN, DENISE, a/k/a
DENISE M. BOWMAN, a/k/a
DENISE H. BOWMAN,
deceased**

Late of North East Township
Administrator: Trevor A. Owens and Thomas E. Owens, c/o David W. Bradford, Esq., 731 French Street, Erie, PA 16501
Attorney: David W. Bradford, Esq., 731 French Street, Erie, PA 16501

**CASEY, ARTHUR R.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Ronald J. Susmarski, 4030 West Lake Road, Erie, PA 16505
Attorney: Aaron E. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**FISHER, JAMES R., a/k/a
JAMES ROBERT FISHER,
deceased**

Late of the City of Erie
Executor: David Charles Fisher, 290 Carilla Lane, Columbus, OH 43228
Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**HYDZIK, EDWARD B., a/k/a
EDWARD HYDZIK,
deceased**

Late of the Township of Millcreek, County of Erie and State of Pennsylvania
Executrix: Mary Ann Jakubowski, 224 Maryland Avenue, Erie, PA 16505
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**JONES, HELENE L.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Christopher Michael Jones, 245 East Fifth Street, Apt. #1, Erie, PA 16507
Attorney: Gary J. Shapira, Esq., 305 West Sixth Street, Erie, PA, 16507

**KARPIK, ANN M.,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Lucille Karpik
Attorney: Thomas J. Minarcik, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**KEARNEY, JAMES P.,
deceased**

Late of City of Erie, Erie County, Commonwealth of Pennsylvania
Executrix: Colleen A. Kozlowski, c/o 120 W. 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**KERECMAN, GEORGE J., a/k/a
GEORGE KERECMAN,
deceased**

Late of the Township of Greene, County of Erie and Commonwealth of Pennsylvania
Executrix: Kristen Golixer, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Darlene M. Vlahos, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**KLING, DONALD W., a/k/a
DONALD W. KLEIN,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Donald N. Klein, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Darlene M. Vlahos, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**LYLE, BETTY L.,
deceased**

Late of the Borough of Union City, County of Erie, Commonwealth of Pennsylvania
Co-Executrices: Linda L. Hanlin, Donna J. Buell c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**McKINNEY, WILLIAM D.,
deceased**

Late of Union Township, Erie County
Executrix: Colleen A. McKinney, 8400 West High Street, Union City, PA 16438
Attorney: Melanie M. LaSota, Esq., Business & Succession Planning Advisors, LLC, One PPG Place, Ste. 1710, Pittsburgh, PA 15222

**ROOS, ALFRED THOMSON,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executor: Northwest Savings Bank, 1030 State Street, Suite 100, Erie, PA 16501
Attorney: Thomas E. Kuhn, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**VAUGHAN, DOUGLAS L., SR.,
a/k/a DOUGLAS LANE
VAUGHAN, SR.,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executor: Douglas L. Vaughan, Jr.
Attorney: Thomas J. Buseck, Esquire, The McDonald Group, L.L.P., 456 West Sixth Street, Erie, PA 16507-1216

**YOCHIM, ANTHONY P., a/k/a
ANTHONY YOCHIM,
deceased**

Late of Millcreek Township, Erie County
Executor: Daryl Pfadt, 9580 Donation Road, Waterford, Pennsylvania 16441
Attorney: John Mir, Esquire, 2530 Village Common Dr., Suite B, Erie, Pennsylvania 16506

SECOND PUBLICATION

**CHERNICKY, EMIL J., a/k/a
EMIL CHERNICKY,
deceased**

Late of the Township of McKean, County of Erie and Commonwealth of Pennsylvania
Executor: Kenneth R. Chernicky
Attorney: Adam J. Williams, Esquire, 425 West Tenth Street, Erie, PA 16502

**COPPLE, DORIS C.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Barry L. Copple
Attorney: Gerald J. Villella, Esquire, Dailey, Karle & Villella, 150 East Eighth Street, 2nd Floor, Erie, PA 16501

**CZARNECKI, MARY M.,
deceased**

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executor: Jeffrey Czarniecki, c/o Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Colleen R. Stumpf, Esq., Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**FELDE, DAVID V., a/k/a DAVID
VICTOR FELDE,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Lori A. Felde, c/o Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Darlene M. Vlahos, Esq., Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**JOHNSON, LOUIE P., SR.,
deceased**

Late of the Borough of Union City, County of Erie, Commonwealth of Pennsylvania
Executrix: Tiana M. McChesney, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**KREIDER, BETTY RUTH, a/k/a
BETTY R. KREIDER,
deceased**

Late of the Boro of Girard, County of Erie and Commonwealth of Pennsylvania
Executrix: Kimberly S. Horvath, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Marsh Spaeder Baur Spaeder & SchAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**LUDDY, MARY LOUISE,
deceased**

Late of Summit Township
Executor: James J. Luddy, c/o 246 West 10th Street, Erie, PA 16501
Attorney: Evan E. Adair, Esq., 246 West 10th Street, Erie, PA 16501

**MALINSKI, NANCY L.,
deceased**

Late of Erie County, Pennsylvania
Co-Administrators: Rebecca Malinski & Teresa A. Baker
Attorney: Stephen Hutzelman, Esq., 305 West Sixth Street, Erie, PA 16507

**McCOOL, ROBERT J., a/k/a
ROBERT McCOOL,
deceased**

Late of the Borough of Lake City, County of Erie and State of Pennsylvania
Executor: Daniel McCool, 2533 Lee Road W, Ashtabula, OH 44004
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**MEOLA, ANTONIO N., a/k/a
ANTONIO MEOLA, a/k/a
ANTHONY MEOLA,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Executor: Daniel J. Moela, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**PAKULSKI, LOUISE A.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Vicki Risjan

Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**PAYHA, MARY D., a/k/a
MARY J. PAYHA,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania

Executor: Joseph M. Payha, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorney: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**ROBERTS, JOHN J., D.D.S.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executor: John B. Fessler, 2222 West Grandview Blvd., Erie, PA 16506

Attorney: Thomas E. Kuhn, Esquire, Quinn Buseck Leemhuis Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**SCALISE, WILMA E.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executor: Raymond W. Scalise, c/o Melaragno, Placidi, Parini & Veitch, 502 West Seventh Street, Erie, PA 16502

Attorney: Gene P. Placidi, Esquire, Melaragno, Placidi, Parini & Veitch, 502 West Seventh Street, Erie, PA 16502

**SCHULZE, WADE ALAN, a/k/a
WADE A. SCHULZE,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Administratrix: Justine Sullivan, 411 Kelso Drive, #17, Erie, PA 16505

Attorney: Michael J. D'Amico, Esquire, D'Amico Law Offices, L.L.C., 310 Grant Street, Suite 825 Grant Building, Pittsburgh, PA 15219

**SIMMONS, RITA B.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executor: Donald E. Benson, c/o 504 State Street, 3rd Floor, Erie, PA 16501

Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**SIMON, MICHAEL J.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania

Executor: Elaine M. Wright

Attorney: Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505

**TULLIO, VITO, JR., a/k/a
VITO C. TULLIO, JR.,
deceased**

Late of Erie County, Pennsylvania

Executor: Jeff Lombardo & Dennis Galletta, c/o Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

Attorney: Joseph P. Martone, Esquire, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

THIRD PUBLICATION**BIDDLESTON, THOMAS,
deceased**

Late of Erie County, Pennsylvania
Co-Executors: Alan Biddlestone, Cammy Biddlestone and Patty Evan

Attorney: Elizabeth Brew Walbridge, 1001 State Street, Suite 1400, Erie, PA 16501

**COOK, PATRICIA A.,
deceased**

Late of the Township of North East, County of Erie and State of Pennsylvania

Administrator: Walter C. Randall, 186 Eastwood Drive, North East, PA 16428

Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**KIERSTEIN, KURT W.,
deceased**

Late of North East Borough, Erie County, North East, Pennsylvania

Executor: Richard A. Kierstein, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428

Attorney: Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**LOZOWSKI, NANCY L.,
deceased**

Late of the Township of Girard, County of Erie, Commonwealth of Pennsylvania

Executor: Christine Ann Edinger, c/o John J. Shimek, III, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

Attorney: John J. Shimek, III, Esq., Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

**McKENRICK, STEVEN M.,
deceased**

Late of the Township of Girard
Executrix: Heidi Z. McKenrick,
8770 Old Lake Road, Lake City,
PA 16423
Attorney: Michael A. Fetzner,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**PETROFF, MARTHA,
deceased**

Late of the City of Erie, County
of Erie and Commonwealth of
Pennsylvania
Executrix: Laurie A. Petroff, c/o
John J. Shimek, III, Sterrett Mott
Breski & Shimek, 345 West 6th
Street, Erie, PA 16507
Attorney: John J. Shimek, III,
Esq., Sterrett Mott Breski &
Shimek, 345 West 6th Street,
Erie, PA 16507

**SCEIFORD, MARJORIE P.,
a/k/a MARJORIE L. SCEIFORD,
a/k/a MARJORIE LOUISE
SCEIFORD,
deceased**

Late of Township of Harborcreek,
Erie County, Commonwealth of
Pennsylvania
Co-Executors: Melanie Jane Nash
and Douglas C. Sceiford, c/o 120
West 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure,
Esq., Knox McLaughlin Gornall &
Sennett, P.C., 120 West 10th Street,
Erie, PA 16501

**TARBELL, HERMA M.,
deceased**

Late of the Township of Union,
County of Erie, Commonwealth
of Pennsylvania
Executor: Steven C. Tarbell, c/o
Paul J. Carney, Jr., Esq., 224 Maple
Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr.,
Esq., 224 Maple Avenue, Corry,
PA 16407

**TRETTER, FRANCES L., a/k/a
FRANCES ROSS TRETTER,
a/k/a FRANCES TRETTER,
deceased**

Late of the City of Erie, County
of Erie and State of Pennsylvania
Administrator: John Tretter, 451
West 9th Street, Erie, PA 16502
Attorney: Ronald J. Susmarski,
Esq., 4030 West Lake Road, Erie,
PA 16505

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