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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

MATTISE JAMES HOLT

Appellant

No. 1558 WDA 2015

Appeal from the Judgment of Sentence September 9, 2015
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0013629-2014

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

MATTISE JAMES HOLT

Appellant

No. 1268 WDA 2016

Appeal from the Order July 29, 2016
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0013629-2014

BEFORE: SHOGAN, J., OTT, J., and MUSMANNO, J.

MEMORANDUM BY SHOGAN, J.:

FILED DECEMBER 08, 2017

Mattise James Holt ("Appellant") appeals from the judgment of sentence imposed on his nonjury convictions of rape by forcible compulsion, statutory sexual assault, unlawful contact with a minor, sexual assault,

incest, indecent assault, endangering the welfare of children, and corruption of minors.¹ Appellant also appeals from the order designating him a sexually violent predator (“SVP”).² We affirm the judgment of sentence, vacate the SVP order, and remand.

This case stems from Appellant’s rape of the minor female victim on two occasions, the details of which are set forth in the trial court’s Pa.R.A.P. 1925(a) opinion. Following a bench trial, the trial court convicted Appellant of the above-referenced crimes. Prior to sentencing, Appellant agreed to a post-sentence determination of whether he was an SVP. N.T., 9/9/15, at 2–11. On September 9, 2015, the trial court sentenced Appellant to

¹ 18 Pa.C.S. §§ 3121(a)(2), 3122.2, 6318(a)(1), 3124.1, 4302, 3126(a)(7), 4304(a)(1), and 6301(a)(1), respectively.

² Appellant filed two separate appeals. His appeal from the September 9, 2015 judgment of sentence was filed prior to this Court’s decision in **Commonwealth v. Schrader**, 141 A.3d 558 (Pa. Super. 2016). “In **Schrader**, we held that when a defendant waives a pre-sentence SVP determination, his judgment of sentence is not final until the SVP determination is rendered.” **Commonwealth v. Woeber**, ___ A.3d ___, 2017 PA Super. 353 n.2 (Pa. Super. filed November 9, 2017) (quoting **Schrader**, 141 A.3d at 561). Here, Appellant waived his right to a pre-sentence SVP hearing. N.T., 9/9/15, at 2–11. He then filed a separate notice of appeal from the SVP order. “Because Appellant filed appeals to preserve the issues raised with respect to his judgment of sentence and the trial court order, we find we have jurisdiction to consider these appeals, even though post-**Schrader**, only a single notice of appeal would have been necessary once the SVP determination was made, thereby making the judgment of sentence final as of that time.” **Woeber**, 2017 Pa. Super. 353 n.2. Accordingly, we *sua sponte* consolidate these appeals pursuant to Pa.R.A.P. 513.

incarceration for an aggregate term of 208 to 416 months. Appellant appealed, and he, along with the trial court, complied with Pa.R.A.P. 1925.

Following a hearing on July 29, 2016, the trial court designated Appellant an SVP and ordered his lifetime registration pursuant to the Sex Offender Registration and Notification Act ("SORNA"), 42 Pa.C.S. §§ 9799.10–9799.41. Appellant appealed, and he, along with the trial court, complied with Pa.R.A.P. 1925.

On appeal from the judgment of sentence, Appellant states three questions for our consideration:

1. Did the Commonwealth present insufficient evidence to establish that Appellant committed the crime of Forcible Rape, 18 Pa.C.S. § 3121(a)(1-2), given its failure to prove that he compelled [the minor female victim] to engage in sexual intercourse with him either via force or via the threat of force?

2. Did the Commonwealth present insufficient evidence to establish that Appellant communicated with [the minor female victim] in a way, and for a purpose, prohibited by the Unlawful Contact statute, 18 Pa.C.S. § 6318(a)(1), and, if it did, did it present evidence sufficient to establish the crime rose to the level of a first degree felony?

3. Was Appellant's waiver of his jury trial right invalid due to his ignorance of the fact that his Trial Counsel's advice to waive should be treated with skepticism given his own past criminal record indicating a decided lack of good judgment (with the failure to file a Post-Sentence Motion including such a claim not precluding review of this claim on the merits)?

Appellant's Brief at 3–4.

We have reviewed the parties' briefs, the relevant law, the certified record before us on appeal, and the thorough opinion of the trial court filed

on August 3, 2016. We conclude that each claim raised on appeal lacks merit and the trial court's well-crafted opinion adequately addresses those claims. Accordingly, we affirm on the basis of the trial court's opinion, specifically, pages two through twenty-two—wherein it sets forth the facts, the appropriate standard and scope of review and its analysis of Appellant's sufficiency and waiver challenges—and adopt its reasoning as our own.³

On appeal from the SVP order, Appellant presents a single question:

Was the order of the Allegheny County Court of Common Pleas deeming Appellant to be a Sexually Violent Predator (SVP) an unlawful order, void *ab initio*, given that the court was without subject matter jurisdiction (having already imposed a sentence upon Appellant)?

Appellant's Brief at 4.

Appellant acknowledges that a panel of this Court rejected this claim of error in ***Commonwealth v. Whanger***, 30 A.3d 1212 (Pa. Super. 2011). He raises it now "owing to [his] concern that, were it not made, he would be foreclosed from seeking *en banc* and/or allocatur review of this panel's decision, and thus of his ability to challenge the *Whanger* ruling."

Appellant's Brief at 8.

"This Court is bound by existing precedent under the doctrine of *stare decisis* and continues to follow controlling precedent as long as the decision

³ The parties are directed to attach a copy of pages two through twenty-two of the trial court's August 3, 2016 opinion to this Memorandum in the event of further proceedings in this matter.

has not been overturned by our Supreme Court.” **Commonwealth v. Slocum**, 86 A.3d 272, 278 n.9 (Pa. Super. 2014). Because **Whanger** remains controlling precedent, we reject Appellant’s claim of error. **Schrader**, 141 A.3d 558.

However, we are mindful that issues regarding the legality of a sentence may be raised *sua sponte*. **See Commonwealth v. Stradley**, 50 A.3d 769, 774 (Pa. Super. 2012) (“It is settled that a legality-of-sentence issue ‘may be reviewed *sua sponte* by this Court,’ due to the fact that an ‘illegal sentence must be vacated.’”) (internal citation omitted)). Recently, a panel of this Court held “that section 9799.24(e)(3) of SORNA violates the federal and state constitutions because it increases the criminal penalty to which a defendant is exposed without the chosen fact-finder making the necessary factual findings beyond a reasonable doubt.” **Commonwealth v. Butler**, ___ A.3d ___, 2017 PA Super 344, *6 (Pa. Super. filed Oct. 31, 2017).⁴

Here, the trial court conducted an SVP hearing and designated Appellant to be an SVP without making that necessary factual finding beyond a reasonable doubt; therefore, we are constrained to vacate the trial court’s July 29, 2016 SVP order, and, pursuant to **Butler**, 2017 PA Super 344, *6,

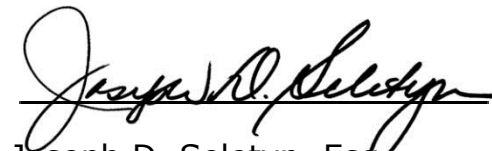
⁴ Appellant filed an Application to File Reply Brief on November 14, 2017, in which he raises a **Butler**-based argument. Given our disposition of Appellant’s SVP challenge, we deny the application as moot.

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remand this case to the trial court for the sole purpose of issuing the appropriate notice to Appellant under 42 Pa.C.S. § 9799.23 that he is required to register for life.

Order vacated. Judgment of sentence affirmed in all other respects.
Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/8/2017