

**J-118-2005
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 69 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered on January 19, 2005 at No.
	:	3083 EDA 2003, that vacated and
v.	:	remanded the Judgment of Sentence of
	:	the Court of Common Pleas of
	:	Northampton County, entered on
JAMES CHARLES KLUEBER,	:	September 12, 2003 at No. 832-2002.
	:	
Appellee	:	ARGUED: October 19, 2005

ORDER

PER CURIAM

DECIDED: August 23, 2006

Appellee was convicted of 134 counts of Sexual Abuse of Children, 18 Pa.C.S. § 6312, relating to his possession of child pornography. The trial court sentenced appellee to three to six months imprisonment on each count, all to run consecutively, for a cumulative sentence of 33 1/2 to 67 years imprisonment. See N.T. Sentencing, 9/12/03, at 52. The Superior Court vacated the trial court's sentence.

The trial court relied on appellee's prior history and conducted a lengthy sentencing hearing before finding appellee was a high risk for re-offense and was an active danger to the public. See id. The sentence was within the standard range and the Superior Court erred in vacating the trial court's sentence. See 42 Pa.C.S. § 9781 (c)(1)-(3) (appellate court may vacate sentence falling within guidelines if it is considered unreasonable); Commonwealth v. Smith, 673 A.2d 893, 895 (Pa. 1996) (sentence disturbed on appeal only if abuse of discretion exists). The Superior Court

inappropriately relied on a study that was not introduced at the sentencing hearing, see Commonwealth v. Young, 317 A.2d 258, 264 (Pa. 1974); Murphy v. Murphy, 599 A.2d 647, 652 (Pa. Super. 1991), and inappropriately ordered a different trial judge hear the case on remand. See Pa. Const. art. V, § 10(a); 42 Pa.C.S. § 502; In re Avellino, 690 A.2d 1138, 1140-42 (Pa. 1997) (this Court has supervisory and administrative authority over state courts, including, but not limited to, assignment of trial court judges).

For the above reasons, the Order of the Superior Court is hereby **REVERSED**.

Mr. Chief Justice Cappy and Mr. Justice Castille join the per curiam order reversing the Order of the Superior court.

Former Justice Nigro did not participate in the decision of this case.

Madame Justice Newman and Mr. Justice Baer would reverse the order of the Superior Court based solely on the fact that the trial court did not abuse its discretion in sentencing Appellee. In light of this disposition, it is unnecessary to decide the remaining issues.

Mr. Justice Saylor dissents.