

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
DAREN NEVIN LEVAN,		
Appellant		No. 1291 MDA 2012

Appeal from the Judgment of Sentence entered June 29, 2012
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-CR-0000797-2011

BEFORE: MUNDY, OLSON AND STRASSBURGER,* JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 1, 2013

Appellant, Daren Nevin Levan, appeals from the judgment of sentence following his guilty plea to three counts of sexual abuse of a child (photographing/filming sexual acts), six counts of endangering the welfare of a child, 10 counts of corruption of a minor, 10 counts of indecent exposure, four counts of indecent assault, 10 counts of open lewdness, and three counts of furnishing alcohol to minors.¹ We affirm.

The facts of this case are essentially uncontested. On December 21, 2011, Appellant entered a negotiated guilty plea to the aforementioned crimes for sexually abusing his minor stepdaughter over the course of eight years. The trial court deferred sentencing and ordered Appellant to submit

¹ 18 Pa.C.S.A. §§ 6312(b), 4304, 6301, 3127, 3126, 5901, respectively.

*Retired Senior Judge assigned to the Superior Court.

to an evaluation by the Sexual Offenders Assessment Board (SOAB) pursuant to Megan's Law, 42 Pa.C.S.A. §§ 9791–9799.9. On March 13, 2012, the trial court, upon praecipe by the Commonwealth that the SOAB issued its report, filed an order scheduling sentencing for March 20, 2012.

On March 16, 2012, Appellant requested a continuance to obtain an expert to rebut the SOAB report. The trial court granted the request and rescheduled sentencing for May 21, 2012. On May 14, 2012, Appellant requested another continuance, claiming that he had not received the medical records and documentation necessary to prepare his expert for sentencing. The trial court granted the request and rescheduled sentencing for June 22, 2012. On June 20, 2012, Appellant requested another continuance, claiming his expert required all of the documentation the SOAB relied upon in making its assessment, in order to defend him properly. On June 22, 2012, the trial court ordered a continuance until June 29, 2012 and specified that it would not grant any further continuances. The trial court held a sentencing hearing on June 29, 2012, at which time Appellant orally requested another continuance. The trial court denied that request and held the sentencing hearing. Appellant did not present expert testimony to rebut the SOAB report presented by the Commonwealth.

At the conclusion of the hearing, the trial court sentenced Appellant, pursuant to the negotiated plea, to an aggregate term of six to 20 months of imprisonment followed by seven years of probation. The trial court also

determined that Appellant was a sexually violent predator subject to lifetime registration requirements under Megan's Law. This timely appeal followed.²

On appeal, Appellant presents one issue for our review:

Whether the trial court erred in denying, over the objection of defense counsel, the defense's request for a continuance so as to permit time for the defense's expert witness to prepare an evaluation of Appellant and testify on Appellant's behalf?

Appellant's Brief at 4.

Appellant claims the trial court "by refusing to grant the defense's requested continuance of sentencing, robbed him of his right to counter the conclusions of the SOAB evaluation." *Id.* at 7. He contends that he requested **all** of the documents relied upon for the SOAB assessment, but was not provided with them. *Id.* at 8-9. Appellant also argues that the trial court erroneously relied upon Pa.R.Crim.P. 703³ as justification for refusing additional continuances. *Id.* at 7-9.

² On July 13, 2012, Appellant filed a notice of appeal. On July 16, 2012, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied timely on August 6, 2012. The trial court issued an opinion pursuant to Pa.R.A.P. 1925(a) on August 7, 2012 and an amended opinion (editing a single mistake on page 3) on September 5, 2012.

³ Pennsylvania Rule of Criminal Procedure 703 deals with disclosure of pre-sentence reports. Upon review, we note that the trial court's order dated June 20, 2012 stated "[n]o further continuances will be granted for any reason to avoid violation of Rule 703." Order, 6/20/2012. Ostensibly, the trial court intended to rely on Pa.R.Crim.P. 704, pertaining to the timing of sentencing. Regardless, as discussed *infra*, based upon our standard of
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Our standard of review when considering a court's decision to deny a motion for a continuance is as follows:

The grant or denial of a motion for a continuance is within the sound discretion of the trial court and will be reversed only upon a showing of an abuse of that discretion. An abuse of discretion is not merely an error of judgment. Rather, discretion is abused when the law is over-ridden or misapplied, or the result of partiality, prejudice, bias, or ill-will as shown by the evidence or the record. The grant of a continuance is discretionary and a refusal to grant is reversible error only if prejudice or a palpable and manifest abuse of discretion is demonstrated. In reviewing a denial of a continuance, the appellate court must have regard for the orderly administration of justice, as well as the right of the defendant to have adequate time to prepare a defense.

Commonwealth v. Hansley, 24 A.3d 410, 418 (Pa. Super. 2011) (internal citations, quotations, and bracket omitted).

Here, the trial court determined:

[Appellant's] plea was entered on December 21, 2011, and his sentencing did not take place until June 29, 2012. During that six and one-half (6½) month period, he had abundant opportunity to submit to an evaluation by an expert of his choice. There was no requirement that he wait for the [SOAB's] determination of the issue before seeking his own expert evaluation. Moreover, a period of more than three (3) months had transpired between the time of the [SOAB's] assessment and the sentencing date. Three (3) continuances had been granted to him. The [c]ourt believed that he had been given abundant opportunity to have an evaluation performed during the six and one-half (6½) month period between the time of his plea and his sentencing.

(Footnote Continued) _____

review and the sentencing court's rationale for denying Appellant's fourth request for continuance, reliance on either Rule is irrelevant.

[Appellant's] counsel argues that [Appellant's] expert evaluation could not take place until certain information provided to the [SOAB] had been provided to his expert. The information he sought was not in the possession of the Commonwealth. [Appellant] did not explain why his expert needed that information, as [Appellant] was the one most aware of the circumstances involved in his abuse and could have conveyed that information to his expert. As such, his own expert would have more direct access to information than the [SOAB's] expert who had to gather it from a number of sources. In any event, all of this could have been done within the six and one-half (6½) month period. There was no valid reason for any further continuances.

Amended Trial Court Opinion, 9/5/2012, at 4-5.

Based upon our standard of review, we discern no abuse of discretion. Appellant does not contest that he received the SOAB report in March 2012, more than three months prior to his sentencing hearing. Instead, he complains that he was not privy to the documents relied upon in that report. However, at no time did Appellant identify what specific documents were necessary to rebut the SOAB's assessment. There was simply no reason why his expert could not challenge the SOAB determination without the supporting documentation. Moreover, the trial court granted three prior continuances. Accordingly, the trial court thoroughly weighed Appellant's right for adequate time to prepare his defense and the orderly administration of justice as required. Hence, the trial court did not abuse its discretion by denying Appellant's fourth request for a continuance.

Judgment of sentence affirmed.