NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
R.W.,	:	
Appellant	:	No. 1771 MDA 2011

Appeal from the Judgment of Sentence September 12, 2011
In the Court of Common Pleas of Lycoming County
Criminal Division No(s).: CP-41-CR-0000939-2009

BEFORE: OLSON, OTT, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: January 11, 2013

Appellant, R.W.,[1] appeals from the judgment of sentence, of an aggregate thirty to sixty years' imprisonment, entered in the Lycoming County Court of Common Pleas following his jury conviction for offenses arising from the abuse of his granddaughter and his girlfriend's granddaughter. He challenges: (1) the trial court's denial of his Pennsylvania Rule of Criminal Procedure 600 motion; (2) the discretionary aspects of his sentence; and (3) the sufficiency of evidence for the court's finding that he is a sexually violent predator ("SVP"). We affirm.

The trial court summarized the trial evidence as follows. C.W. is

* Former Justice specially assigned to the Superior Court.

[1] To shield Appellant's granddaughter's identity, we have amended the caption to reflect only Appellant's initials.

Appellant's granddaughter.

> In the summer of 1996 or 1997 when C.W. was 10 or 11 years old, she [stayed with Appellant] and his girlfriend on an extended visit. One night while Appellant's girlfriend was at work, C.W. and Appellant were sitting on the couch watching television when Appellant slid his hand underneath C.W.'s shorts and [touched] her vagina. C.W. told Appellant to stop, got up and went into a bedroom and [played] a computer game. Shortly thereafter, Appellant came into the room, placed his hands on C.W.'s shoulders, and then put his hands under her shirt and [touched] her breasts. C.W. asked Appellant to stop, and he left the room.
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> Later that night after C.W. had gone to bed and fallen asleep, Appellant came into the room and got into bed with C.W. Appellant [rubbed] his penis on the outside of C.W.'s shorts, and then he slid her shorts and underwear down and rubbed his penis against her vagina. Appellant had an erection and his penis penetrated the lips of C.W.'s vagina, but did not go all the way inside. C.W. told Appellant to stop, and he got up and left.
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> From 1996 to 2001, Appellant also sexually abused his girlfriend's granddaughter, R.D., who was five to ten years old during that time. Appellant would come into the room where R.D. was sleeping early in the morning before her grandmother came home from work. Appellant would pull down or take R.D.'s underwear off, and tell her if she was a good girl and counted to 100, she could go to Wal-Mart or the corner store and he would buy her something. Appellant then engaged in a variety of sexual contacts with R.D. He fondled her breasts, put his fingers in her vagina, rubbed his penis on her vagina so that his penis penetrated the lips of her vagina, put his mouth on her vagina and moved his tongue around and between the lips of her vagina.
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> Although R.D. did not know C.W., Appellant would say things to her like you do this better than C.W. He also told her that if she was good enough, then he would not need R.D.'s younger sister.

> Appellant's sexual abuse of these children was not reported to the police until 2009, after R.D. was in counseling for another issue.

Trial Ct. Op., 5/1/12, at 1.

On May 18, 2009, the police filed a criminal complaint against Appellant for the acts committed against both victims.[2] He was charged with sixteen counts, which included: (1) attempted rape,[3] a felony of the first degree; (2) attempted statutory sexual assault,[4] a felony of the second degree; (3) involuntary deviate sexual intercourse ("IDSI"), by forcible compulsion and against a victim less than thirteen years old,[5] both felonies of the first degree; (4) aggravated indecent assault, by forcible compulsion and against a victim less than thirteen years old,[6] felonies of the first and second degree; (5) indecent assault, by forcible compulsion and against a

[2] Although the criminal complaint is entered on the trial docket with a date of June 8, 2009, it was signed May 18th, and the trial court states the complaint was filed on May 18th. ***See*** Trial Ct. Op. at 2.

[3] 18 Pa.C.S. §§ 901(a), 3121(a)(6).

[4] 18 Pa.C.S. § 3122.1.

[5] 18 Pa.C.S. § 3123(a)(1), (a)6). The criminal complaint cited the statute for IDSI against a victim less than thirteen years of age as subsection 3123(a)(6) of the "1994-2002 PA Criminal Code." Criminal Complaint, 5/18/09, at 3. We note that the crimes were committed before 2002, and that 3123(b) is the current subsection for this offense.

[6] 18 Pa.C.S. § 3125(a)(2), (7).

victim less than thirteen years old,[7] misdemeanors of the first and second degrees; (6) attempted incest,[8] a felony of the second degree; (7) endangering the welfare of a child ("EWC"), a felony of the third degree; and (8) corruption of a minor, a misdemeanor of the first degree.[9] On April 9, 2010, Appellant entered a plea of no contest, under a plea agreement, to two counts of indecent assault—both misdemeanors of the first degree—for a sentence of probation. N.T., 7/21/10, at 1, 3. The court ordered an SVP assessment.

On July 21, 2010, the parties appeared for a scheduled sentencing and SVP hearing. ***Id.*** at 2. The court stated that it "met with counsel beforehand and indicated to counsel that based upon the [sentencing information, it] doubted that [it] was willing to accept the plea agreement for probation given the nature of the charge" and other information, including the affidavit of probable cause. ***Id.*** at 3. The court also stated that the Commonwealth had informed it that because of the prior score and the court's statements, "it was inclined to withdraw the plea offer of probation."[10] ***Id.*** at 3-4. Appellant's counsel stated that "the

[7] 18 Pa.C.S. § 3126(a)(2), (7).

[8] 18 Pa.C.S. § 4302.

[9] 18 Pa.C.S. § 6301(a).

[10] We note the unusual circumstance of this case, where the Commonwealth's initial no-contest plea offer of two years' probation—for

Commonwealth probably does have the right to withdraw" the plea offer, but objected on the ground that it would place an undue hardship on Appellant. ***Id.*** at 4. The court stated it would not accept the plea agreement for probation, and allowed Appellant to withdraw his plea. ***Id.*** at 6-7. On July 26, 2010, it issued an order which provided: "[U]pon the Court advising counsel that it would not accept the plea agreement for probation, the Court GRANTS [Appellant's] motion to withdraw the plea of no contest." Order, 7/26/10.

On January 10, 2010, more than one year and seven months after the filing of the complaint, Appellant filed a motion to dismiss the charges under Rule 600, alleging the Commonwealth failed to commence a speedy trial. The court held a hearing the following day; a judge other than whom allowed withdrawal of Appellant's plea presided over the hearing. Appellant argued that at the prior hearing, it was the Commonwealth who first withdrew the plea offer, and thus there was no plea agreement before that judge. N.T., 1/11/11, at 3-4. The court cited the order allowing Appellant

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first-degree misdemeanors—and the trial court's ultimate sentence of an aggregate thirty to sixty years' imprisonment, were poles apart. The sole statement made by the Commonwealth at the July 21, 2010 hearing was "Correct," an agreement with the trial court that it was withdrawing the plea offer because of "the prior record score calculation" and the court's indication that it was not inclined to accept the plea sentence. ***See*** N.T., 7/21/10, at 3. Appellant's counsel responded that the Commonwealth "should have obviously been aware of [the] prior record score well before today." ***Id.*** at 4. As stated above, the Commonwealth made no further statements for the remainder of the hearing. ***See id.*** at 4-7.

to withdraw his plea, and held it was bound by the judge's finding that it would not accept the plea agreement for probation. ***Id.*** at 6. The court denied Appellant's motion for dismissal of the charges.

The case proceeded to a jury trial on January 24, 2011. A jury found Appellant guilty of all charges. On September 12, 2011, the court found Appellant was an SVP, and imposed an aggregate sentence of thirty to sixty years' imprisonment. He filed a motion to reconsider the sentence, which was denied. Appellant took this timely appeal and complied with the court's order to file a Pa.R.A.P.1925(b) statement of errors complained of on appeal.

Appellant's first issue for our review is that the court erred in denying his Rule 600 motion. For ease of discussion, we first summarize the relevant legal principles. "Our standard of review in evaluating Rule [600] issues is whether the trial court abused its discretion . . . ." ***Commonwealth v. Bowes***, 839 A.2d 422, 424 (Pa. Super. 2003) (citation omitted). Rule 600(A) provides in pertinent part: "Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed." Pa.R.Crim.P. 600(A)(3). Rule 600(B) states: "[T]rial shall be deemed to commence on the date . . . the defendant tenders a plea of guilty or *nolo contendere*." Pa.R.Crim.P. 600(B). This Court has held that Rule 600(B) "does not require a plea to be accepted, but only requires that

the plea is tendered in order to toll the running of the 365 day limit." ***Bowes***, 839 A.2d at 425.

Rule 600(D)(1) provides that when a trial court has granted a new trial, and if the defendant has been released on bail, "trial shall commence within 365 days of the court's order" granting a new trial. Pa.R.Crim.P. 600(D)(1). In ***Bowes***, the defendant pleaded guilty within one year of the date he was charged. ***Bowes***, 839 A.2d at 425. At the scheduled hearing for sentencing, which was more than one year after the date of charging, the defendant requested permission to withdraw his plea, and the court granted it. ***Id.*** at 423 On appeal, this Court held that pursuant to Rule 600(D)(1), a new period of 365 days began to run when the defendant withdrew his guilty plea. ***Id.*** at 425-26.

In the instant matter, the trial court reasoned that when Appellant withdrew his no contest plea, a new 365-day period began to run, pursuant to Rule 600(D)(1). Trial Ct. Op. at 4. On appeal, Appellant argues that "the withdrawal of the plea was forced on [him] by the Commonwealth when it withdrew the plea bargain." Appellant's Brief at 9-10. He reasons that "[w]hen the Commonwealth withdrew the offer, [he] was faced with withdrawing the plea or facing an open sentenc[e] on the two charges as well as . . . the remaining charges that were not the subject of the plea." ***Id.*** at 12. While acknowledging the language in the court's order—that "the [c]ourt refused to go along with the plea agreement"—Appellant also

emphasizes "that the [c]ourt couldn't reject the plea agreement since it had already been withdrawn." ***Id.*** at 9. Appellant reasons that Rule 600 "did not contemplate the situation where the Commonwealth withdraws the plea and forced a defendant to withdraw the plea." ***Id.*** at 13. He avers that in this case, the court's holding that another 365 days would begin "would allow a manipulation of the rule by the Commonwealth." ***Id.*** Appellant analogizes this situation to cases in which the Commonwealth withdraws a criminal complaint and subsequently refiles it, and the time between the filing of the complaints counts against the Commonwealth. ***Id.*** at 11.

We find no merit in Appellant's amplification of whether the Commonwealth withdrew the plea offer first, the court merely indicated it **would** reject the plea agreement, or the court **did reject** a plea agreement that was no longer in effect. It is clear that at the July 21, 2010 hearing, the court had an independent basis for rejecting the plea agreement sentence of probation; it cited the nature of the charges, affidavit of probable cause, offense gravity score, prior record score, and sentencing guidelines. N.T., 7/21/10, at 3. The court asked Appellant why it should accept the plea agreement. ***Id.*** at 4. In response, counsel argued for a mitigated range sentence, citing the lapse of nine or ten years since the incidents, Appellant's age of seventy-six, his lack of contact with the judicial system, and his health. ***Id.*** at 5. The court stated that it had considered some of those factors and held: "I would not be inclined, given the seriousness of the

offense and given the other information that I referenced, to accept the plea agreement, and so I'm not going to accept the plea agreement for probation." ***Id.*** at 5-6.

In light of the foregoing, we disagree with the premise of Appellant's argument that the Commonwealth's actions forced him to withdraw his plea, and that the court had not entered or could not enter a final ruling as to his plea agreement. Indeed, the court's order allowing Appellant to withdraw the plea stated that it had "advis[ed] counsel that it would not accept the p[lea agreement for probation." Order, 7/26/10. It is of no moment whether it was the Commonwealth or the court who first indicated it would withdraw or reject the plea offer. Accordingly, we find no basis to disturb the court's reasoning that pursuant to Rule 600(D)(1), a new 365-day period began on the date Appellant withdrew his plea. ***See*** Pa.R.Crim.P. 600(D)(1); ***Bowes***, 839 A.2d at 425-26. Thus, we hold no relief is due.

Appellant's second issue on appeal is a challenge to the discretionary aspects of his sentence. The court imposed consecutive, standard-range sentences which aggregated to thirty to sixty years' imprisonment. We note that Appellant was seventy-seven years old at the time of sentencing[11] and

[11] Although Appellant's brief states that he was seventy-four at the time of sentencing, Appellant's Brief at 13, the sentencing transcript and our calculation, based on biographical data in the record, indicate that he was seventy-seven. ***See*** N.T. Sentencing, 9/12/11, at 5, 33.

had "self reported medical problems, which include lymphoma, as well as heart and kidney problems requiring [stents]." N.T., 9/12/11, at 35.

For ease of discussion we again first state the relevant legal authority.

> It is well settled that, with regard to the discretionary aspects of sentencing, there is no automatic right to appeal.
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> > This appeal is, therefore, more appropriately considered a petition for allowance of appeal. 42 Pa.C.S.A. § 9781(b). To reach the merits of a discretionary sentencing issue, we conduct a four-part analysis to determine: (1) whether appellant filed a timely notice of appeal, Pa.R.A.P. 902, 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, 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[.]
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> A substantial question will be found where an appellant advances a colorable argument that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms which underlie the sentencing process. At a minimum, the Rule 2119(f) statement must articulate what particular provision of the code is violated, what fundamental norms the sentence violates, and the manner in which it violates that norm.

Commonwealth v. Mastromarino, 2 A.3d 581, 585-86 (Pa. Super. 2010) (some citations omitted), *appeal denied*, 14 A.3d 825 (Pa. 2011).

On appeal, Appellant fails to cite to the place in the record where these claims were preserved before the trial court. ***See*** Pa.R.A.P. 2117(c) (requiring statement of case to specify state of proceedings at which issue

sought to be reviewed on appeal was raised), 2119(e) (requiring same of argument section of appellate brief); ***Commonwealth v. Fransen***, 42 A.3d 1100, 1106 n.11 (Pa. Super. 2012) ("Failing to direct this Court to specific portions of the record in support of an argument violates Pa.R.A.P. 2119(c) [and for] that reason alone, we could conclude this issue is waived."). In the argument section of his brief, he alleges that his rehabilitative needs and "the protection of the public would have been served with a considerably lesser sentence." Appellant's Brief at 14. He also states that any lack of remorse may be explained by a "nearly fatal" "serious head injury" which affected his memory, and of which the court knew. ***Id.*** at 15. These issues were not raised in his post-sentence motion. Accordingly, they are waived for our review. ***See Mastromarino***, 2 A.3d at 585.

Appellant also asserts that the trial court failed to consider his age, the fact that he was suffering from cancer, as well as cancer treatment, the lack of force in the commission of the offenses, the lapse of eight years between the crimes and his arrest, and his lack of criminal activity during that interim. These claims were raised in his post-sentence motion. However, a claim that the court failed to give adequate consideration to a defendant's poor health, advanced age, and other mitigating factors does not raise a substantial question. ***Commonwealth v. Downing***, 990 A.2d 788, 794 (Pa. Super. 2010); ***Commonwealth v. Eline***, 940 A.2d 421, 435 (Pa.

Super. 2007). Accordingly, we do not review these issues. ***See Mastromarino***, 2 A.3d at 585-86.

Finally, Appellant contends that given his age, cancer, and cancer treatment, the aggregate sentence of thirty to sixty years' imprisonment amounted to a life sentence.[12] Appellant's Brief at 13.

Generally, a challenge to the imposition of consecutive, and not concurrent, sentences does not raise a substantial question. ***Commonwealth v. Prisk***, 13 A.3d 526, 533 (Pa. Super. 2011). However, in ***Prisk***, the majority of a three-judge panel of this Court held that the defendant's claim that his aggregate sentence of 633 to 1,500 years' imprisonment—for convictions of 314 offenses related to the sexual abuse of his stepdaughter—was manifestly excessive and absurd raised a substantial question.[13] ***Id.*** at 533. This Court noted that "the key to resolving the preliminary substantial question inquiry is whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face

[12] Appellant cites his age and health in advancing other claims—for example that "the protection of the public would have been served with a considerably lesser sentence," and that he "is unlikely to reoffend so" his rehabilitative needs would be "better served by a lesser sentence" and "he would be unable to engage in [criminal] activity." Appellant's Brief at 14. However, these discrete arguments are waived for the reasons stated above.

[13] The author of the instant memorandum wrote a concurring and dissenting statement in ***Prisk***, reasoning that the defendant's "aggregate sentence of 633 to 1,500 years' imprisonment [was] manifestly excessive." ***Prisk***, 13 A.3d at 533, dissenting op. by Fitzgerald, J. Nevertheless, it is the majority opinion which is binding authority.

to be, an excessive level in light of the criminal conduct at issue in the case." ***Id.*** at 533 (citing ***Mastromarino***, 2 A.3d at 587).

We note that Appellant's contention that he received what was essentially a life sentence does not include a specific challenge to the consecutive nature of his sentences. Nevertheless, we deem this claim raises a substantial question pursuant to ***Prisk***. ***See Prisk***, 13 A.3d at 533. Accordingly, we review its merits.

We note the relevant standard of review:

> [S]entencing is vested in the discretion of the trial court, and will not be disturbed absent a manifest abuse of that discretion. An abuse of discretion involves a sentence which was manifestly unreasonable, or which resulted from partiality, prejudice, bias or ill will. It is more than just an error in judgment.

Downing, 990 A.2d at 792-93 (citation omitted).

"[T]he trial court [is] permitted to consider all reasonable inferences derived from the evidence presented at trial." ***Id.***at 793. "[W]here the trial court is informed by a pre-sentence report, it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that where the court has been so informed, its discretion should not be disturbed." ***Id.*** at 794 (citation omitted).

The trial court relied on ***Prisk***. In that case, the defendant was convicted of 314 offenses, including multiple counts of rape, involuntary deviate sexual intercourse, and indecent assault. ***Prisk***, 13 A.3d at 528. He sexually abused his stepdaughter for seven years, beginning when she was

ten years old. ***Id.*** The trial court imposed an aggregate sentence of 633 to 1,500 years' imprisonment. ***Id.*** at 529. On direct appeal to this Court, the defendant "assert[ed] his aggregate sentence [was] manifestly excessive and unreasonable, because the court imposed consecutive sentences for some of his convictions," the "court failed to recognize the absurdity of the aggregate sentence imposed," and "[b]ased on his current life expectancy, . . . his minimum sentence [was] roughly twelve times longer than necessary for the court to have effectively imposed a life sentence." ***Id.*** at 532.

This Court held that the defendant had preserved his issue for appeal and raised a substantial question, but denied relief:

> [W]e must emphasize that the jury found [the defendant] guilty of [314] separate offenses. These offenses stemmed from [the defendant's] systematic sexual abuse of his stepdaughter, which occurred on an almost daily basis over the course of six years. Further, the court did not impose consecutive sentences for every count. At the same time, [the defendant] was not entitled to a "volume discount" for his multiple offenses. Based upon the foregoing, we will not deem the aggregate sentence as excessive in light of the violent criminal conduct at issue.

Id. at 533 (citation omitted).

In the instant matter, the trial court reviewed the pre-sentence investigation report, and thus we presume it was "aware of all appropriate sentencing factors and considerations." ***See id.***; N.T., 9/12/11, at 33. At the sentencing hearing, it stated that although Appellant's crimes were 'heinous," it did not "see a basis for sentencing in the aggravated range." N.T., 9/12/11, at 51. Furthermore, the court acknowledged Appellant's age,

medical issues, and a criminal history consisting "of burglary and larceny convictions from the 1960s." Trial Ct. Op. at 5. The court also noted Appellant's counsel's argument for a lenient sentence. The court, however, imposed an aggregate sentence of thirty to sixty years for the following reasons:

> The Court . . . did not find that these factors outweighed the seriousness of the charges, the [e]ffect on the victim [sic] and the community, and Appellant's lack of remorse.
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> One victim, C.W., was Appellant's ten or eleven year old granddaughter; the other, R.D., was the granddaughter of his paramour. These children trusted Appellant, and he took advantage of his role in their families. R.D. was only five years old when Appellant started to sexually abuse her, and the continued to sexually abuse her for five years. Appellant used manipulation and implied threats when he told R.D. she could go to Wal-Mart or the corner store if she was a "good girl" and when he told her if she was good enough, he wouldn't "need" [R.D.'s] younger sister. Appellant's abuse of these children broke the most basic trust in any family unit and will impact the victims' relationships for the rest of their lives. It did not appear to the Court that Appellant showed any remorse, any compassion, or any emotion, let alone the slightest inkling of how his conduct permanently impacted these girls.

Id. at 5-6.

At the sentencing hearing, the trial court specifically considered the length of the sentence in conjunction with Appellant's age and health:

> You're 77 years old. You apparently have lymphoma and other health problems. But they're not going to give you a pass out of this one.
>
> I have no idea how long you will live. . . . [T]hat is someone else's hands [sic], that's not in mine. But when I take into account the gravity of the offenses as it relates to

> the victims, these girls are going to have to live with this for the rest of their lives regardless. It will impact their relationships for the rest of their lives.

N.T., 9/12/11, at 53. The court concluded that Appellant's sentence was not excessive in light of ***Prisk***, which it deemed was a "similar case[ ]." ***Id.*** at 6.

After review of the trial court's reasoning, which included consideration of Appellant's age and serious health condition, the facts of the case, and his manipulation or exploitation of his status as a trusted family member, we hold it did not abuse its discretion. ***See Downing***, 990 A.2d at 792-93. Accordingly, we find no relief is due.

In his final issue, Appellant challenges the sufficiency of the evidence for the court's finding that he is an SVP. He argues that the Commonwealth's "expert did not attempt to make a determination if [A]ppellant was likely to engage in sexually '**violent**' act [sic] in the future." Appellant's Brief at 16. Appellant maintains that "[t]here was no force or violence used in the commission of the present offenses," and "[i]t is unreasonable to believe that a 74 year old man with serious health issues would engage in violent sexually predatory conduct in the future." ***Id.*** at 17. Furthermore, Appellant "believes that the standard used in [SVP] evaluations in [sic] unconstitutional in that a person who is subject to the evaluation cannot reasonably defend against it." ***Id.*** at 16. He reasons that the abnormality of "Paraphilia Not Otherwise Specified" is a "catch all" which

"allows the expert to say that even though this is not a defect that falls within one of the recognized diagnostic categories [sic]." ***Id.*** We find no relief is due.

This Court has explained:

> The determination of a defendant's SVP status may only be made following an assessment by the [Sexual Offenders Assessment Board ("SOAB")] and hearing before the trial court. In order to affirm an SVP designation, we, as a reviewing court, must be able to conclude that the fact-finder found clear and convincing evidence that the individual is a sexually violent predator. As with any sufficiency of the evidence claim, we view all the evidence and reasonable inferences therefrom in the light most favorable to the Commonwealth. We will reverse a trial court's determination of SVP status only if the Commonwealth has not presented clear and convincing evidence that each element of the statute has been satisfied.
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> * * *
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> An SVP under Pennsylvania's version of Megan's Law is defined as follows:
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> > A person who has been convicted of a sexually violent offense as set forth in section 9795.1 (relating to registration) and who is determined to be a sexually violent predator under section 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.
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> 42 Pa.C.S.A. § 9792.[ ]

Commonwealth v. Morgan, 16 A.3d 1165, 1168 (Pa. Super. 2011) (some citations omitted), *appeal denied*, 38 A.3d 824 (Pa. 2012).

> The precise line of inquiry for the Board's expert, as well as any other expert who testifies at an SVP hearing, is whether the defendant satisfied the definition of sexually violent predator set out in the statute, that is, whether he or she suffers from a mental abnormality or personality disorder that makes him or her more likely to engage in predatory sexually violent offenses. The salient inquiry to be made by the trial court is the identification of the impetus behind the commission of the crime and extent to which the offender is likely to **reoffend**.

Id. at 1169 (citation omitted).

In response to Appellant's contention that he did not employ force in the commission of the abuse, the trial court reasoned:

> The term "sexually violent predator" is a term of art that does not require a showing of physical violence. To deem an individual a sexually violent predator, the Commonwealth must show that: (1) the individual has been convicted of a sexually violent offense as set forth in 42 Pa.C.S. § 9795.1; and (2) the individual has a mental abnormality or personality disorder that makes him likely to engage in sexually violent offenses.

Trial Ct. Op. at 6-7 (citing 42 Pa.C.S. § 9792; ***Commonwealth v. Askew***, 907 A.2d 624, 629 (Pa. Super. 2006)). We agree with this reasoning; the definition of an SVP does not require the actor to have employed force or violence in the commission of the offenses.[14]

At Appellant's SVP hearing, the Commonwealth called SOAB board member C. Townsend Velkoff as an expert witness. He stated that he

[14] Dr. Velkoff testified similarly: "The violent part of [the term "sexually violent predator"] is a legal term. [A]n individual doesn't need to display physical violence in order to meet the diagnostic criteria, or the statutory criteria for that term." N.T., 9/12/11, at 21.

completed an assessment of Appellant, in which Appellant did not participate. N.T., 9/12/11, at 8-9. Dr. Velkoff opined that Appellant met the "criteria for a DSM diagnosis of pedophilia." ***Id.*** at 15, 17. Contrary to Appellant's claim on appeal, Dr. Velkoff did offer an opinion as to whether Appellant was likely to reoffend. Indeed, this testimony was elicited during Appellant's cross-examination, in response to the question, "Did you come to any conclusion as to whether or not you believed that [Appellant] would be someone who could re-offend?" ***Id.*** at 17-18. Dr. Velkoff responded: "Yes. . . . I determined that because he meets criteria for pedophilia, his likelihood re-offending [sic] is significantly greater than someone who doesn't meet the diagnostic criteria." ***Id.*** at 18. Dr. Velkoff concluded that he believed Appellant met the criteria for an SVP. ***Id.*** at 17.

In light of the foregoing, we reject Appellant's argument that the Commonwealth failed to present evidence that he was likely to reoffend. Instead, there was clear and convincing evidence, albeit on cross-examination, that he was likely to reoffend. ***See Morgan***, 16 A.3d at 1168.

We now consider Apellant's contention that the SVP statute is unconstitutional because "a person who is subject to [an SVP] evaluation cannot reasonably defend against it." Appellant's Brief at 16. He states that Dr. Velkoff concluded that he met the criteria for an SVP because, *inter alia*, he "suffered from a mental abnormality, specifically Paraphilia Not Otherwise Specified." ***Id.*** Appellant characterizes this condition as a "catch all" that

allows an SVP designation "even though this is not a defect that falls within one of the recognized diagnostic categories." ***Id.*** Appellant does not cite to the place in the record for this diagnosis. Our review of the SVP hearing transcript reveals that Dr. Velkoff opined that Appellant "met criteria for a DSM diagnosis of pedophilia," which includes a "display [of] intent, interest, fantasies, urges or behaviors directed at a prepubescent child." N.T., 9/12/11, at 15. We decline to scour the record for corroboration of Appellant's claim. We find no relief is due.

For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.