

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

CHARLES FINCH

Appellant

No. 1135 EDA 2013

Appeal from the Judgment of Sentence November 2, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0005865-2009

BEFORE: GANTMAN, P.J., WECHT, J., and JENKINS, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED DECEMBER 11, 2014

Appellant, Charles Finch, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial conviction of rape—forcible compulsion, unlawful contact with a minor, indecent assault—without consent, and sexual assault.¹ We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.²

¹ 18 Pa.C.S.A. §§ 3121(a)(1), 6318(a)(1), 3126(a)(1), and 3124.1, respectively.

² While Appellant's counseled direct appeal was pending, he filed a *pro se* PCRA petition, which the trial court did not address. **See generally *Commonwealth v. Jette***, 611 Pa. 166, 23 A.3d 1032 (2011) (reiterating *(Footnote Continued Next Page)*)

Appellant raises the following issues for our review:

DID NOT THE TRIAL COURT ERR IN FINDING THAT [K.L.] WAS COMPETENT TO TESTIFY?

DID NOT THE TRIAL COURT ERR IN DENYING THE MOTION FOR MISTRIAL DUE TO PROSECUTORIAL MISCONDUCT IN THE OPENING ARGUMENTS, WHERE THE PROSECUTOR URGED THE JURY TO MAKE A STATEMENT THAT THE DISABLED COULD GET JUSTICE IN COURT?

(Appellant's Brief at 3).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Genece E. Brinkley, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed November 27, 2013, at 21-26, 31-33) (finding: **(1)** court conducted competency hearing in which K.L. testified, defense counsel cross-examined K.L., court heard argument, and court was able to observe demeanor and timing of K.L.'s responses to questions regarding truth, lies, and duty to tell truth; K.L. demonstrated understanding of difference between truth and lie, importance of telling truth, that it was good to tell truth, and that telling lie would get her in trouble; K.L.'s confusion in placing certain events in specific years does not go to her competency because she indicated ability to understand reality;

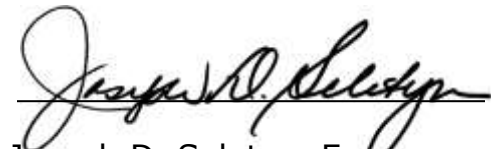
(Footnote Continued) _____

rule that court will not consider *pro se* filings of defendant who is represented by counsel of record).

based on totality of record, K.L. was competent to testify; court did not abuse its discretion in failing to preclude K.L.'s testimony; **(2)** Commonwealth's statements about K.L. getting justice and being dragged through this process were not so inflammatory as to prevent jury from objectively weighing evidence at trial; discussion of concept of justice in opening statement did not deprive Appellant of fair trial or rise to level of manifest necessity required to grant mistrial; issue of fairness was open to oratorical flair because K.L. was victim of heinous crime; court properly denied defense counsel's motion for mistrial because Commonwealth did not commit prosecutorial misconduct during opening argument). The record supports the trial court's decision; therefore, we see no reason to disturb it. Accordingly, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/11/2014