NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. LAWRENCE E. LABRYER Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1144 WDA 2013

Appeal from the Judgment of Sentence of June 26, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No.: CP-02-CR-0005934-2010

BEFORE: FORD ELLIOTT, P.J.E., BOWES, J., and WECHT, J.

MEMORANDUM BY WECHT, J.: **FILED JUNE 24, 2014**

Lawrence E. Labryer appeals from his June 26, 2013 judgment of sentence. We affirm.

The trial court summarized the factual and procedural history of this case, as follows:

> [Labryer] was charged with [two counts of] Rape, and [one count each of] Unlawful Contact with a Minor, Aggravated Indecent Assault, Statutory Sexual Assault, Endangering the Welfare of a Child, Indecent Exposure, Corruption of Minors[,] and Indecent Assault.[1] Following a jury trial held before [the trial court, Labryer] was found not guilty of one count of Rape[,] but was found guilty of all [the] remaining charges. Following [hearings] held before [the trial court] on February 14 and 16,

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[1] 18 Pa.C.S. §§ 3121(a)(1), 6318(a)(6), 3125(a)(8), 3122.1, 4304, 3127(a), 6301(a)(1), 3126(a)(2), and 3126(a)(7), respectively. The Commonwealth withdrew the indecent assault charge (18 Pa.C.S. § 3126(a)(7)) prior to trial. ***See*** Trial Court Opinion, 9/30/2013, at 1 n.8.

> 2012, [the trial court] found [Labryer] to be a Sexually Violent Predator ("SVP") and imposed consecutive terms of imprisonment of [ten] to [twenty] years at the Rape Charge, [five] to [ten] years at the Unlawful Contact with a Minor charge[,] and two and [one-half] to [five] years at the Corruption of Minors charge, for an aggregate term of imprisonment of [seventeen and one-half] to [thirty-five] years. Timely Post-Sentence Motions and Supplemental Post-Sentence Motions were filed and were denied on July 31, 2012. No direct appeal was taken.
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> On January 14, 2013, [Labryer] filed a *pro se* [petition for collateral relief pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-46]. Counsel was appointed and an Amended Petition followed on March 14, 2013. After reviewing the Amended Petition and the Commonwealth's response thereto, [the PCRA court] entered an Order on June 26, 2013[,] which vacated [Labryer's] prior sentence, dismissed the Unlawful Contact with a Minor, Endangering the Welfare of a Child, Indecent Exposure, Corruption of Minors[,] and Indecent Assault charges and re-imposed consecutive terms of imprisonment of 10 to 20 years at the Rape charge and 5 to 10 years at the Aggravated Indecent Assault charge.[2] [The trial court's determination that Labryer was an SVP] was also continued. Timely Post-Sentence Motions were filed and were denied on July 9, 2013.
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> * * *
>
> Briefly, the evidence presented at trial established that beginning when [the victim] was [fourteen] and continuing until age [fifteen], she was raped repeatedly by [Labryer,] who was her mother's boyfriend. At age [fifteen] she became pregnant and had a daughter . . . who is being raised by [the victim's] father and step-mother. A paternity test stipulated to by [Labryer] confirmed that [he] is [the child's] father.

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[2] In his PCRA petitions, Labryer argued that five of his convictions were barred by the applicable statutes of limitation. ***See*** Labryer's Amended PCRA Petition, 3/14/2013, at 9-12. In its response to Labryer's submission, the Commonwealth conceded that Labryer's claims were meritorious. ***See*** Commonwealth's Answer to PCRA Petition, 5/14/2013, at 1-2.

Trial Court Opinion ("T.C.O."), 9/30/2013, at 1-2 (quotation marks added; internal footnotes omitted).

On July 15, 2013, Labryer filed a timely notice of appeal from his re-sentencing. On July 23, 2013, the trial court directed Labryer to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On July 25, 2013, Labryer timely complied. On September 30, 2013, the trial court issued a Rule 1925(a) opinion.

Labryer raises two issues for our consideration:

> 1. Did the trial court err in denying [Labryer's post-sentence motions] since [Labryer's] individual and aggregate sentences were manifestly excessive, and the trial court failed to state adequate reasons on the record for deviating from the sentencing guidelines and imposing a sentence above the aggravated range for rape, and for imposing a sentence above the standard but below the aggravated range for aggravated indecent assault?
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> 2. Did the trial court err in denying [Labryer's post-sentence motions] since the trial court erred in finding [Labryer] to be a [SVP] since the Commonwealth's expert premised his finding on ongoing illegal sexual conduct lasting six months or longer, yet he never reviewed the trial transcript, which revealed that there was no evidence indicating that the conduct lasted six months or longer?

Brief for Labryer at 3 (capitalization modified).

In his first claim, Labryer asserts that the trial court imposed a manifestly excessive sentence without adequately stating its reasons for doing so on the record. This claim implicates the discretionary aspects of Labryer's sentence. "It is well-settled that, with regard to the discretionary

aspects of sentencing, there is no automatic right to appeal." ***Commonwealth v. Austin***, 66 A.3d 798, 807–08 (Pa. Super. 2013).

> Before [this Court may] reach the merits of [a challenge to the discretionary aspects of a sentence], we must engage in a four part analysis to determine: (1) whether the appeal is timely; (2) whether Appellant preserved his issue; (3) whether Appellant's brief includes a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of sentence [see Pa.R.A.P. 2119(f)]; and (4) whether the concise statement raises a substantial question that the sentence is appropriate under the sentencing code. . . . [I]f the appeal satisfies each of these four requirements we will then proceed to decide the substantive merits of the case.

Id. (brackets in original). Labryer has complied with the first three requirements listed above. Specifically, Labryer filed a timely notice of appeal, preserved his discretionary challenge in a timely post-sentence motion, and has included a Rule 2119(f) statement in his brief. Consequently, we will determine whether Labryer has presented a "substantial question" that his sentence is inappropriate pursuant to the Sentencing Code. ***See Austin***, 66 A.3d at 808.

The determination of what constitutes a substantial question must be evaluated on a case-by-case basis. ***Id.*** "A substantial question exi[s]ts only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Id.*** (citing ***Commonwealth v. Griffin***, 65 A.3d

932, 935 (Pa. Super. 2013)). The most complete statement[3] of Labryer's claim is as follows:

> Labryer's [ten-to-twenty-year] sentence for rape was two years above the aggravated guideline range of [eight] years, and his [five-to-ten-year] sentence for aggravated indecent assault was above the standard guideline range of [forty-two to fifty-four]

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[3] Labryer also advances a claim that his sentence is excessive because the trial court set his terms of incarceration to run consecutively with each other. Brief for Labryer at 18. "Long[-]standing precedent of this Court recognizes that 42 Pa.C.S. [§] 9721 affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences imposed at the same time or to sentences already imposed." ***Commonwealth v. Marts***, 889 A.2d 608, 612 (Pa. Super. 2005) (citing ***Commonwealth v. Graham***, 661 A.2d 1367, 1373 (Pa. 1995)). "Any challenge to the exercise of this discretion ordinarily does not raise a substantial question." ***Id.*** (citing ***Commonwealth v. Johnson***, 873 A.2d 704, 709 n.2 (Pa. Super. 2005)). Although recent decisions in this Court indicate that claims challenging the consecutive structuring of terms of incarceration **may** constitute a substantial question, we must assess each situation on a "case-by-case basis." ***See Commonwealth v. Mastromarino***, 2 A.3d 581, 586-88 (Pa. Super. 2010) (citing ***Commonwealth v. Dodge***, 859 A.2d 771, 782 n.13 (Pa. Super. 2004), *vacated and remanded on other grounds* 935 A.2d 1290 (Pa. 2007)). Labryer's is **not** one of the "extreme cases" in which the imposition of consecutive sentences "raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of the criminal conduct at issue in the case." ***Id.*** at 588 (quoting ***Commonwealth v. Gonzalez-Dejusus***, 994 A.2d 595, 599 (Pa. Super 2010)). Instantly, Labryer engaged in an ongoing pattern of sexual abuse with his girlfriend's minor daughter. Upon resentencing, the court set Labryer's two terms of incarceration to run consecutively with one another, which resulted in an aggregate sentence of fifteen to thirty years. By way of contrast, the defendant in ***Dodge*** - whom this Court found **did** present a substantial question in challenging the consecutive structure of his sentence - received dozens of consecutive terms for primarily "property crimes" that resulted in an aggregate term of fifty-eight and one-half to 124 years' incarceration. ***Dodge***, 859 A.2d at 776. Thus, while we will address the merits of Labryer's first claim, we will not address his claim that consecutiveness itself renders his sentence excessive, because this does not raise a substantial question here.

> months but below the aggravated range of [sixty-six] months. [Labryer] respectfully avers that the sentences were manifestly excessive since he showed genuine remorse for his crimes, and that the [trial court] failed to state adequate reasons for deviating from the aggravated range of the Sentencing Guidelines at the rape count . . . .
>
> [Labryer] also avers that the imposition of consecutive sentences, especially since [Labryer] expressed remorse for the crimes, constituted a manifestly excessive sentence.

Brief for Labryer at 18. This Court has held that claims that the sentencing court imposed a sentence outside of the standard guidelines without stating adequate reasons on the record presents a substantial question. ***See Commonwealth v. Robinson***, 931 A.2d 15, 26 (Pa. Super. 2007) (citing ***Commonwealth v. Goggins***, 748 A.2d 721, 728 (Pa. Super. 2000)). Instantly, Labryer was sentenced to the statutory maximum sentence at both the rape and aggravated indecent assault counts, which exceeds the standard (and aggravated) guidelines for both offenses. Therefore, we conclude that Labryer has presented a substantial question. Accordingly, we will address the merits of his claims.

Our standard of review of a challenge to the discretionary aspects of sentence is well-settled:

> Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Robinson, 931 A.2d at 26. "In every case in which the court imposes a sentence for a felony or a misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed." ***Commonwealth v. Mouzon***, 812 A.2d 617, 620–21 (Pa. 2002); ***see*** 42 Pa.C.S. § 9721(b). The sentencing guidelines are not mandatory, and sentencing courts retain "broad discretion in sentencing matters, and therefore, may sentence defendants outside the [g]uidelines." ***Id.*** (citing ***Commonwealth v. Ellis***, 700 A.2d 948, 958 (Pa. Super. 1997)). "In every case where the court imposes a sentence . . . outside the guidelines adopted by the Pennsylvania Commission on Sentencing . . . the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines." 42 Pa.C.S. § 9721(b). However, "[t]his requirement is satisfied 'when the judge states his reasons for the sentence on the record and in the defendant's presence.'" ***Commonwealth v. Widmer***, 667 A.2d 215, 223 (Pa. Super. 1995), *reversed on other grounds*, 689 A.2d 211 (Pa. 1997). Consequently, to comply with the above procedural requirements, a trial court must state adequate reasons for the imposition of sentence on the record in open court. ***See Robinson***, 931 A.2d at 26 (quoting ***Commonwealth v. Walls***, 846 A.2d 152, 158 (Pa. Super. 2004), *reversed on other grounds*, 926 A.2d 957 (Pa. 2007)) ("If a court chooses to sentence

a defendant outside of the sentencing guidelines, it should state on the record adequate reasons for the deviation.”).

“When imposing sentence, a court is required to consider ‘the particular circumstances of the offense and the character of the defendant.’” ***Commonwealth v. McClendon***, 589 A.2d 706, 712–13 (Pa. Super. 1991) (*en banc*) (quoting ***Commonwealth v. Frazier***, 500 A.2d 158, 159 (Pa. Super. 1985)). “In considering these factors, the court should refer to the defendant’s prior criminal record, age, personal characteristics and potential for rehabilitation.” ***Id.*** “Where pre-sentence reports exist, we shall . . . presume that the sentencing judge was aware of relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors. A pre-sentence report constitutes the record and speaks for itself.” ***Commonwealth v. Devers***, 546 A.2d 12, 18 (Pa. 1988).

At the June 26, 2013 resentencing hearing, the trial court reaffirmed its original explanation in support of Labryer’s sentence. ***See*** Notes of Testimony-Resentencing, 6/26/2013, at 3. The trial court’s original reasoning, which was stated on the record, and in Labryer’s presence, at the original sentencing hearing, reads as follows:

> I find that you have committed multiple offenses against this young person, and I find it reprehensible that you violated [your] position of trust. You just heard what [*sic*] the impact that your actions had on the victim and her parents. The victim had a child to you, and that child is another victim of your horrid actions. The victim was [fourteen] years old. You had a prior

> indecent assault for which probation was eventually revoked, and interestingly enough, that assault was with a minor.
>
> You have numerous other offenses. You never did well in any kind of supervision. As I stated before, your ridiculous testimony that you had sex with [the victim] because you thought the mother could consent to her having sex is not even worth a response from me. You have never had any regular employment, although you have managed to father four other children, all of [whom] I understand were removed by [Children & Youth Services ("CYS")]. I see no evidence of rehabilitation. I do not see any indication that you could ever be a productive citizen, and I disagree with what your attorney has said. I have seen no remorse from you. Thank goodness that [your child with the victim] has grandparents willing to take her in and love her.
>
> Something very interesting in your case, I read the presentence report not once, but twice, and you know what I was doing, I was looking for something positive about you, and you know what, I found nothing. You were in jail before and that did not deter your activities.

Notes of Testimony-Sentencing ("N.T."), 2/16/2012, at 16-18.

During this exchange, the sentencing court specifically referred to: (1) the impact that Labryer's crimes had upon the victim and her family; (2) Labryer's prior criminal record, which included a prior conviction for indecent assault with another minor; (3) Labryer's resistance to rehabilitation and supervision; (4) a perceived lack of remorse from Labryer; and (5) Labryer's risk for recidivism. We conclude that these statements substantially conform with the requirements set forth by ***McClendon***. Furthermore, the sentencing court had the benefit of a pre-sentencing report, which it reviewed diligently. ***See*** N.T. at 18. Thus, we may presume that the sentencing court was apprised fully of Labryer's characteristics and

properly considered those factors in setting Labryer's sentence. ***See Devers***, 546 A.2d at 18 ("Having been fully informed by the pre-sentence report, the sentencing court's discretion should not be disturbed."). We conclude that the sentencing court stated adequate reasons on the record to support the imposition of a sentence in excess of the aggravated guidelines. "This court is not required to parrot the words of the Sentencing Code, stating every factor that must be considered under Section 9721(b) . . . . [T]he record **as a whole** must reflect due consideration by the court of the statutory considerations." ***Commonwealth v. Coulverson***, 34 A.3d 135, 145-46 (Pa. Super. 2011) (emphasis added) (citing ***Commonwealth v. Feucht***, 955 A.2d 377, 383 (Pa. Super. 2008)).

After examining the record as a whole, we are persuaded that the sentencing court adequately informed Labryer of the reasons that it exceeded the standard guidelines in crafting his sentence. Accordingly, Labryer's first claim fails.

Turning to Labryer's second issue, he asserts that the trial court erred in determining that he was an SVP. Specifically, Labryer challenges the determinations of the expert who examined him in order to determine whether he was an SVP. In pertinent part, Labryer's argument is as follows:

> Dr. Charles Pass' determination that [Labryer] was a sexually violent predator was based upon a finding that [Labryer's] conduct involving the victim lasted six months or longer, and [Dr. Pass] conceded that if it had only occurred for less than six months, he could not have classified [Labryer as an SVP]. Notes of Testimony-SVP Hearing, 2/14/2012, at 9-10. If Dr. Pass had

> reviewed the Jury Trial Transcript, he would have discovered that the conduct began in the spring of 2000 (so, at the very earliest, 3/21/00), and ended in September 2000. Moreover, [Labryer] testified at trial that the sexual activity only lasted from July 2000 to September 2000.

Brief for Labryer at 20-21 (citations modified). Although not directly styled as such, we discern that Labryer is contesting the sufficiency of the evidence to support his designation as an SVP. ***See*** Brief for Labryer at 20 (reciting standard of review for sufficiency challenges to an SVP determination).

Our standard of review in this context is well-established:

> If a person appeals an SVP designation and contends the evidence supporting that designation was insufficient, our standard of review is clear. We do not weigh the evidence presented to the sentencing court and do not make credibility determinations. ***Commonwealth v. Geiter***, 929 A.2d 648, 650 (Pa. Super. 2007). Instead, we view all the evidence and its reasonable inferences in a light most favorable to the Commonwealth. ***Commonwealth v. Fletcher***, 947 A.2d 776, 776 (Pa. Super. 2008). We will disturb an SVP designation only if the Commonwealth did not present clear and convincing evidence to enable the court to find each element required by the SVP statutes.

Feucht, 955 A.2d at 381-82 (citations modified). "If a person is convicted of one or more of the sexually violent offenses set forth in 42 Pa.C.S. § 9795.1, the court shall order the individual to be assessed by the [State Sexual Offenders Assessment Board ("the Board").]"[4] ***Id.*** at 380 (citing 42 Pa.C.S. § 9795.4(a)). "Upon praecipe from the Commonwealth, the court

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[4] Labryer's convictions for rape, aggravated indecent assault, and statutory sexual assault are predicate offenses pursuant to section 9795.1.

holds a hearing at which the Commonwealth must prove by clear and convincing evidence that the SVP designation is appropriate." ***Id.*** (citing 42 Pa.C.S. § 9795.4(e)). "The clear and convincing standard means the evidence was so clear, direct, weighty, and convincing that the trier of fact could come to a clear conviction, without hesitating, concerning the facts at issue." ***Id.*** (citing ***Commonwealth v. Meals***, 912 A.2d 213, 219 (Pa. 2006)). The statutes governing the assessment of whether an individual is an SVP expired on December 20, 2012.[5] However, the provisions were in effect at the time that Labryer originally was determined to be an SVP in February 2012. Thus, we will assess his claim under the tenets of section 9795.4.

The factors relating to an SVP assessment are as follows:

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[5] ***See A.S. v. Pennsylvania State Police***, 87 A.3d 914, 915 n.4 (Pa. Cmwlth. 2014):

> Sections 9791 through 9799.9 of the Sentencing Code, 42 Pa.C.S. §§ 9791–9799.9 . . . were commonly referred to as "Megan's Law II." The original version of "Megan's Law" was held to be unconstitutional in ***Commonwealth v. Williams***, 733 A.2d 593 (Pa. 1999); however, in ***Commonwealth v. Williams***, 832 A.2d 962 (Pa. 2003), the Supreme Court held that Megan's Law II was constitutional. By operation of Section 9799.41 of the Sentencing Code, 42 Pa.C.S. § 9799.41, enacted on December 20, 2011, certain sections of the Sentencing Code, including Section 9795.1, expired on December 20, 2012. The subject matter of these expired provisions are now found in the Sex Offender Registration and Notification Act ("SORNA"), 42 Pa.C.S. §§ 9799.10–.40.

87 A.3d at 917 (quotation marks added).

(b) Assessment.--Upon receipt from the court of an order for an assessment, a member of the [B]oard as designated by the administrative officer of the [B]oard shall conduct an assessment of the individual to determine if the individual should be classified as a sexually violent predator. The [B]oard shall establish standards for evaluations and for evaluators conducting the assessments. An assessment shall include, but not be limited to, an examination of the following:

(1) Facts of the current offense, including:

(i) Whether the offense involved multiple victims.

(ii) Whether the individual exceeded the means necessary to achieve the offense.

(iii) The nature of the sexual contact with the victim.

(iv) Relationship of the individual to the victim.

(v) Age of the victim.

(vi) Whether the offense included a display of unusual cruelty by the individual during the commission of the crime.

(vii) The mental capacity of the victim.

(2) Prior offense history, including:

(i) The individual's prior criminal record.

(ii) Whether the individual completed any prior sentences.

(iii) Whether the individual participated in available programs for sexual offenders.

(3) Characteristics of the individual, including:

(i) Age of the individual.

(ii) Use of illegal drugs by the individual.

> (iii) Any mental illness, mental disability or mental abnormality.
>
> (iv) Behavioral characteristics that contribute to the individual's conduct.
>
> (4) Factors that are supported in a sexual offender assessment field as criteria reasonably related to the risk of reoffense.

Feucht, 955 A.2d at 380-81 (quoting 42 Pa.C.S. § 9795.4(b)). A mental abnormality is defined as a "congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons." ***Id.*** at 381 (quoting 42 Pa.C.S. § 9792).

Instantly, Labryer insists that Dr. Pass testified that, in the absence of a determination that Labryer's sexual misconduct with the victim went on for longer than six months, the Commonwealth would have been unable to demonstrate that he suffered from an abnormality that made him "likely to engage in predatory sexually violent offenses." ***Id.*** The testimony of Dr. Pass, in relevant part, was as follows:

> Q: Dr. Pass, did you perform the evaluation on [Labryer]?
>
> A: I did.
>
> Q: And in that examination, did you follow the standards as set forth in Title 42 of the Crimes Code?
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> A: I did. There were two [e]valuations done on [Labryer]. The first occurred on August 23, 2011[,] without the

benefit of an interview. And the second one occurred on January 31, 2012 with the benefit of an interview at the Allegheny County jail.

Q: Okay. And did you create a report after your first and second interviews?

A: I did.

Q: Did your second interview include things from your first interview? Is it all-inclusive?

A: Yes, it is.

Q: And based on -- let me back up just a minute. I'm going to show you what I'll mark as Commonwealth Exhibit 1. Can you tell the [c]ourt what this is[?]

A: This would be my assessment and forensic exam for a sexually violent predatory assessment on [Labryer,] which would have been inclusive of the August 23, 2011 examination and the January 31, 2012 examination.

* * *

Q: After your evaluation, did you reach a conclusion?

A: I did.

Q: What conclusion did you reach?

A: When evaluating this particular case, [Labryer], and all the facts that were provided to me in the forensic case file in accordance with a review of Megan's Law, my findings indicated that [Labryer] met the classification standards and criteria for a sexually violent predator classification.

Q: Is that conclusion based on a reasonable degree of certainty?

A: It is.

Notes of Testimony-SVP Hearing, 2/14/2012, at 5-7. Dr. Pass was then cross-examined by Labryer's counsel, in pertinent part, as follows:

> Q: Dr. Pass, in your reports you indicated that you reviewed the records that were provided to you?
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> A: Yes.
>
> Q: As far as those records were concerned, what type of records did they include as far as the details regarding the facts of the case?
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> A: They would be on Page 1, under Evaluation Procedures, documents reviewed, which would have been the obvious Allegheny County Court Order mandating the assessment, the informed consent forms, the field investigator's report, law enforcement investigation records, the police criminal complaint, affidavit of probable cause pertinent to the incident offense, [the] victim's medical records, [Labryer's] prior criminal offense history records[,] and the Torrance State Hospital report.
>
> Q: Did you review any statements that were made by the victim?
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> * * *
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> A: [I] reviewed the victim's medical records, and by statements from the victim, statements given to various authorities? Yes.
>
> * * *
>
> Q: Okay. Did you review the trial transcript?
>
> A: No.
>
> Q: Okay. Now, as far as the evaluation that you made and the determination regarding the duration of the activity --
>
> A: Yes.

Q: -- you indicated that because the activity took place for a period greater than six months, that that indicated there is a mental abnormality or a risk of [Labryer] being a sexual violent predator?

A: Yes. The general rule of thumb is that involvement in illegal sexual conduct with pubescent or prepubescent children, in this particular case obviously for a period of time longer than six months, could qualify for the classification under one of the paraphilias.

Q: So if it were activity that took place for less than six months, that would undermine that particular finding?

A: Yes. That would throw a question on whether or not there is ample evidence to support an abnormality.

Id. at 7-10 (emphasis added).

Our reading of Dr. Pass' testimony does not confirm Labryer's claim that a change in Dr. Pass' determination of the length of Labryer's sexual misconduct with the victim would have rendered the trial court incapable of finding that Labryer was an SVP. Rather, Dr. Pass stated that a change in the timeline of the events in this case would have raised a question on whether "there is ample evidence to support an abnormality." ***Id.*** at 10. Dr. Pass did not specify that such a change would have been dispositive to his SVP determination. Moreover, we note the following:

> [W]ith regard to the various assessment factors listed in Section 9795.4, there is no statutory requirement that all of them or any particular number of them be present or absent in order to support an SVP designation. ***Meals***, 912 A.2d at 220–23. The factors are not a checklist with each one weighing in some necessary fashion for or against SVP designation. ***Id.*** at 222. Rather, the presence or absence of one or more factors might simply suggest the presence or absence of one or more particular types of mental abnormalities. ***See id.*** at 221.

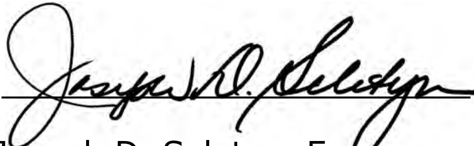
Feucht, 955 A.2d at 381.

Even assuming, *arguendo*, that Labryer's claim is viable and that Dr. Pass could **not** have concluded that Labryer should be designated an SVP if his predatory conduct did not last for at least six months, Labryer cannot demonstrate that the conduct lasted for less than six months. Labryer and the victim gave differing reports regarding the duration of the abuse. Labryer testified that his sexual relationship with the victim began in July 2000, as part of a purported surrogacy arrangement made with the victim's mother, and that it ended sometime in September 2000. Notes of Testimony-Trial, 6/29/2011, at 126-27. The victim testified that Labryer began abusing her when she was fourteen, that this was sometime in the spring, that her fifteenth birthday fell in June 2000, and that Labryer's final act of abuse occurred sometime in the "middle, end of September [2000]." ***Id.*** at 41, 72, 75. Neither Labryer nor the victim was able to offer concrete dates in his or her testimony. However, Labryer's own argument concedes that it is possible to examine the testimony and conclude that his conduct lasted for at least six months. Specifically, Labryer states that if the conduct in this case began in the spring of 2000 (which we calculate to be March 20, 2000, at the earliest), and continued until at least September 21, 2000, then "it may be inferred that the conduct could *possibly* have lasted for six months." Brief for Labryer at 20-21 (emphasis in original). We agree.

Viewing all the evidence and reasonable inferences in light most favorable to the Commonwealth, ***see Feucht***, *supra*, we conclude that there was sufficient evidence for the court to conclude that Labryer was an SVP. The victim and Labryer offered differing accounts of the timeline of events. Labryer concedes that the evidence arguably supports contrary conclusions. In asserting that the court could not have concluded that the conduct at issue in this case lasted for at least six months, Labryer essentially contends that the trial court was bound to believe Labryer's testimony and to disbelieve the testimony from Dr. Pass and the victim. "The aforesaid arguments relate primarily to the weight and credibility of the Commonwealth's evidence. These are matters we do not address on a sufficiency appeal. Thus, they warrant no relief." ***Id.*** at 382-83.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/24/2014