NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. KENNETH PARROTTE Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1252 WDA 2013

Appeal from the Judgment of Sentence June 6, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0003276-2012

BEFORE: GANTMAN, P.J., FORD ELLIOTT, P.J.E., and OLSON, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED MAY 09, 2014**

Appellant, Kenneth Parrotte, appeals from the judgment of sentence entered in the Allegheny County Court of Common Pleas, following his jury trial convictions of indecent assault—complainant less than thirteen years of age, endangering welfare of children ("EWOC"), corruption of minors, and indecent exposure.[1] We vacate the judgment of sentence and remand for resentencing.

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.

Appellant raises the following issues for our review:

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[1] 18 Pa.C.S.A. §§ 3126(a)(7), 4304, 6301(a)(1), and 3127(a), respectively.

> DID THE TRIAL COURT [ERR] IN FINDING [APPELLANT] TO BE A SEXUALLY VIOLENT PREDATOR, WHERE THE COMMONWEALTH FAILED TO PRESENT CLEAR AND CONVINCING EVIDENCE THAT [APPELLANT] HAD A MENTAL ABNORMALITY OR DEFECT THAT MAKES HIM LIKELY TO ENGAGE IN PREDATORY, SEXUALLY VIOLENT OFFENSES?
>
> DID THE TRIAL COURT [ERR] IN INCREASING THE STATUTORY MAXIMUM PENALTY FOR [EWOC] FROM FIVE TO SEVEN YEARS, WHERE THE JURY DID NOT MAKE THE FINDING OF FACT WHICH WOULD PROVIDE FOR THAT INCREASE, AND THE TRIAL COURT WAS CONSTITUTIONALLY BARRED FROM INDEPENDENTLY MAKING THAT FINDING FOR PURPOSES OF SENTENCING?
>
> DID THE TRIAL COURT ABUSE ITS DISCRETION IN IMPOSING A MANIFESTLY EXCESSIVE AND UNREASONABLE SENTENCE IN CONTRAVENTION OF [APPELLANT'S] REHABILITATIVE NEEDS, LACK OR RECENT CRIMINAL HISTORY, AND THE FORCE OF EVIDENCE IN THIS CASE?
>
> DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL, WHERE THE JURY ERRED IN WEIGHING THE EVIDENCE AND FINDING THAT THE TENUOUS AND WAVERING TESTIMONY OF Z.S. SUPPORTED CONVICTIONS FOR INDECENT ASSAULT, [EWOC], AND CORRUPTION OF MINORS?

(Appellant's Brief at 6).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Donna Jo McDaniel, we conclude Appellant's first, third and fourth issues merit no relief. The trial court's opinion fully discusses and properly disposes of Appellant's issues on appeal. (***See*** Trial Court Opinion, filed October 3, 2013, at 2-12) (finding: **(1)** Appellant's claims of insufficient evidence to

support finding of mental abnormality or personality defect and predatory behavior are meritless because record demonstrates Commonwealth presented clear and convincing evidence that Appellant suffers from antisocial personality disorder in accordance with Megan's Law statute, and Appellant's behavior met definition of "predatory" under Megan's Law statute; **(3)** court acted within its discretion when it imposed sentence outside aggravated range; sentence imposed did not exceed statutory maximum; court ordered, reviewed, and considered pre-sentence investigative report prior to sentencing hearing; record reflects court considered all appropriate factors in determining sentence; court placed its reasons for sentence on record; fact that sentences exceeded guideline range does not render them *per se* illegal; given facts and circumstances of Appellant's assaults on six-year old granddaughter, sentence was appropriate; court was within its discretion in imposing statutory maximum; Appellant's discretionary aspects of sentencing claim must fail; **(4)** evidence presented at trial established that Appellant's granddaughter lived with Appellant, his wife, granddaughter's siblings, and other children when granddaughter was five and six years old; in December 2011, Appellant brought granddaughter into his bedroom when his wife was not home and engaged in sexual intercourse with his granddaughter; in January 2012, granddaughter's mother brought granddaughter to hospital after she disclosed Appellant's conduct; during forensic interview, granddaughter

described skin pigmentation anomaly on Appellant's penis, which was later observed by arresting detectives; given this evidence, there is no question that verdict was appropriate and did not "shock" court's conscience). The record supports the trial court's decision on these issues, and we see no reason to disturb it. Accordingly, we affirm Appellant's first, third and fourth issues on the basis of the trial court's opinion.

In his second issue, Appellant argues his three and one half (3½) to seven (7) year sentence for EWOC is illegal. Appellant contends that, under the Sixth and Fourteenth Amendments of the United States Constitution and existing United States Supreme Court precedent,[2] the court could not sentence Appellant to seven (7) years for EWOC unless the jury found, beyond a reasonable doubt, that Appellant endangered the victim through a "course of conduct." Appellant alleges the criminal information did not refer to "course of conduct," and the jury was not instructed on this element at trial. Appellant claims that, absent instruction on "course of conduct," the elements presented to the jury constituted misdemeanor EWOC, which carries a statutory maximum of five (5) years. Appellant maintains the trial court was constitutionally barred from making an independent finding on "course of conduct" to support an increase in the statutory maximum to

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[2] ***Alleyne v. United States***, ___ U.S. ___, 133 S.Ct. 420, 184 L.Ed.2d 252 (2012); ***Apprendi v. New Jersey***, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

seven (7) years. Appellant concludes this Court should vacate the judgment of sentence for EWOC and remand for resentencing on misdemeanor EWOC. We agree.

The Pennsylvania Consolidated Statutes provides in relevant part:

> **§ 4304. Endangering welfare of children**
>
> **(a) Offense defined.—**
>
> (1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.
>
> * * *
>
> **(b) Grading.—**An offense under this section constitutes a misdemeanor of the first degree. However, where there is a course of conduct of endangering the welfare of a child, the offense constitutes a felony of the third degree.

18 Pa.C.S.A. § 4304(a)(1), (b). "[I]n order to be graded as a third-degree felony, the Commonwealth must allege in the information and present evidence at trial of the additional factor of 'course of conduct,' and the jury must be instructed on such." ***Commonwealth v. Popow***, 844 A.2d 13, 18 (Pa.Super. 2004).

> "[C]ourse of conduct" is not an element of the offense of [EWOC], but it is an additional fact, a jury question, that impacts the grading of the offense. [This Court] cannot merely assume the jury [finds] this additional fact when no evidence of it [is] presented at trial and no mention of it [is] made in the jury's charge.

Id.

Instantly, the criminal information provided:

> Count 5 ENDANGERING WELFARE OF CHILDREN Felony 3
>
> The actor being a parent, a guardian, or a person supervising the welfare of Jane Doe, a child or children under 18 years of age, knowingly endangered the welfare of said child or children through a course of conduct violating the duty of care, protection or support, namely inappropriate sexual contact with a minor in violation of Section 4304 of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa.C.S. § 4304, as amended.

(Criminal Information, filed 3/30/12, at 3). The Commonwealth also presented evidence at trial that Appellant's conduct with his granddaughter occurred on several occasions. (***See*** N.T. Trial, 6/17/13, at 54-55.) Nevertheless, the court instructed the jury on EWOC as follows:

> [Appellant] has been charged with the crime of [EWOC]. In order to find [Appellant] guilty of this charge you must find that the following elements have been proven beyond a reasonable doubt: first, that [Appellant] endangered the welfare of a child by violating a duty of care, protection or support, namely, by inappropriate physical contact; second, that [Appellant] endangered the welfare of a child knowingly. A person's conduct is knowing when he is aware that it is practically certain that his conduct will cause a particular result. Third, that [Appellant] at the time was the parent, guardian or person supervising the welfare of the child; and fourth, that the child was under the age of eighteen at the time of the endangerment.

Id. at 126-127. Examination of this instruction reveals the court did not instruct the jury on "course of conduct." Because this additional instruction was not presented to the jury, we are unable to assume the jury found a "course of conduct." ***See Popow, supra***. Thus, the court improperly

graded Appellant's EWOC offense as a third degree felony. ***See id.*** Furthermore, the Commonwealth concedes there is a basis for this Court to grant relief on Appellant's second claim. Therefore, based on the foregoing, we vacate the judgment of sentence in its totality and remand for resentencing. ***See Commonwealth v. Bartrug***, 732 A.2d 1287 (Pa.Super. 1999), *appeal denied*, 561 Pa. 651, 747 A.2d 896 (1999) (citing ***Commonwealth v. Vanderlin***, 580 A.2d 820, 831 (Pa.Super. 1990) (holding sentencing error in multi-count case requires that all sentences be vacated so court can restructure its whole sentencing scheme). ***See also Commonwealth v. Goldhammer***, 512 Pa. 587, 517 A.2d 1280 (1986), *certiorari denied*, 480 U.S. 950, 107 S.Ct. 1613, 94 L.Ed.2d 798 (1987)) (stating, "When a defendant challenges one of several interdependent sentences, he, in effect, challenges the entire sentencing plan"; if appellate court alters overall sentencing scheme, then remand for re-sentencing is proper).

Judgment of sentence vacated; case remanded for resentencing. Jurisdiction is relinquished.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/9/2014

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v. CC: 201203276

KENNETH PARROTTE,

Defendant

OPINION

Filed By:

Honorable Donna Jo McDaniel
President Judge
Court of Common Pleas of Allegheny County
323 Courthouse
Pittsburgh, PA 15219

(412) 350-5434

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

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v. CC: 201203276

KENNETH PARROTTE,

Defendant

OPINION

The Defendant has appealed from the judgment of sentence entered on June 6, 2013. A review of the record has revealed that the Defendant has failed to present any meritorious issues on appeal and, therefore, the judgment of sentence should be affirmed.

The Defendant was charged with Rape of a Child,[1] Incest,[2] Sexual Assault,[3] Indecent Assault of a Person Under 13,[4] Endangering the Welfare of a Child,[5] Corruption of Minors[6] and Indecent Exposure[7] in relation to a series of incidents that occurred with his six-year-old granddaughter. Following a jury trial held before this Court, the Defendant was found not guilty of the Rape of a Child, Incest and Sexual Assault charges, and convicted of the remaining charges. At a hearing before this court on June 6, 2013, the Defendant was found to be a Sexually Violent Predator (SVP) and was subsequently sentenced to a term of imprisonment of

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[1] 18 Pa.C.S.A. §3121(c)
[2] 18 Pa.C.S.A. §4302
[3] 18 Pa.C.S.A. §3124.1
[4] 18 Pa.C.S.A. §3126(a)(7)
[5] 18 Pa.C.S.A. §4304
[6] 18 Pa.C.S.A. §6301(a)(1)
[7] 18 Pa.C.S.A. §3127(a)

three and one half (3 ½) to seven (7) years. Timely Post Sentence Motions were filed and were denied on July 8, 2013. This appeal followed.

On appeal, the Defendant raises several claims of error, which are addressed as follows:

1. Weight of the Evidence

Initially, the Defendant argues that the verdicts were against the weight of the evidence. This claim is meritless.

Briefly, the evidence presented at trial established that when she was five and six years old, Zamiyah Scott lived with the Defendant (her grandfather), her grandmother, her siblings and other children of the Defendant's. In December of 2011, shortly after Zamiyah turned six, the Defendant brought her into his bedroom when his wife was not home and engaged in sexual intercourse with her. In January, 2012, she was brought to Children's Hospital by her mother, after she disclosed the Defendant's conduct. During her forensic interview, Zamiyah described a skin pigmentation anomaly on the Defendant's penis, which was later observed by the arresting detectives.

It is well-established that the "scope of review for [a weight of the evidence] claim is very narrow. The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and [the appellate court] will not disturb that decision absent an abuse of discretion. Where issues of credibility and weight are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary

to the evidence as to shock one's sense of justice." Commonwealth v. Knox, 50 A.3d 732, 737-8 (Pa.Super. 2012).

Moreover, "when the challenge to the weight of the evidence is predicated on the credibility of trial testimony, [appellate] review of the trial court's decision is extremely limited. Generally, unless the evidence is so unreliable and/or contradictory as to make any verdict based thereon pure conjecture, those types of claims are not cognizable on appellate review." Commonwealth v. Bowen, 55 A.3d 1254, 1262 (Pa.Super. 2012).

"Where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim." Commonwealth v. Shaffer, 40 A.3d 1250, 1253 (Pa.Super. 2012). "A motion for new trial on grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence." Commonwealth v. Moreno, 14 A.3d 133, 136 (Pa.Super. 2011).

Because the Defendant properly raised his weight of the evidence claim on Post-Sentence Motions, the appellate court's review is only directed to this Court's discretion in denying the motion. See Shaffer, supra. Given the evidence presented at trial and discussed above, there is no question that the verdict was appropriate and not "shocking" to the conscience. Zamiyah's accurate description of the abnormality in the Defendant's penis shows without question that Zamiyah had the opportunity to observe the Defendant's genitals, and, coupled with her descriptions of the assaults clearly support the verdict. This claim must fail.

2. *Sexually Violent Predator Determination*

Next, the Defendant challenges the sufficiency of the Sexually Violent Predator (SVP) determination on the basis that there was no evidence to suggest that he had a mental abnormality or personality defect or that he engaged in predatory behavior. Both of these claims are meritless.

A Sexually Violent Predator is defined by statute as

> *a person who has been convicted of a sexually violent offense...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.*

42 Pa.C.S.A. §9792.

The statute further defines "predatory" as

> *An act directed at a stranger or at a person with whom a relationship has been initiated, established, maintained or promoted, in whole or in part, in order to facilitate or support victimization.*

42 Pa.C.S.A. §9792.

The assessment criteria include:

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.*

42 Pa.C.S.A. §9795.4(B). The Commonwealth bears the burden of establishing SVP status by clear and convincing evidence. Commonwealth v. Feucht, 955 A.2d 377, 382 (Pa.Super. 2008).

When reviewing a trial court's SVP determination, the appellate court's "scope of review is plenary" and the appellate court "will reverse the trial court only if the Commonwealth has not presented clear and convincing evidence sufficient to enable the trial court to determine that each element required by the statute has been satisfied. The evidence must be viewed in the light most favorable to the Commonwealth. The reviewing court may not weigh the evidence or substitute its judgment for that of the trial court. The clear and convincing standard requires evidence that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conclusion, without hesitancy, of the truth of the precise facts in issue." Commonwealth v. Dixon, 907 A.2d 533, 535 (Pa.Super. 2006), internal citations omitted.

Initially, the Defendant challenges the SVP determination on the basis that there was insufficient evidence to support the finding that he has a mental abnormality or personality defect. This claim is meritless.

At the SVP hearing, Dr. Alan Pass discussed the diagnostic criteria for antisocial personality disorder and testified that the Defendant met those criteria. He stated:

Q. (Ms. Capone): To determine whether the defendant has antisocial personality disorder, you reviewed documents back to before Ken Parrotte was 15 years of age?

A. (Dr. Pass): Yes, I did.

Q. Did you find the criteria you mentioned just now before he was 15 to be true of Ken Parrotte?

A. Yes. Essentially, what I founded [sic] from a review of the records of his prior criminal history is that his criminal misconduct began as a juvenile with conduct prior to the age of 15 with onset age of 13 until approximately 1984, and then coming forward from that date throughout his juvenile and adult years.

Q. Dr. Pass, you mentioned that the person must be 18 years old, and we know that to be true for Mr. Parrotte?

A. Yes.

Q. Dr. Pass, you also mentioned that this pattern of behavior happens before someone is 15 years old and continues on into their adulthood?

A. Correct.

Q. Would you tell the Court what you found in relation to Mr. Parrotte with that behavior developing into adulthood?

A. His antisocial behavior and criminal misconduct began at the age of 13, and coming forward with such events as theft by unlawful taking, receiving stolen property, criminal attempt theft, criminal mischief, possession of instruments of crime, probation violations, and being placed in various detention facilities when he was a juvenile. He was charged with failure to adjust and escape from one of the juvenile programs, and he was found delinquent and was placed in the Vision Quest juvenile delinquency program.

In 1987 as a juvenile he was charged with receiving stolen property, unauthorized use of a motor vehicle, robbery, criminal conspiracy and he was placed into the New Castle Youth Development Center. Lastly, as a juvenile until around 1988 at about 17 the defendant was charged with receiving stolen property, criminal conspiracy and failure to adjust.

At age 19 his case was closed as a juvenile case, and went forward into adult status. Then going forward as an adult, in 1991 there are convictions for receiving stolen property, unauthorized use of an automobile, driver required to be licensed, fleeing and eluding police, receiving stolen property, driving without a license, burglary, theft by unlawful taking and receiving stolen property. These all resulted in various periods of probation and/or incarceration.

In 1994 he was convicted of robbery, robbery of a motor vehicle, theft by unlawful taking, and two counts of RSP. Again, he was sentenced to County time.

So my review of his criminal history starts at the age of 13, and it is my opinion that his behavior constitutes a pattern of disregard for and violation of the rights of others that began in childhood starting at 13 and coming forward into adulthood.

Q. Dr. Pass, you mentioned some of the criteria would be someone who acts irresponsible and doesn't maintain employment consistently?

A. Yes.

Q. Did you find that to be true for Mr. Parrotte also?

A. Again, the diagnostic classification gives and overview. There will always be exceptions. I think in his case he had eight different vocational assignments during his employment history, with his longest employment lasting for two and a half years as a home improvement wholesaler. It appears he has had many different vocational assignments.

Q. Dr. Pass, you indicated that not paying one's debts is an indicating [sic] of this type of behavior. Were you able to review Mr. Parrotte's materials to see if he was irresponsible with his debts?

A. As it relates specifically to the domestic relations court, I reviewed the documents associated with the orders of support, the complaint for support being filed, and the contempt petition against the defendant for failure to support or provide support during the course of my document review.

(SVP Hearing Transcript, p. 11-15).

At the conclusion of the hearing, this Court addressed the requirement of antisocial personality disorder. It stated:

> THE COURT: Okay, truthfully, you almost had me with this 17-year hiatus, and I was figuring he got out when he was maybe 22 or 24 and had 17 clean years, and I figured even if he served the maximum that would have given him 10 years of being clean. However, that's not the case. The entire time he was incarcerated on a regular basis he was cited with some misconduct. I have this little book that's called a Judge's Guide to Mental Health Jargon. It says an antisocial personality disorder – it says there is a disregard for the rights of others and a failure to obey the law and that it involves behavior without remorse. It doesn't say antisocial personality disorder is defined by a certain number of convictions in a certain number of years.
>
> The defendant was diagnosed prior to the age of 15, and he has continued in this action now. He may have had a little bit of time where he wasn't in trouble, and where he certainly wasn't arrested or convicted of anything, but even while on probation and parole he continued to get into trouble to the point where he was actually recommitted on a technical parole violation and did back-up time. It's not as though it was a 22-year-old kid stealing a car for a joy ride. This is a person that committed offense after offense after offense as long as he is out. I feel the Commonwealth has proven that the defendant suffers from antisocial personality disorder.

(SVP Hearing Transcript, p. 50-1).

As the record demonstrates, the testimony of Dr. Pass presented clear and convincing evidence that the Defendant suffers from antisocial personality disorder as contained in the Megan's Law statute. This claim is meritless

Next, the Defendant challenges the SVP determination on the basis that there was no evidence to establish that the Defendant's behavior was predatory. This claim is belied by the evidence.

At the SVP Hearing, Dr. Pass also testified regarding the predatory finding:

Q. (Ms. Capone): ...You said the criteria for a sexually violent predator is two-pronged, and the second is sexual predator behavior?

A. (Dr. Pass): Yes.

Q. Did you find that to be true with Mr. Parrotte as well?

A. He met the classification definition or criteria for predatory conduct in the commission of the instant offense. The statute defines predatory conduct as an act directed at a stranger or at a person with whom a relationship had been initiated, established, maintained or promoted in whole or in part, and with the support to facilitate victimization. In my review of Mr. Parrotte's criminal behaviors in this instant offense it indicated on multiple occasions he engaged in sexual acts with a six-year old female victim with whom a relationship had been initiated, established, maintained or promoted in whole or in part to promote or facilitate that victimization.

It's obvious that Mr. Parrotte was related to the victim. I don't believe he developed the relationship specifically with the victim, his granddaughter, for the purpose of sexually violating her. However, what happened was he changed the ultimate nature of the relationship between himself and the victim at his first point of illegal sexual conduct with her, and he continued to shape that behavior with successive contacts with the victim going forward. The defendant also instructed the victim not to disclose the nature of the illegal sexual conduct to anyone, and it is common in these types of cases that there is a declaration to the victim not to disclose to avoid law enforcement detection.

(SVP Hearing Transcript, p. 15-6).

As the record demonstrates, the testimony and report of Dr. Pass presented clear and convincing evidence that the Defendant's behavior met the definition of "predatory" as contained in the Megan's Law statute. This claim is meritless.

3. Excessive Sentence

Finally, the Defendant argues that the sentence imposed was excessive. This claim is meritless.

Before addressing the Defendant's claims, this Court notes that in its review of the record in preparation for the instant Opinion, it realized that there was an error in the written Order of Sentence. At the sentencing hearing, this Court imposed three (3) consecutive terms of imprisonment of three and one half (3 ½) to seven (7) years at each of the Indecent Assault, Endangering the Welfare of a Child and Corruption of Minors charges. However, the written

sentencing Order notes only two (2) three and one half (3 ½) to seven (7) year term at the Indecent Assault and Endangering the Welfare of a Child charges, and indicates that no further penalty was imposed at the Corruption of Minors charge. Inasmuch as this is obviously a clerical error, this Court has filed a Corrected Order of Sentence concurrently herewith.

As to the merits of the Defendant's argument, this Court has often noted that "[s]entencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent an abuse of discretion. Commonwealth v. Hardy, 939 A.2d 974, 980 (Pa.Super. 2007). "An abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable or the result of partiality, prejudice, bias or ill-will. In more expansive terms... an abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness or partiality, prejudice, bias or ill-will, or such lack of support as to be clearly erroneous." Commonwealth v. Dodge, 957 A.2d 1198, 1200 (Pa.Super. 2008).

"[A]lthough the sentencing guidelines are an important factor in sentencing, they are but only one factor when determining individualized sentences. 'The guidelines have no binding effect, create no presumption in sentencing and do not predominate over other sentencing factors – they are advisory guideposts that are valuable, may provide an essential starting point and that must be respected and considered; they recommend, however, rather than require, a particular sentence.'" Commonwealth v. Holiday, 954 A.2d 6, 12 (Pa.Super. 2008). Inasmuch as the guidelines are not mandatory in nature, this Court was well within its discretion in imposing a sentence outside the aggravated range.

Moreover, the fact that the sentences did exceed the guideline range does not render them per se illegal, as the Defendant would suggest. "It cannot be gainsaid that a permissible and legal sentence under Pennsylvania statutory law is rendered improper simply because the sentence exceeds the guidelines; The guidelines do not supersede the statute." Commonwealth v. Johnson, 873 A.2d 704, 709 (Pa.Super. 2005). The sentence imposed was not in excess of the statutory maximum and was, therefore, legal.

Moreover, when formulating a sentence, the Court is required to consider a level of "confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community and the rehabilitative needs of the defendant." 42 Pa.C.S.A. §9721(b). "'When imposing a sentence, a court is required to consider the particular circumstances of the offense and the character of the defendant'... 'In particular, the court should refer to the defendant's prior criminal record, [her] age, personal characteristics and [her] potential for rehabilitation'... Where the sentencing court has the benefit of a pre-sentence investigation report ("PSI"), we can assume the sentencing court 'was aware of the relevant information regarding the defendant's character and weighed those considerations along with the mitigating statutory factors.'" Commonwealth v. Griffin, 65 A.3d 932, 937 (Pa.Super. 2013), internal citations omitted.

Prior to the sentencing hearing, this Court Ordered a Pre-Sentence Report, which it reviewed and considered prior to the hearing. At the sentencing hearing, this Court then placed its reasons for imposing sentence on the record:

> THE COURT: Well, I have reviewed the presentence report, and I find that it is horrific that the victim in this case was your six-year old granddaughter that you assaulted multiple times. You violated a position of trust, and although I don't know that this has been discussed, you told her she wasn't allowed to tell anyone. You have been involved with the criminal justice system since you were 13 years of age. You have convictions for five counts of receiving stolen property,

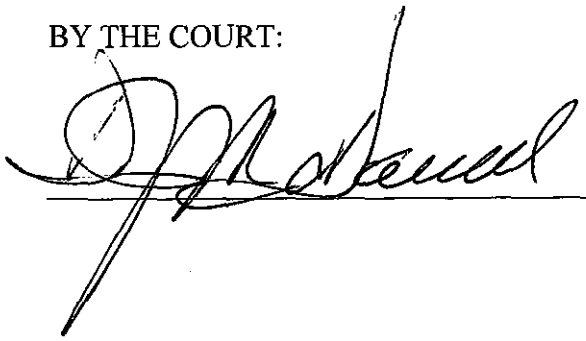
> unauthorized use, theft and robbery. You have summary convictions. You have not done well with community based supervision. You were in the State Correctional Institution one time, and you got out and violated parole and you were sent back. If you aren't a danger to our community, I don't know who would be.

(Sentencing Hearing Transcript, p. 55).

As the record reflects, this Court appropriately considered all of the appropriate factors in crafting its sentence. Given the circumstances of the assaults on the Defendant's six-year-old granddaughter, this Court was completely within its discretion in imposing the statutory maximum sentence. The fact that the Defendant is now upset with the length of the sentence does not make it inappropriate or an abuse of discretion. The sentence imposed was appropriate given the facts of this case, and it must be affirmed. This claim must fail.

Accordingly, for the above reasons of fact and law, the judgment of sentence entered on June 6, 2013 must be affirmed.

BY THE COURT:



, P.J.

October 2, 2013