

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

WILLIAM F. HARTMAN

Appellant

No. 156 EDA 2016

Appeal from the Judgment of Sentence December 7, 2015  
in the Court of Common Pleas of Delaware County Criminal Division  
at No(s): CP-23-CR-0004506-2014

BEFORE: BENDER, P.J.E., LAZARUS, and FITZGERALD,\* JJ.

CONCURRING STATEMENT BY FITZGERALD, J.: **FILED JULY 17, 2017**

I most reluctantly agree that Appellant's conviction and sentence under 42 Pa.C.S. § 9718.2 must be affirmed. However, I believe that the mandatory twenty-five to fifty year sentence is grossly disproportionate to the offenses committed by Appellant. Instantly, Appellant was found guilty for possession of four images of child pornography,<sup>1</sup> but was found not to be

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> Appellant previously pleaded guilty to one count of possessing child pornography and criminal use of a communication facility and was sentenced to six to twenty-three months' electronic home monitoring and a consecutive five years' probation. Because this was Appellant's second offense, Appellant possession of each image constituted a felony of the second degree, punishable by a maximum of five to ten years' imprisonment. **See** 18 Pa.C.S. § 6312(d.1)(2)(ii). However, the Section 9718.2 applies without regard to the grading of the offense. **See** 42 Pa.C.S. § 9718.2(b). Therefore, the twenty-five to fifty year sentence required by Section 9718.2 for a **single** count exceeded the maximum twenty to forty year sentence the

a sexually violent predator. Without further evidence that Appellant is a threat others or risks reoffending, I find no reasonable justification to imprison Appellant for a minimum of twenty-five years.<sup>2</sup> Thus, I believe that the application of the General Assembly's mandate, while required under Section 9718.2(d), is wholly inappropriate in this case.

P.J.E. Bender joins this concurring statement.

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trial court could have imposed consecutively for all four counts had the Commonwealth not sought the mandatory minimum sentence.

<sup>2</sup> At an estimated cost of \$36,000 per year, the taxpayers of this Commonwealth must also now bear at least \$900,000 before Appellant becomes parole eligible.