NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
ROBERT ANDREWS, Appellant	No. 2232 EDA 2010

Appeal from the Judgment of Sentence March 25, 2010
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0001106-2008 and MC-51-CR-00560832-2007.

BEFORE: OLSON, WECHT and COLVILLE,* JJ.

MEMORANDUM BY OLSON, J.: Filed: March 12, 2013

Appellant, Robert Andrews, appeals from the judgment of sentence pronounced on March 25, 2010 in the Criminal Division of the Court of Common Pleas of Philadelphia County. We affirm.

At the conclusion of trial on February 26, 2009, a jury found Appellant guilty of unlawful contact with a minor, aggravated assault, endangering the welfare of a child, corrupting the morals of a minor, and indecent exposure.[1] Given the nature of Appellant's convictions, the trial court ordered a Megan's Law[2] assessment and convened a hearing on March 25, 2010. At the

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[1] 18 Pa.C.S.A. §§ 6318(a)(1), 2702(a), 4304(a), 6301(a)(1), and 3127(a).

[2] 42 Pa.C.S.A. §§ 9791-9799.9.

*Retired Senior Judge assigned to the Superior Court.

conclusion of the March 2010 hearing, the court determined that Appellant met the qualifications for a sexually violent predator (SVP) and ordered Appellant to serve 25 to 50 years in prison.[3]

The trial court prepared the following summary of the facts established at Appellant's trial:

> At trial, the Commonwealth presented the testimony of Appellant's daughter, [C.W.]. [C.W.] testifie[d] that on June 19, 2007, when she was 14 years old, she came home from school and began watching a soap opera in her third floor bedroom. [C.W.] stated that [Appellant] came into her bedroom, which was unusual, and gave her an I-Pod for no special occasion. She further stated that [Appellant] sat on the bed with her for about [ten] minutes before leaving briefly. According to [C.W's] testimony, [Appellant] returned to her bedroom and gave her a Pepsi. He stayed in the bedroom for a couple of minutes and then left again. [C.W.] testified that [Appellant] returned about 20 minutes later, wearing boxer shorts, and said, "Pumpkin, look[."] At that point, [C.W.] saw that [Appellant] had pulled his penis out of the top of his boxers and was moving it back and forth. After stating "Get that out of my face[,"] [C.W.], who was wearing only pajamas, grabbed her skirt to put it on. [C.W.] stated that [Appellant] pushed her into a closet and began to rip her clothes off. According to [C.W.'s] testimony, [Appellant] got on top of her, banged her head on the ground, and choked her for a couple of minutes. [C.W.] stated that she was kicking and telling him to get off of her. At some point [Appellant] let her up and left her bedroom briefly during which time [C.W.], who was partially clothed, testified that she tried to climb out of her bedroom window. At that point, [C.W.] testified that [Appellant] returned to her bedroom, grabbed her and punched her in the head with a closed fist for about 20 minutes. [C.W.] stated that at some point [Appellant] let her up and she ran downstairs in an attempt to escape. However, she stated that she was

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[3] The trial court imposed a sentencing enhancement applicable to second strike sexual offenders under 42 Pa.C.S.A. § 9718.2 for Appellant's unlawful contact with minors conviction. ***See supra.***

> stopped by [Appellant] who slammed the door shut, pushed her to the ground and began choking her again. [C.W.] stated that [Appellant] ordered her back upstairs to his room and she cried but complied. [Appellant] then threatened [C.W.] with a knife. [C.W.] testified that [Appellant] got back on top of her and choked her again. At some point he stopped his attack at which time [C.W.] stated that he [sat] on a chair and said "Pumpkin, let's pray[."] As [C.W.] continued to cry [Appellant] stated "Forgive me[."]

Trial Court Opinion, 4/7/11, at 1-2.

Based on the foregoing evidence, as well as testimony introduced through other Commonwealth witnesses, the jury found Appellant guilty of the above-listed crimes[4] and the trial court pronounced Appellant's sentence, applying the mandatory penalty set forth at 42 Pa.C.S.A. § 9718.2. On April 1, 2010, Appellant filed post-sentence motions challenging the constitutionality of § 9718.2 and alleging that his aggravated assault conviction, as a felony of the first degree, was against the weight of the evidence. Appellant's post-sentence motions were denied by operation of law on August 2, 2010. This timely appeal followed on August 5, 2010. Pursuant to an order entered by the trial court on October 25, 2010, Appellant filed a concise statement of errors complained of on appeal on December 2, 2010.[5]

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[4] The jury acquitted Appellant of attempted rape.

[5] The trial court considered Appellant's concise statement to be timely filed because of a delay in the public defender's receipt of the court's October 25, 2010 order.

In his brief, Appellant asks us to review the following questions:

> Is not 42 Pa.C.S.A. § 9718.2 unconstitutional on its face and as specifically applied to [A]ppellant, where his 25-50 year mandatory minimum sentence for a non-violent misdemeanor predicate offense and a [third-degree] felony constituted cruel and unusual punishment under both the state and federal [c]onstitutions?
>
> Did not the trial court err and abuse its discretion in admitting into evidence [A]ppellant's prior conviction, where such evidence fell under none of the narrow exceptions established by Pa.R.E. 404(b) or controlling precedent, was more prejudicial than probative and served only the forbidden purpose of proving his propensity to engage in the same behavior for which he was on trial?
>
> Was not the evidence insufficient to establish that [A]ppellant met the statutory definition of a "sexually violent predator," where the Commonwealth failed to prove by clear and convincing evidence that [A]ppellant was "likely" to engage in future predatory sexual crimes?

Appellant's Brief at 3.

In his first claim, Appellant challenges the constitutionality of his mandatory sentence of 25-50 years' imprisonment, imposed under 42 Pa.C.S.A. § 9718.2. Specifically, Appellant asserts that the sentence constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, § 13 of the Pennsylvania Constitution.[6] Before we recite the specific underpinnings of Appellant's

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[6] The Eighth Amendment of the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. 8. The corresponding Pennsylvania provision reads: "[e]xcessive bail shall not be

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claim, we review the precise procedural history that led the trial court to impose the mandatory sentence provided in § 9718.2. As set forth above, the jury found Appellant guilty of unlawful contact with a minor under 18 Pa.C.S.A. § 6318.[7] Graded as a felony of the third degree, the offense

(Footnote Continued)

required, nor excessive fines imposed, nor cruel punishments inflicted." Pa. Const. Art. 1 § 13.

We have consistently held that "[t]he Pennsylvania prohibition against cruel and unusual punishment is coextensive with the Eighth and Fourteenth Amendment of the United States Constitution" and that "the Pennsylvania Constitution affords no broader protection against excessive sentences than that provided by the Eighth Amendment to the United States Constitution." ***Commonwealth v. Yasipour***, 957 A.2d 734, 743 (Pa. Super. 2008). Moreover, Appellant has not articulated any basis upon which to conclude that Pennsylvania law offers greater protection than federal law. For each of these reasons, we examine Appellant's claim as a challenge under the Eighth Amendment to the United States Constitution. We note, however, that our Supreme Court has recently agreed to review a constitutional challenge to § 9718.2 under Pennsylvania law. ***See Commonwealth v. Baker***, 35 A.3d 3 (Pa. 2012) (order granting petition for review). To date, no decision has been issued in ***Baker***.

[7] The offense of unlawful contact with a minor is statutorily defined as follows:

> **§ 6318. Unlawful contact with minor**
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> **(a) Offense defined.--**A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:
>
> (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).

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ordinarily carries a maximum sentence of seven years. Because Appellant had a 1997 conviction for indecent assault against another daughter, however, the trial court imposed the mandatory 25-year minimum sentence provided by § 9718.2(a)(1), which is applicable to second strike Megan's Law offenders such as Appellant.[8]

(Footnote Continued)

> (2) Open lewdness as defined in section 5901 (relating to open lewdness).
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> (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).
>
> (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).
>
> (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).
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> (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).
>
> **(b) Grading.--**A violation of subsection (a) is:
>
> (1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or
>
> (2) a felony of the third degree; whichever is greater.

18 Pa.C.S.A. § 6318.

[8] The trial court sentenced Appellant under a prior version of § 9718.2 which states as follows:

> **§ 9718.2. Sentences for sex offenders**

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The following principles apply to our examination of the constitutionality of a duly enacted statutory provision:

> The Pennsylvania Supreme Court has consistently held that enactments of the General Assembly enjoy a strong presumption of constitutionality. All doubts are to be resolved in favor of sustaining the constitutionality of the legislation. [] In order for an act to be declared unconstitutional, the challenging party must prove the act clearly, palpably and plainly violates the constitution.

Commonwealth v. Barnett, 50 A.3d 176, 196-197 (Pa. Super. 2012) (internal citations and quotations omitted).

(Footnote Continued) ___________________

> **(a) Mandatory sentence.--**
>
> (1) Any person who is convicted in any court of this Commonwealth of an offense set forth in section 9795.1(a) or (b) (relating to registration) shall, if at the time of the commission of the current offense the person had previously been convicted of an offense set forth in section 9795.1(a) or (b) or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction, be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon such conviction, the court shall give the person oral and written notice of the penalties under paragraph (2) for a third conviction. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

42 Pa.C.S.A. § 9718.2. Appellant's 1997 indecent assault conviction, a misdemeanor of the first degree, is a qualifying enumerated offense under § 9795.1. Section 9718.2 has since been amended in ways that are not relevant to this appeal.

The Supreme Court of the United States has held that the Eighth Amendment forbids not only barbaric punishments but also sentences that are disproportionate to the crime committed. ***Solem v. Helm***, 463 U.S. 277, 284 (1983). Strict proportionality, however, is not required. Instead, the Eighth Amendment proscribes only extreme sentences that are grossly disproportionate to the crime. ***Harmelin v. Michigan**,* 501 U.S. 957, 1001 (1991). To determine whether a sentence is grossly disproportionate to a crime, ***Solem*** instructs courts to consider: (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals for the commission of the same crime in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions. ***Solem***, 463 U.S. at 292. ***Solem*** does not espouse a rigid and mandatory test; thus, where the proponent of an Eighth Amendment challenge fails to establish an inference of disproportionality, consideration of the second and third prongs of ***Solem*** are unnecessary to deny the claim. ***See Barnett***, 50 A.3d at 198-199.

Appellant argues that § 9718.2 violates the Eighth Amendment as applied in the circumstances of this case[9] and that he has raised an

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[9] Appellant's brief purports to advance both facial and as-applied challenges to § 9718.2. The law is clear, however, that the proponent of a facial challenge to a criminal provision has the burden of establishing that the statute lacks a "plainly legitimate sweep" or that there exists no set of circumstances wherein the legislation can validly be applied. ***Washington***
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inference of disproportionality. Appellant points out that: 1) the jury acquitted Appellant of rape, the most serious offense with which he was charged; 2) he received the mandatory sentence under § 9718.2 solely because he was convicted of a third degree felony (unlawful contact with a minor) and because of his predicate conviction for a misdemeanor of the first degree (indecent assault); 3) the predicate offense occurred 11 years before the current crime; 4) his age, 45 years old at the time of sentencing, meant that he will not be eligible for parole until he is 70 years old, effectively making the mandatory minimum in this case a life sentence; and, 5) enhanced punishments may be imposed under § 9718.2 without regard to whether the crimes involved violence or not.

This Court recently considered and rejected similar constitutional challenges to the mandatory sentencing provisions of § 9718.2. In ***Barnett***, a 70-year-old defendant, who in 1978 was convicted of incest, received a mandatory 25-50 year sentence after a jury found him guilty of unlawful

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State Grange v. Washington State Republican Party, 552 U.S. 442, 449 (2008). Since Appellant has only argued that § 9718.2 is unconstitutional in its application in this case, we examine the merits of this appeal under the rubric of an as-applied challenge.

Appellant also asserts that § 9718.2 infringes his rights under the Due Process clause because non-violent offenders should not be treated the same as violent offenders given the qualitative difference. Appellant's Brief at 19. This generalized and undeveloped objection to the sentence imposed by the trial court is not supported by reference to the record and citation to pertinent case law. Accordingly, we find this contention waived.

contact with a minor and indecent assault. On appeal, the defendant claimed that his sentence was grossly disproportionate because the jury acquitted him of the two most serious offenses with which he was charged (rape and aggravated indecent assault), the most serious conviction involved a third degree felony, his predicate offense occurred in 1978, and his age made the lengthy prison term a virtual life sentence. We held that these contentions failed to raise an inference of gross disproportionality and that the defendant's sentence did not violate the Eighth Amendment. We have also said that the comparison of a sex offender's sentence to the punishments available for other crimes is irrelevant unless an inference of gross disproportionality is established. ***See Commonwealth v. Baker***, 24 A.3d 1006, 1029 (Pa. Super. 2011), *appeal granted*, 35 A.3d 3 (Pa. 2012). Based on our holdings in ***Barnett*** and ***Baker***, we conclude that Appellant has not raised an inference of gross disproportionality and, thus, he is not entitled to relief on his first claim.

In his second claim, Appellant alleges that the trial court erred in admitting evidence pertaining to a prior sexual assault against his older daughter. Appellant maintains that "[b]ecause of the remoteness of the [previous] event[] and [its] patent dissimilarit[y] [with the current offenses], admission of the earlier act" constituted error and an abuse of discretion. The Commonwealth disagrees, arguing that the trial court

correctly allowed Appellant's prior bad act as relevant and admissible to prove his intent. We agree with the Commonwealth.

We apply the following standard of review to Appellant's second claim:

> The admission or exclusion of evidence is a matter vested in the trial court's sound discretion, and we may reverse the court's ruling only upon a showing of a clear abuse of that discretion. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law or an exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.

Commonwealth v. Wattley, 880 A.2d 682, 685 (Pa. Super. 2005) (internal citations and quotations omitted), *appeal dismissed as improvidently granted*, 924 A.2d 1203 (Pa. 2007).

In determining whether the trial court properly admitted evidence of a prior bad act or conviction, we are guided by these principles:

> While evidence of prior bad acts is inadmissible to prove the character of a person in order to show conduct in conformity therewith, evidence of prior bad acts may be admissible when offered to prove some other relevant fact, such as motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident. ***Commonwealth v. Sherwood***, 982 A.2d 483, 497 (2009); Pa.R.E. 404(b)(2) (providing that "[e]vidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident").

Commonwealth v. Busanet, 54 A.3d 35, 60-61 (Pa. 2012) (parallel citation omitted).

In this case, the Commonwealth filed a motion *in limine* seeking to introduce the testimony of C.W.'s older sister regarding the underlying facts

of Appellant's 1997 conviction for indecent assault. The trial court granted the Commonwealth's motion when it was originally presented in December 2008. On February 23, 2009, the parties convened for a subsequent argument to clarify the scope of the court's previous ruling. At that time, Appellant's trial counsel stipulated to the admission of Appellant's prior 1997 guilty plea and conviction. N.T. Motion, 2/23/09, at 9. The court, however, precluded the Commonwealth's reference to the underlying facts of the 1997 conviction since that case involved allegations of oral sex, as well vaginal and anal penetration.[10] ***Id.*** at 6-9. At trial, the court instructed the jury that references to Appellant's 1997 conviction were permitted for the limited purpose of proving Appellant's intent. Because Appellant's prior conviction was admissible for this limited purpose, and because the court gave the jury proper instructions governing its consideration of this evidence, we discern no abuse of discretion and conclude Appellant is not entitled to relief on his second claim.

In his third claim, Appellant challenges the trial court's determination that he should be classified as an SVP pursuant to Megan's Law. Appellant asserts that the Commonwealth failed to present clear and convincing

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[10] Although Appellant alleges in his brief that the trial court found that introduction of the prior conviction was more prejudicial than probative, it is clear from the court's remarks and a review of the February 2009 transcript that this determination referred only to the underlying facts of Appellant's 1997 conviction, and not the conviction itself.

evidence to establish that he met the statutory prerequisites for classification as an SVP. Specifically, Appellant claims that the Commonwealth failed to prove that Appellant was "likely" to engage in future predatory conduct. This claim is without merit.

Where a person has been convicted of a sexually violent offense listed in 42 Pa.C.S.A. § 9795.1, the trial court must order that the individual be assessed by the Sexual Offender Assessment Board ("SOAB" or "board"). 42 Pa.C.S.A. § 9795.4(a). After the board prepares its assessment and submits it to the Commonwealth, the court conducts a hearing at which the Commonwealth must prove by clear and convincing evidence that the individual should be designated as an SVP. 42 Pa.C.S.A. § 9795.4(e). In this context, the clear and convincing standard means that the evidence offered in support of SVP classification must be so clear, direct, weighty, and convincing that the factfinder may arrive at a clear conclusion, without hesitation, that the SVP classification is proper. ***Commonwealth v. Meals***, 912 A.2d 213, 218 (Pa. 2006).

When a defendant challenges the sufficiency of the evidence offered in support of his SVP designation, our standard of review is well-established. We may not weigh the evidence presented to the trial court and we may not make credibility determinations. ***Commonwealth v. Geiter***, 929 A.2d 648, 650 (Pa. Super. 2007), *appeal denied*, 940 A.2d 362 (Pa. 2007). Instead, we view all the evidence and its reasonable inferences in a light most

favorable to the Commonwealth. ***Commonwealth v. Moody***, 843 A.2d 402, 408 (Pa. Super. 2004), *appeal denied*, 882 A.2d 477 (Pa. 2005). We will disturb an SVP designation only where the Commonwealth did not present clear and convincing evidence to enable the court to find each element required by the SVP statute. ***Id.***

Expert reports, as well as expert testimony, constitute substantive evidence which establishes the statutory prerequisites for SVP classification. ***Meals***, 912 A.2d at 223. In addition, although a defendant may refute such evidence by contesting its credibility or reliability before the court, such challenges are directed to the weight, not the sufficiency, of the Commonwealth's case. ***Id.*** at 224. Thus, they do not affect our sufficiency analysis. ***Commonwealth v. Feucht***, 955 A.2d 377, 380-382 (Pa. Super. 2008), *appeal denied*, 963 A.2d 467 (Pa. 2008).

The Pennsylvania Legislature has defined the SVP classification as follows:

> A person who has been convicted of a sexually violent offense as set forth in [42 Pa.C.S.A. §] 9795.1 (relating to registration) and who is determined to be a sexually violent predator under [42 Pa.C.S.A. §] 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. Appellant does not dispute that he has been convicted of an offense which satisfies the first element of the SVP designation under § 9792. The issue presented by Appellant in this case is whether the

Commonwealth adduced clear and convincing evidence to establish that Appellant was likely to engage in future predatory sexually violent offenses.

Section 9795.4 sets forth the following assessment factors:

> **(b) Assessment.**
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> Upon receipt from the court of an order for an assessment, a member of the board as designated by the administrative officer of the board shall conduct an assessment of the individual to determine if the individual should be classified as a sexually violent predator. The board 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:
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> (1) Facts of the current offense, including:
>
> (i) whether the offense involved multiple victims;
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> (ii) whether the individual exceeded the means necessary to achieve the offense;
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> (iii) the nature of the sexual contact with the victim;
>
> (iv) relationship of the individual to the victim;
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> (v) age of the victim;
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> (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.
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> (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.

With respect to these assessment factors, there is no statutory requirement that all of them, or any particular set of them, need be present in order to support an SVP designation. ***Meals***, 912 A.2d at 220-223. The factors are not a checklist, with each one demonstrating in some fashion that an SVP classification has, or has not, been established. ***Id.*** at 222. Rather, the presence or absence of one or more factors may simply suggest the presence or absence of one or more particular types of mental abnormalities. ***See id.*** at 221. For this reason, although the board must examine all the factors listed under § 9795.4, the Commonwealth need not show that any one factor is present, or absent, in a particular case. ***Id.***

Finally, under Megan's Law, 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." 42 Pa.C.S.A. § 9792. Moreover, a sexually violent offense is considered predatory in nature if it is "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." ***Id.*** Again, the central inquiry for the trial court in this case, as in every case, is whether the Commonwealth's evidence, including the board's assessment, shows that an individual who has been convicted of a sexually violent offense suffers from a mental abnormality or disorder which makes that person likely to engage in predatory sexually violent offenses. 42 Pa.C.S.A. § 9792.

To establish that Appellant qualified for SVP designation under Megan's Law, the Commonwealth relied upon the assessment report prepared by Dr. Thomas F. Haworth, a member of the board, together with Dr. Haworth's testimony at the SVP hearing.[11] Dr. Haworth identified the documents that he received and reviewed in preparing the opinions he offered in this case, including the trial court's order mandating the board's assessment, various investigative reports, the criminal complaint filed against Appellant, other court filings, and Appellant's criminal offense and biographical history. The

[11] Appellant's counsel advised the SOAB that Appellant would not be available to participate in the assessment process. Dr. Haworth determined that he nevertheless had adequate information to complete the assessment based upon available records and investigative reports.

report and testimony offered by Dr. Haworth referred to the factors specified in § 9795.4 and provided his analysis and commentary as to how he evaluated Appellant's background information, including the facts pertaining to the present offenses, in light of each factor enumerated in the statute. Counsel for Appellant had an opportunity to cross-examine Dr. Haworth at the SVP hearing.

Dr. Haworth determined that Appellant met the criteria for "personality disorder NOS (not otherwise specified), antisocial features." SOAB Report, 5/22/09, at 8. Dr. Haworth also concluded that Appellant had engaged in predatory behavior as defined by Megan's Law because he had "transformed his role from father into one of exploitation and victimization in service to his own sexual gratification." ***Id.***

Viewing Dr. Haworth's report and expert testimony in the light most favorable to the Commonwealth, we conclude that there was clear and convincing evidence presented to the trial court in support of Appellant's SVP designation. Thus, Appellant's claim has no merit.

Appellant relies primarily on a single contention to support his claim that the evidence introduced at the SVP hearing was insufficient to classify him as a sexually violent predator. Appellant contends that Dr. Haworth failed to engage in an independent analysis or employ unspecified "actuarial tools" that would enable him to better assess whether Appellant was likely to engage in predatory sexually violent offenses. Although this claim relates to

a sufficiency challenge, Appellant's contention is factually unsupported. In both his report and during his testimony at Appellant's SVP hearing, Dr. Haworth concluded that Appellant qualified for SVP classification under the criteria outlined within the Megan's Law statute. Under the statute, an individual may be deemed an SVP only if he is found to be a sexually violent predator under § 9795.4 (relating to assessments) because of a mental abnormality or personality disorder which makes him likely to engage in predatory sexually violent offenses. Dr. Haworth incorporated specific references to this statutory standard into his opinion finding that Appellant suffered from a personality disorder that predisposed him toward the commission of predatory sexually violent acts. Thus, while we agree with Appellant that an expert offered by the Commonwealth to establish SVP status must examine and opine on whether a defendant is likely to re-offend, we cannot agree with Appellant's suggestion that this inquiry exists as a standalone component of a strict, three-prong test. ***See Commonwealth v. Dixon***, 907 A.2d 533, 539 (Pa. Super. 2006), *appeal denied*, 920 A.2d 830 (Pa. 2007).

In sum, there was clear and convincing evidentiary support showing that Appellant suffers from a mental abnormality or personality disorder that makes him likely to engage in predatory sexually violent offenses. Thus, we conclude that the trial court did not abuse its discretion in designating

Appellant as a sexually violent predator under Megan's Law. Appellant's claim to the contrary fails.

Judgment of sentence affirmed.