

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

**COMMONWEALTH**

**vs.**

**RANDY WILSON,  
Defendant**

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**NO. 00-10,958**

**OPINION AND ORDER**

Before the Court is Defendant's post-sentence motions filed May 2, 2005. Argument was heard on June 27, 2005. Defendant submits a motion for withdrawal of guilty plea, a motion to modify sentence and a motion to set aside the finding that Defendant is a sexually violent predator.

A summary of relevant facts is as follows. Defendant was charged with criminal trespass, aggravated assault, simple assault, two counts of aggravated indecent assault, recklessly endangering another person, and involuntary deviate sexual intercourse (IDSI) stemming from an incident on May 8, 2000. According to the affidavit of probable cause and testimony at the preliminary hearing, on that date Defendant entered the victim's residence, questioned her, and proceeded to strike and choke the victim. Defendant also threatened to penetrate the victim with a broomstick and did penetrate with his fist the victim's rectum and vagina. A preliminary hearing was held on June 5, 2000. Each charge except Count 7, IDSI, was held for court. On February 8, 2001, Defendant pled guilty to aggravated assault and two counts of aggravated indecent assault. On June 28, 2001 Defendant submitted a motion to withdraw his

guilty plea, which was denied by this Court by Opinion and Order filed September 5, 2001. Proceedings were then stayed pending resolution of an appeal by the Commonwealth regarding the constitutionality of the Megan's Law statute. The Commonwealth entered its praecipe for a Megan's Law hearing. On July 28<sup>th</sup> 2004, this Court denied Defendant's request for monies for an additional expert assessment of whether Defendant meets the criteria of a sexually violent predator and on March 17, 2005 the Court found Defendant to be a sexually violent predator. On April 26<sup>th</sup> 2005, Defendant was sentenced to seventy (70) months to twenty (20) years state incarceration for aggravated assault, and forty-eight (48) months to ten (10) years state incarceration for aggravated indecent assault to run entirely consecutive.

Presently, Defendant renews the argument that the Court erred in denying his pretrial motion for withdrawal of the guilty plea. The Court relies on the Opinion and Order filed September 5, 2001 holding that Defendant's plea was given knowingly, intelligently and voluntarily and denying the motion.

Defendant's second motion asserts that the Court erred in sentencing Defendant in the aggravated range since "serious bodily injury" was contemplated in the statute and the sentencing guidelines and was therefore an inappropriate basis for an aggravated range.

"Sentencing is a matter vested in the sound discretion of the sentencing judge." Commonwealth v. Johnson, 446 Pa. Super. 192, 666 A.2d 690 (1995). "To constitute an abuse of discretion, the sentence imposed must either exceed the statutory limits or be manifestly excessive." Commonwealth v. Gaddis, 432 Pa. Super. 523, 639 A.2d 462, 469 (Pa. Super. 1995) (citations omitted). In fashioning sentence, a judge is

obligated "to follow the general principle that the sentence imposed should call for 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. § 9721.

The Court finds that the sentence was appropriate and well justified as set forth in the record. (N.T. 4/26/05). While serious bodily injury is an element of the offense in question, the Court retains discretion based on the principles set forth in § 9721. The Court explicitly set forth reasons for the sentence, focusing in large part on the impact on the life of the victim. As the Court explained at sentencing, the victim now must "deal with a visible physical reminder of the assault that happened to [her] in May of 2000. That's not something that she can put aside when she talks about problems in her bodily functions, that's something that going to live with her the rest of her life and no amount of counseling or ignoring it ever erases that." *Id.* pp. 24. The Court further stressed the impact, and concluded, "I think for that reason that any sentence that I impose in these cases can't be part of the standard range or can't be part of the standard sentence." *Id.* "I have put your sentence at the top end of the aggravated range [ . . . ] based upon the fact of the injuries to the victim and the type of case there was the aggravated, the brutal nature, the out of controllable rage." *Id.* Although serious bodily injury was an element of the offense and contemplated in the sentencing guidelines, the malicious nature of Defendant's actions as well as the extent to which those actions have and will impact the life of the victim clearly justify the Court's discretion at sentencing.

Defendant also submits a motion to set aside the finding that Defendant is a sexually violent predator. Based on the recent holding in *Commonwealth v. Curnette*, 2005 PA Super. 109, 2005 Pa. Super. LEXIS 410 (March 22, 2005), and because Defendant previously requested the opportunity to have an independent assessment, the Court will grant Defendant's motion.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of August 2005, the Court makes the following findings:

1. Defendant's motion for withdrawal of guilty plea is hereby DENIED. The Court relies on its previous Opinion filed September 5, 2001.
2. Defendant's motion to modify sentence is hereby DENIED.
3. Based on *Commonwealth v. Curnette* and Defendant's previous request for an independent assessment in the above-captioned case, the Court sets aside the finding that Defendant is a sexually violent predator. The Order filed to the above-captioned case on March 17, 2005 determining that Defendant is a sexually violent predator is VACATED. The sentencing Order filed April 26, 2005 is hereby amended to reflect that the Defendant is not subject to the requirements of Megan's Law. In all other respects the sentencing Order remains in full force and effect.

It is ORDERED and DIRECTED that funds requested by Defendant for an independent assessment are approved in an amount not to exceed \$350 for an expert to conduct a Megan's Law assessment and will approve an

additional \$500 if the expert testifies at the Megan's Law hearing for this case. The Court notes these amounts are consistent with the compensation received by the individuals who conduct the assessments for the Sexual Offender Assessment Board. The Sexual Offender Assessment Board shall provide a copy of any investigative materials or information in its possession to the defense expert if he or she requests it. The telephone number for the Executive Director of the Board is (717) 787-5430 and the address is listed below.

Defendant is ORDERED and DIRECTED to inform this Court in writing within thirty (30) days of the date of this Order the status regarding his independent assessment so that a hearing may be scheduled in this matter.

By The Court,

Nancy L. Butts, Judge

cc:

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