

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**JONATHAN R. KRESS,  
Defendant**

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**No. 1279-2008; 1990-2008  
CRIMINAL DIVISION  
APPEAL**

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)  
OF THE RULES OF APPELLATE PROCEDURE**

The Defendant appeals this Court’s Sentencing Order dated April 24, 2009. The Court notes a Notice of Appeal was timely filed on May 8, 2009 and that the Defendant’s Concise Statement of Matters Complained of on Appeal was filed on June 1, 2009. Defendant asserts one issue on appeal: that the Court erred in finding there was clear and convincing evidence the Defendant is a Sexually Violent Predator (“SVP”).

***Background***

On December 4, 2008, the Defendant pled guilty under information 1279-2008 to one count of Involuntary Deviate Sexual Intercourse and under information 1990-2008 to one count of Sexual Abuse of Children. The plea agreement was for imposition of the mandatory minimum term of ten (10) years incarceration plus consecutive probation. The Defendant was put on notice of the ten (10) year mandatory that applied and the lifetime registration under Megan’s Law. The Defendant was sentenced before this Court on April 24, 2009, at which time he received an aggregate sentence of ten (10) years to twenty (20) years in a State Correctional Institution

followed by seven (7) years of consecutive probation. On that date, the Court also found there was clear and convincing evidence that the Defendant is a SVP pursuant to Megan's Law.

### ***Discussion***

The Defendant asserts the Court erred by ordering that there was clear and convincing evidence that the Defendant is a SVP pursuant to Megan's Law.

The Pennsylvania Superior Court will "reverse a trial court's determination of SVP status 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.

Commonwealth v. Leddington, 908 A.2d 328, 335 (Pa. Super. Ct. 2006).

A sexually violent predator is defined in relevant part as:

A person who has been convicted of a sexually violent offense as set forth in section 9795.1 (relating to registration) 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.

Id. (citing 42 Pa.C.S.A. § 9792, Definitions.) To determine if an individual displays a mental abnormality the Sexual Offenders Assessment Board utilizes the DSM-TR-IV diagnostic criteria. The DSM-IV-TR provides a diagnostic category of Paraphilia to address deviate sexual behavior not described by the most common sexually deviate categories. The diagnostic criteria for Paraphilia are as follows:

- a. Over a period of at least 6 months, (an individual experiences) recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other non-consenting persons.

- b. The person has acted on these sexual urges, or the sexual urges or fantasies caused marked distress, interpersonal difficulty, or led to legal complications.

Sexual Offender Assessment on Jonathan Kress, p. 5.

The Court finds the Commonwealth presented clear and convincing evidence that the Defendant is a SVP. The Defendant pled guilty to Involuntary Deviate Sexual Intercourse which is considered a sexually violent offense. There is also no dispute that the Defendant was diagnosed as a pedophile based upon the DSM-IV-TR diagnostic criteria. C. Townsend Velkoff (Velkoff) of the Sexual Offenders Assessment Board testified that he evaluated the Defendant to see if he met the requirements under Megan's law to be considered a SVP. Velkoff explained that the Defendant displayed an intellect abnormally and therefore met the criteria of a SVP. Velkoff related the Defendant was acting on sexual urges, he had accumulated more than 9500 digital images of child pornography for a period of time beginning in 2004, which is well more than the six months required by the statute and began well before his molestation of the fourteen year old male victim in this case. The Court found based upon Velkoff's testimony that the Defendant had the pornographic images as he is sexually interested and sexually reactive to that age range of children depicted in the images. The Court was satisfied based upon the length of time the Defendant had been viewing child pornography and that he acted on those urges, that the Defendant is a SVP.

***Conclusion***

As none of the Defendant's contentions appear to have merit, it is respectfully suggested that the Defendant's conviction and sentence be affirmed.

By the Court,

Dated: \_\_\_\_\_

Nancy L. Butts, Judge

xc: DA (MK)  
Roger R. Laguna, Jr., Esq.  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)