

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
vs.	:	NO. CR-176-2008
	:	
MARK ALLEN BENNETT,	:	
	:	
Defendant	:	1925(a) OPINION

Date: November 17, 2010

**OPINION IN SUPPORT OF THE ORDER OF JULY 14, 2010 IN COMPLIANCE WITH
RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Mark Bennett filed a notice of appeal on August 12, 2010 in which he is appealing from this Court’s order of July 14, 2010 in which Mr. Bennett was sentenced to a cumulative minimum sentence of 36 years and 3 months and cumulative maximum sentence of 77 years and ordered to pay a total fine of 40 thousand dollars. This sentence was imposed as a result of his conviction on 86 counts of sexual abuse of children, a felony of the third degree under section 6312 (d)(1) of the crimes code after a sentencing hearing held that date.¹

In Mr. Bennett’s statement of matters complained of on appeal, filed October 1, 2010, Mr. Bennett states that the Court’s order of July 14, 2010 was an abuse of discretion because it effectively imposed a life sentence for the possession of pornography and that the sentence is manifestly excessive and unduly harsh.

This sentence was imposed upon remand from the Superior Court as directed in their memorandum filed April 20, 2010, because this Court had treated all counts after Count 1 as second degree rather than third degree felonies which, subsequent to our original sentencing of April 20, 2009, the Pennsylvania Supreme Court specifically disapproved in *Commonwealth v.*

¹ The Court’s original order was administratively modified to address typographical errors by the orders of August 18, 2010 and October 28, 2010.

Jarowecki, 985 A.2d 955 (Pa. 2009). The prior Superior Court memorandum and decision upheld this Court's April 20, 2009 decision that Mr. Bennett was a sexually violent predator.

Mr. Bennett's conviction occurred as a result of his possession of copious amounts of child pornography involving 36 different child victims. Given the offense gravity score of 5, and Mr. Bennett's prior record score of 3, the standard sentencing range for a minimum sentence as to each count was 6 to 16 months. As noted in our prior 1925a opinion, filed October 2, 2009, a copy of which is attached hereto, "[t]hese offenses, taken together with his prior sexual offenses against children, his failure to follow sexual offender registration requirements, his lack of remorse, and his lack of intent to change his ways as a sexually violent predator made Mr. Bennett deserving of receiving a sentence which has the effect of incarcerating him for the rest of his life." Trial Court 1925a Opinion of October 2, 2009.

Although the matter was remanded for resentencing based upon the Pennsylvania Supreme Court's decision in *Jarowecki*, this Court's reasoning in imposing Mr. Bennett's sentence has not changed since he was sentenced April 20, 2009. When Mr. Bennett previously appealed that sentence he made the same complaints that he does now, and the Court previously addressed Mr. Bennett's complaints in its October 2, 2010 opinion. The Court, therefore, relies upon the reasoning set forth in our prior 1925a opinion of October 2, 2010.

Specifically, in support of the current appeal, we incorporate our reasoning for the original sentence which is fully explained in our prior 1925a opinion at pages 23 to 27. In addition, the Court would also like to draw the Appellate Court's attention to pages 5 and 6 of our prior 1925a opinion describing some examples of the depictions contained in the copious child pornography Mr. Bennett possessed.

Furthermore, on July 14, 2010, after incorporating both counsels' arguments and the Courts' prior findings and reasoning, the Court opened the door to any other considerations or additional information that either counsel wanted to submit to the court, after which the Court re-sentenced Mr. Bennett. At resentencing, in describing the intent of the Court, the Court reiterated its prior findings and reasoning as well as addressed counsels' arguments at resentencing:

I emphasize[the] primary reason that the consecutive sentences are [directed] are in order to try to provide as much justice as I can, keeping into each of the victims as well as to address the needs of society in that way, and further, that [it is for] the protection of society, because I see no indication whatsoever, even today, and did not earlier, find anything that would indicate to me in any way that upon release that Mr. Bennett could have any intention of changing his ways and that the only way to protect our community from further sexual abuse of children... is to see that he is incarcerated for the remainder of his life.

Id. at pg 22.

This Court affirms that it is still the intent of our current Sentencing Order (now under appeal) to effectively incarcerate Mr. Bennett for life. In setting a fine we also intend to ensure that the assets he has now and may come into in the future would not inure to his benefit but would be paid over to the Commonwealth.

By the Court,

William S. Kieser, Senior Judge

cc. Superior Court (Original +1)

Nicole Spring, Esquire

Mary Kilgus, Esquire

Gary Weber, Esquire

Jerri Rook, Executive Secretary to the Honorable Judge Joy Reynolds McCoy