

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-362-2011; CR-1121-2011
vs. :
: Opinion and Order re Defendant's
MATTHEW J. PELLESCI, : Oral Post Sentence Motion
Defendant :

OPINION AND ORDER

This matter came before the Court on the Defendant's oral post sentence motion. The relevant facts follow.

During the course of an investigation into the dissemination of child pornography through file sharing, the police obtained a search warrant and seized Defendant's computer. The police discovered hundreds of picture and movie files of child pornography on Defendant's computer. As a result, the police charged Defendant in case number 362-2011 with 100 counts of Sexual Abuse of Children, nine of which related to dissemination of child pornography in violation of 18 Pa.C.S.A. §6312(c)(1), and 91 of which related to possession of child pornography in violation of 18 Pa.C.S.A. §6312(d)(1).

Shortly thereafter, Defendant sold his MP3 player without deleting its contents. When the buyer began looking through the player to see what music was on it, she discovered a video depicting child pornography and turned the MP3 player over to the police. As a result, the police charged Defendant in case number 1121-2011 with one count of Sexual Abuse of Children (possession of child pornography) in violation of 18 Pa.C.S.A. §6312(d)(1).

On February 27, 2012, Defendant entered a guilty plea to the 92 counts of Sexual Abuse of Children related possession of child pornography in exchange for a sentence

recommendation of 4 to 8 years incarceration in a State Correctional Institution.

On June 19, 2012, the Court sentenced Defendant in accordance with the plea agreement and informed Defendant of his obligation to register as a sex offender for the rest of his life due to his multiple convictions for Megan's Law offenses. *See* 42 Pa.C.S.A. §9795.1(b)(1). Defendant made an oral post sentence motion in which he claimed that he should only register for 10 years. The Court scheduled an argument on Defendant's motion for July 30, 2012.

Defendant argued that although he was charged with multiple counts they should be treated as one offense for purposes of Megan's Law registration because the Defendant possessed all of the child pornography at the same time, which distinguishes his case from the case of Commonwealth v. Merolla, 909 A.2d 337 (Pa. Super. 2006), where the Superior Court found the appellant was subject to lifetime registration because he was charged with three separate offenses involving three different victims.

The Court cannot agree with Defendant's arguments. In fact, the Court believes Merolla supports the Court's finding that Defendant is subject to lifetime registration. Although the defendant in Merolla assaulted three separate victims, this fact was not determinative of, or even mentioned in, the Superior Court's analysis of section 9795.1(b)(1). Instead, the Superior Court's decision was based solely on statutory construction and legislative intent. The Superior Court noted that, unlike the Three Strikes Statute, which applies "where the person had at the time of the commission of the current offense **previously** been convicted" of two or more crimes of violence, the salient portion of

the Megan's Law statute does not require a previous conviction. 909 A.2d at 346.

Furthermore, neither the registration nor notification components of Megan's Law are considered additional punishment. Id. Therefore, it was "irrelevant that Merolla had not been sentenced for his first offense before the commission of his second crime." Id. at 347.

Defendant's argument that he committed but one possessory act also fails, because the Pennsylvania Supreme Court rejected this same argument, albeit in a somewhat different context. In Commonwealth v. Davidson, 595 Pa. 1, 938 A.2d 198 (2007), the appellant claimed that his multiple sentences for possession of child pornography violated double jeopardy and the merger doctrine, because he committed a single act of possession. 938 A.2d at 215. The Pennsylvania Supreme Court concluded that the "plain language of the statute evidences the intent of the General Assembly to make each image of child pornography possessed a separate, independent crime under Section 6312(d)." Id. at 219. Therefore, under the rationale of Davidson, Defendant committed 92 separate offenses.

The language of the Megan's Law statute is clear. Although Sexual Abuse of Children generally is a ten-year registration offense under section 9795.1(a), when a defendant has multiple convictions, he is a lifetime offender. 42 Pa.C.S.A. §9795.1(b)(1) ("The following individuals shall be subject to lifetime registration: (1) An individual with two or more convictions of any of the offenses set forth in subsection (a)."). Defendant has 92 convictions for Sexual Abuse of Children in violation of 18 Pa.C.S. §6312. Therefore, he is clearly a lifetime registrant under 42 Pa.C.S.A. §9795.1(b)(1).¹

¹ The Court also notes that it appears Defendant would be a lifetime registrant under the statutory provisions which take effect on December 20, 2012. *See* 42 Pa.C.S.A. §9799.14(d)(16), §9799.15(a)(3).

In the alternative, Defendant asked for an opportunity to withdraw his guilty plea. Defendant asserted that a component of his plea agreement was that the term of his registration would be 10 years. Therefore, he should be given the opportunity to file a motion to withdraw his guilty plea. The Court cannot agree.

Although the face sheet of the written guilty plea colloquy mentions a ten-year period of registration, it is not listed in the “Terms of the Plea Agreement” but in the section entitled “Special Sentencing Provisions Applicable.” Therefore, the Court disagrees with Defendant’s assertion that a ten-year period of registration was part of the plea agreement. Moreover, even if Defendant was incorrectly advised of the length of his registration obligation, such would not be a basis to withdraw his guilty plea. The Pennsylvania Supreme Court has held that the registration requirements of Megan’s Law are collateral consequences and a lack of knowledge of such consequences fails to undermine the validity of the plea. Commonwealth v. Leidig, 598 Pa. 211, 956 A.2d 399 (2008).

ORDER

AND NOW, this ____ day of August 2012, the Court DENIES Defendant’s oral post sentence motion.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Ronald Travis, Esquire

Gary Weber, Esquire (Lycoming Reporter)
Work file