

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1046 – 2012
:
vs. : CRIMINAL DIVISION
:
SHAWN RASHEEN WEBB, :
Defendant : Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant's Post-Sentence Motion, filed July 18, 2013. Argument on the motion was heard August 28, 2013, after which the court requested that the transcript of the hearings on July 11, 2013, be prepared. Those transcripts were completed on September 17, 2013.

On April 18, 2013, Defendant was convicted by a jury of rape of a child and related charges with respect to one of two alleged victims, and found not guilty of similar charges with respect to the other alleged victim.¹ Defendant was sentenced on July 11, 2013, to an aggregate term of twelve to twenty-four years incarceration, followed by ten years of supervision. Defendant was also found to be a sexually violent predator. In the instant motion, Defendant contends the court erred in denying his motion to sever the charges, in imposing sentence, and in finding him a sexually violent predator. These issues will be addressed seriatim.

In a pre-trial motion, Defendant had requested that the court sever the charges based on his alleged conduct toward his step-daughter from those based on his alleged conduct toward his daughter. After a hearing on December 11, 2012, the Honorable Marc F. Lovecchio denied the motion, finding that evidence of each set of allegations would be admissible at trial of the other, the evidence was capable of separation by the jury and would not cause confusion, and Defendant would not be unfairly prejudiced. For purposes of the instant motion, the court will rely on Judge Lovecchio's opinion in support of the Order entered January 17, 2013.

¹ The alleged victims were Defendant's step-daughter and daughter. He was found guilty of all charges alleged to have been committed against his step-daughter. He was found not guilty of all but one charge against his daughter; he was found guilty of the charge of endangering the welfare of a child as against his daughter.

Defendant also asserts the sentence was excessive, arguing that it does not reflect the mitigating circumstances, is not consistent with protection of the public, does not consider the gravity of the offenses, and does not consider the rehabilitative needs of the defendant. In imposing sentence, the court noted as a mitigating circumstance Defendant's lack of a prior record, but also deemed an important consideration his abuse of trust, that is, that his step-daughter looked to him as a father-figure, a protector of her welfare, and he not only failed in that role but abused that role, to his advantage and to her significant detriment. Further, the court considered his complete lack of remorse or willingness to accept responsibility for the emotional damage done to his step-daughter. The rehabilitative needs of the defendant were also considered as they will be met by the sexual abuse counseling available in the state correctional system. Finally, the court considered Mr. Velkoff's admonition that the type of behavior in which Defendant engaged is one which is "very likely to continue", and thus a lengthy period of incarceration, followed by a lengthy period of supervision, will ensure the safety of the public.

Defendant's argument at sentencing, that the risk of re-offending is low, was not supported by the record. While Mr. Velkoff did state that Defendant "lies outside the age range associated with the highest risk for sexual re-offense", N.T., July 11 (morning proceedings), 2013, at p. 11, he never said that Defendant's risk of re-offense was low, and indeed, as noted above, he stated that because Defendant was "displaying sexual interest in children, ... he's very likely to continue to act on that interest." *Id.* The court also fails to understand Defendant's argument that the gravity of the offenses was not considered. The offenses were of utmost gravity and that was certainly considered, and weighed in favor of, and not against, the sentence imposed.

Finally, Defendant contends the court erred in adjudicating him a sexually violent predator, arguing that the evidence was insufficient to support a finding that he suffered from pedophilia or that he committed a predatory act. The Commonwealth presented the testimony of Townsend Velkoff, an expert in the field, who reviewed the relevant facts and concluded that Defendant met the statutory requirements to be classified as a sexually violent predator. With respect to his finding that Defendant was a pedophile, Mr. Velkoff testified that

Defendant was more than five years older than the victim and had engaged in the behavior with the victim for more than six months, both of which met the diagnostic criteria for pedophilia. With respect to the finding that Defendant committed a predatory act, Mr. Velkoff testified that Defendant's having initiated unwanted sexual contact with a person with whom he had a relationship, as well as his having increased over time the degree of sexual contact, both led to his conclusion that Defendant exhibited predatory behavior. Considering this testimony, the court believes the evidence was sufficient to support its finding that Defendant was a sexually violent predator.

Accordingly, as none of Defendant's issues has merit, the court will enter the following:

ORDER

AND NOW, this 18th day of September 2013, for the foregoing reasons, Defendant's Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson