

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-1002-2008**
:
v. :
:
LARRY EUGENE RIGGLE, : **CRIMINAL DIVISION**
Defendant : **1925(a) Opinion**

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

I. Background

On April 28, 2009, a jury found the Defendant guilty of one count Involuntary Deviate Sexual Intercourse,¹ four counts of Indecent Assault,² one count of Aggravated Indecent Assault,³ and one count of Corruption of a Minor.⁴ This is the correct list of the counts notwithstanding the list in the Court’s Opinion dated April 10, 2014. On August 7, 2009, the Court sentenced the Defendant to eight to sixteen years in prison with four years consecutive probation. For sentencing on the Involuntary Deviate Sexual Intercourse count, the Court “applied the mandatory minimum required [by 42 Pa. C.S. § 9718(a)(1)] in light of the age of the victim.” Order (August 7, 2009).

On December 18, 2012, the Defendant filed a timely PCRA Petition. The Court appointed counsel for the Defendant. On March 17, 2014, PCRA Counsel filed a Turner-Finley “No Merit Letter.” In an Opinion and Order dated April 10, 2014, the Court found the Defendant’s PCRA Petition to be without merit and notified the Defendant of its intention to dismiss the petition. On June 4, 2014, after receiving an objection containing no additional issues of merit, the Court dismissed the Defendant’s PCRA Petition and notified the Defendant

¹ 18 Pa. C.S. § 3123(a)(7).

² 18 Pa. C.S. § 3126(a)(8). On April 28, 2009, the information was “amended to reflect the fact that the indecent assault is charged under Section A8 of the statute.” Order (April 28, 2009).

³ 18 Pa. C.S. § 3125(a)(8).

⁴ 18 Pa. C.S. § 6301(a)(1).

of his right to appeal. On July 7, 2014, the Defendant filed a Notice of Appeal. On August 8, 2014, the Defendant filed a Statement of Matters Complained of on Appeal. The Defendant's Statement essentially contains seven paragraphs of argument. As a response to paragraphs two through six, the Court will rely on its Opinion dated April 10, 2014. The Court will address paragraphs one and seven in this Opinion.

In paragraph one of the Defendant's Statement, the Defendant contends that the imposition of the mandatory minimum sentence under 42 Pa. C.S. § 9718(a)(1) violated the Sixth Amendment right discussed in the Supreme Court of the United States decision in Alleyne v. United States.⁵ In paragraph seven, the Defendant contends that he was denied his constitutional rights by the failure of the Commonwealth to specify the date on which the alleged offense occurred.

II. Discussion

A. Paragraph One of Defendant's Statement of Matters Complained of on Appeal

42 Pa.C.S. § 9718(a)(1) provides, “[a] person convicted of [18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)] when the victim is under 16 years of age shall be sentenced to a mandatory term of imprisonment . . . not less than ten years.” As mentioned above, the Court applied this statute when sentencing the Defendant. The Defendant argues that the mandatory minimum sentence violated the Sixth Amendment right discussed in Alleyne. In Alleyne, the Court held that “facts that increase mandatory minimum sentences must be submitted to the jury.” 133 S. Ct. at 2163.

The Sixth Amendment concerns present in Alleyne are not present here. The Defendant was charged with Involuntary Deviate Sexual Intercourse, which, in this case, requires that the victim be less than 16 years of age. *See* 18 Pa. C.S. § 3123(a)(7). The victim testified that he

⁵ 133 S. Ct. 2151 (2013).

was 13 when the Defendant penetrated his anus. N.T., 4/28/09, at 29, 31, 33 and 39. By finding the Defendant guilty of involuntary deviate sexual intercourse beyond a reasonable doubt, the jury specifically found the element required to impose the mandatory minimum sentence. This element is the victim being less than 16 years of age. *See* 42 Pa.C.S.A. § 9718(a). Therefore, the requirements of Alleyne have been met, and the Defendant's claim is without merit.

B. Paragraph Seven of Defendant's Statement of Matters Complained of on Appeal

Pennsylvania Rule of Criminal Procedure 560(B)(3) provides, "[I]f the precise date [of the offense] is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient." "[T]he date of the commission of the offense must be 'fixed with reasonable certainty.'" Commonwealth v. Devlin, 333 A.2d 888, 890 (Pa. Super. 1975). In Devlin, the Court wrote:

Due process is not reducible to a mathematical formula. Therefore, we cannot enunciate the exact degree of specificity in the proof of the date of a crime which will be required or the amount of latitude which will be acceptable. Certainly the Commonwealth need not always prove a single specific date of the crime. Any leeway permissible would vary with the nature of the crime and the age and condition of the victim, balanced against the rights of the accused.

Id. at 892.

"[T]he Commonwealth must be afforded broad latitude when attempting to fix the date of offenses which involve a continuous course of criminal conduct." Commonwealth v. Groff, 548 A.2d 1237, 1242 (Pa. Super. 1988). In Commonwealth v. McClucas,⁶ the Commonwealth alleged that a child was sexually abused from June 1979 to June 1980 and November 1982 to around February 1985. 516 A.2d at 70. The Court wrote, "Inasmuch as the crimes, in toto,

⁶ 516 A.2d 68 (Pa. Super. 1986).

occurred over a period of time, we are not prepared to say that the lack of chronological specificity seriously encroached upon [defendant's] ability to defend himself.” Id. at 71.

In Commonwealth v. G.D.M.,⁷ the Commonwealth alleged that a six-year-old child was sexually abused over a seven month period. 926 A.2d at 990. The child was able to say that the abuse began when he started kindergarten and ended when the defendant was arrested. Id. The Court found that “the due process concerns of *Devlin* are satisfied where the victim, as here, can at least fix the times when an ongoing course of molestation commenced and when it ceased.” Id.

In Commonwealth v. Brooks,⁸ “[the defendant] was charged with committing . . . sex offenses against [child] victims during the summer months of 2001, and [one of the victims] testified that she recalled the abuse occurring when it was warm outside and she was wearing shorts when the sexual abuse occurred.” 7 A.3d at 859. The Court held that “the trial court’s conclusion that the victims’ testimony was sufficient to support the informations filed by the Commonwealth such that, if any due process violation in fact occurred, it must yield to the rights of the victims.” Id. at 860.

Here, the Defendant engaged in a continuous course of criminal conduct, so the Commonwealth should be afforded broad latitude when attempting to fix the dates of the offenses. The Commonwealth alleged that the sexual abuse of the victim occurred from June 2007 to February 2008.⁹ The victim repeatedly testified that the abuse occurred when he was thirteen years old. N.T., 4/28/09, at 29, 31, 33 and 39. The victim also testified that the abuse stopped some time in February 2008 when he was in eighth grade. Id. at 35, 40, and 50. While the testimony of the victim did not establish an exact time frame of the abuse, it does establish a

⁷ 926 A.2d 984 (Pa. Super. 2007).

⁸ 7 A.3d 852 (Pa. Super. 2010).

⁹ On April 28, 2009, the information was amended “to indicate the dates of the alleged crimes would be from June 2007 to February 2008.” Order (April 28, 2009).

general time frame of 2007 to 2008. Given the young age of the victim and the Defendant's continuous course of criminal conduct, this Court believes that the due process concerns of Devlin were satisfied.

III. Conclusion

The Defendant's Sixth Amendment right was not violated because the jury found the element required to impose the mandatory minimum sentence. In addition, the Commonwealth established the dates of the offenses with enough specificity that the due process concerns of Devlin were satisfied. Therefore, it is respectfully submitted that this Court's Order dismissing the Defendant's PCRA Petition be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge