

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No's. CR-798-2017; CR-851-2016;  
: CR-853-2016; CR-1416-2016  
vs. :  
:  
:  
WARREN SWANK, III, : Defendant's Motion to  
Defendant : Vacate Order for SVP Hearing

**OPINION AND ORDER**

On July 24, 2018, Defendant pled guilty to Count 1, statutory sexual assault (4 to 8 years older), a felony of the second degree, and Count 3, indecent assault, a misdemeanor of the second degree under Information 798-2017.

Defendant's sentencing was scheduled for October 1, 2018. In preparation for sentencing, the Lycoming County Adult Probation officer prepared a Pre-Sentence report and the Pennsylvania Sexual Offender's Assessment Board conducted an assessment of the defendant to determine whether he met the criteria to be classified as a sexually violent predator.

As this court has previously recognized, the law governing the registration of sexual offenders has significantly changed in the past few years. On June 12, 2018, Act 29 of 2018 was enacted, effective immediately. It replaced Act 10 of 2018, which was effective February 21, 2018 and which was meant "to address" previous court decisions addressing the unconstitutional applicability of the prior registration acts under specific circumstances.

Defendant's conviction on Count 1, statutory sexual assault, would require him to register as a Tier II sexual offender. If Defendant, however, was designated a Sexually Violent Predator (SVP), he would be required to register for life and have additional registration requirements.

While the court indicated in a recent Order that Defendant's sentencing would be continued to December 7, 2018 and that the court would first hear argument on whether the defendant can be designated as an SVP, this Opinion shall address whether Defendant's motion to vacate the order for a sexually violent predator hearing should be granted.

Given this court's prior Opinions in *Commonwealth v. Conard Carpenter*, CR-192-2017 (Lycoming County) and *Commonwealth v. Kelli Vassallo*, CR-115-2017 (Lycoming County), this court grants Defendant's motion. The legislature has not enacted a constitutional SVP designation mechanism and accordingly, no hearing shall be held.

**ORDER**

**AND NOW**, this \_\_\_\_ day of November 2018, Defendant's sentencing and final PV hearing shall be held on **December 7, 2018 at 1:30 p.m. in Courtroom No. 4** of the Lycoming County Courthouse. The court will not proceed with a sexually violent predator (SVP) hearing.

By The Court,

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Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)  
William Miele, Esquire (PD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File