

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1379-2017
:
vs. :
:
ANDREW J. ULTSH, : Commonwealth’s Praecipe for SVP Hearing
Defendant : Defendant’s Motion to Vacate Order for SVP

OPINION AND ORDER

Before the court is Defendant’s motion to vacate order for sexually violent predator assessment and the Commonwealth’s praecipe to schedule a hearing to determine Defendant’s sexually violent predator (SVP) status. The parties met on July 13, 2018 at which time the court heard argument and permitted the parties to submit briefs in support of their respective requests.

On April 24, 2018, Defendant pled guilty to two counts of sexual abuse of children, relating to the possession of child pornography, graded as felonies of the second degree and three counts of sexual abuse of children, relating to possession of child pornography, graded as felonies as the third degree.

The court ordered that Defendant be assessed by the Pennsylvania’s Sexual Offender’s Assessment Board (SOAB). An assessment was conducted. Following the assessment, the Commonwealth filed a praecipe to schedule a hearing.

According to the Commonwealth, it intends on presenting evidence from the Board assessor which indicates that Defendant meets the criteria to be designated as an SVP. The Commonwealth requests that this court conduct a hearing based upon Act 10 of 2018, to determine whether Defendant should be classified as an SVP.

As the Commonwealth notes in its memorandum, Act 29 of 2018 was enacted

on June 12, 2018 and it applies in Defendant's case. Because Defendant's conduct occurred after the December 20, 2012 effective date of SORNA, he is subject to the provisions of subchapter H of Act 29.

Contrary to what is set forth in Defendant's presentence report, the court does not conclude that Defendant by virtue of his convictions alone would be a Tier III sex offender. His convictions alone result in the defendant being a Tier I offender. 42 Pa. C.S.A. § 9799.14 (b) (9); see also *Commonwealth v. Lutz-Morrison*, 636 Pa. 395, 143 A.3d 891, 895 (2016) ("the statute requires an act, a conviction, and a subsequent act to trigger lifetime registration for multiple offenses otherwise subject to a fifteen- or twenty-five-year period of registration").

Based on this Court's Opinions in *Commonwealth v. Carpenter*, CR-192-2017 (Lycoming County) (June 2018) and *Commonwealth v. Vassallo*; CR-115-2017 (November 7, 2018), this court granted Defendant's motion and will preclude the holding of an SVP hearing.

ORDER

AND NOW, this ____ day of December 2018 for the reasons set forth above, no SVP hearing shall be held in this matter. Defendant's sentencing is scheduled for **January 10, 2019 at 10:00 a.m. in Courtroom No. 4** of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: Christopher Jones, Esquire (SDAG)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File