

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001378-2019
:
vs. : CRIMINAL DIVISION
:
:
AHMED MEHRAN SUMIT, :
Appellant : 1925(a) Opinion

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

This Opinion is written in support of the court’s judgment of sentence dated February 23, 2021.

By way of background, the Commonwealth charged Ahmed Mehran Sumit (hereinafter “Appellant”) with twenty-four counts of Sexual Abuse of Children-Child Pornography,¹ and one count of Criminal Use of a Communication Facility.²

On October 20, 2020, Appellant pleaded guilty to a consolidated count of Sexual Abuse of Children-Child Pornography, a felony of the second degree. The court directed Appellant to undergo an assessment with the Pennsylvania Sexual Offender Assessment Board (“the board”) to determine whether he met the criteria for a sexually violent predator. The court scheduled Appellant’s sentencing hearing for January 5, 2021.

On January 4, 2021, the Commonwealth requested a continuance of the sentencing hearing. The Commonwealth noted that the board required 90 days to complete

¹ 18 Pa. C.S.A. §6312(d).

² 18 Pa. C.S.A. §7512.

its assessment and requested a sentencing date after January 18, 2021. The court granted the continuance over Appellant's objection and rescheduled the sentencing hearing for February 23, 2021.

On January 5, 2021, Appellant requested modification of his bail so that he could be released from incarceration because his plea agreement was for a time-served sentence. The court denied Appellant's motion.

On February 22, 2021, Appellant filed a motion to dismiss for failure to timely sentence, because the court did not sentence him within 90 days of his guilty plea and it extended or continued his sentencing hearing without "good cause shown."

On February 23, 2021, the court denied Appellant's motion and sentenced Appellant to incarceration in the Lycoming County Prison for a minimum of 220 days and a maximum of 544 days. Appellant completed his sentence on February 23, 2021, but he could not be released except to his Immigration and Customs Enforcement (ICE) detainer.

On February 26, 2021, Appellant filed a notice of appeal.

Appellant's sole issue on appeal is that "the [c]ourt erred in denying the discharge of [Appellant] for failure to sentence within a timely manner." The court cannot agree. In addition to the reasons stated in the Order dated February 23, 2021 (and docketed on February 24, 2021), the court would rely on the following.

Rule 704(A) which governs the time for sentencing states:

- (1) Except as provided by Rule 702(B), sentence in a court case shall **ordinarily** be imposed within 90 days of conviction or the entry of a plea of guilty or *nolo contendere*.
- (2) When the date for sentencing in a court case must be delayed, for good cause shown, beyond the time limits set forth in this rule, the judge shall include in the record the specific period of time for the extension.

Pa. R. Crim. P. 704(A)(emphasis added).

Appellant construes the comment related to paragraph (A)(1) as limiting the time for sentencing to no more than 120 days, 90 days plus one 30-day extension. See Motion to Dismiss, ¶ 26. However, Appellant misconstrues the comment related to paragraph (A)(1), by solely quoting the second sentence, which takes it out of context.

The comment related to paragraph (A)(1) states:

Under paragraph (A)(1), sentence should be imposed within 90 days of conviction or the entry of a plea of guilty or *nolo contendere*, unless the court orders a psychiatric or psychological examination pursuant to Rule 702(B). Such an order should extend the time for sentencing only as much time as is reasonably required, but in no event should sentencing be extended for more than 30 days beyond the original 90-day limit.

Appellant construes the second sentence as applying to any order extending the time for sentencing. Instead, the phrase “such an order” refers to an order directing a defendant to undergo a psychiatric or psychological examination pursuant to Rule 702(B). The court did not order Appellant to undergo a psychiatric or psychological examination pursuant to Rule 702(B). Rather, the court ordered Appellant to undergo a sexual offender assessment pursuant to 42 Pa. C.S.A. §9799.24.

Furthermore, Appellant completely ignores the comment with respect to delays for good cause pursuant paragraph (A)(2), which states:

Paragraph (A)(2) is not intended to sanction *pro forma* requests for continuances. Rather, it permits the judge to extend the time limit for sentencing under extraordinary circumstances only. **For example, additional pre-sentence procedures may be required by statute. See 42 Pa. C.S. §§9799.11-9799.41 for pre-sentence assessment and hearing procedures for persons convicted of sexually violent offenses.**

Because such extensions are intended to be the exception rather than

the rule, the extension must be for a specific time period, and the judge must include in the record the length of the extension. A hearing need not be held before an extension can be granted. Once a specific extension has been granted, however, some provision should be made to monitor the extended time period to insure prompt sentencing when the extension period expires.

Pa. R. Crim. P. 704, cmt. (emphasis added).

“Sexually violent offense” is defined as an “offense specified in section 9799.14 (relating to sexual offenses and tier system) as a Tier I, Tier II, or Tier III sexual offense committed on or after December 20, 2012, for which the individual was convicted. 42 Pa. C.S.A. §9799.12. Appellant pleaded guilty to a consolidated count of Sexual Abuse of Children-Child Pornography in violation of 18 Pa. C.S.A. §6312(d), which is a Tier I sexually violent offense. 42 Pa. C.S.A. §9799.14(b)(9). This offense occurred on or about February 1, 2018. Therefore, Appellant is a person convicted of a sexually violent offense.

The court was required to order Appellant to undergo an assessment by the board. 42 Pa. C.S.A. §9799.24(a)(“After conviction but before sentencing, the court shall order an individual convicted of a sexually violent offense to be assessed by the board.”). The board was entitled to 90 days to complete its assessment. 42 Pa. C.S.A. §9799.24(d)(“The board shall have 90 days from the date of conviction of the individual to submit a written report containing its assessment to the district attorney.”) A sexual offender assessment is the example of an extraordinary circumstance for an extension of a sentencing hearing beyond the ordinary 90-day time limit. Accordingly, the court did not err when it denied Appellant’s motion to dismiss for failing to sentence him within 90 days of his guilty plea. If anything, the court erred in scheduling Appellant’s original sentencing hearing for January 5, 2021, as that date was before the 90-day period expired for the board’s assessment.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Timothy Reitz, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)