IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	**CP-41-CR-998-2020**
vs.	:	**CP-41-CR-1409-2020**
	:	
COLLIN S. REID,	:	
Defendant	:	

OPINION

AND NOW, this 11th day of May 2022, following argument held April 29, 2022, the Court hereby issues the following OPINION addressing the pre-sentence issues in this case.

On November 17, 2021, a jury convicted Defendant Collin Reid of eighteen counts and acquitted him of six counts related to ongoing sexual crimes against a minor victim. Due to the nature of the charges, the Court originally scheduled sentencing for March 1, 2022 to provide the Sexual Offender Assessment Board the 90 days necessary to complete a Sexually Violent Predator assessment.

On March 1, 2022, hours before Defendant's scheduled sentencing, counsel for Defendant requested to withdraw, citing a deterioration in the attorney-client relationship to such an extent that he could no longer adequately represent Defendant. The Court granted this motion and appointed a new attorney from the Lycoming County Public Defender's office. Sentencing was continued to March 21, 2022 to give counsel time to meet with Defendant and discuss his case.

On March 18, 2022, the Commonwealth filed a Notice of Applicability of Mandatory Sentences, providing notice that they intended to pursue mandatory twenty-five year minimums on a number of counts pursuant to 42 Pa. C.S.

§ 9718.2(a)(1).[1] On March 21, 2022, the Commonwealth requested a continuance of sentencing, exercising its right under 42 Pa. C.S. § 9718.2(c) for a hearing to discuss the applicability of mandatory minimums and other issues; the Court granted this continuance without objection of the Defendant.[2] On March 25, 2022 the Court issued an Order scheduling argument and directing the parties to file briefs addressing the following four issues:

- Whether Defendant's 1996 New York offense was an adult conviction or a juvenile adjudication;
- Whether, under 42 Pa. C.S. § 9718.2, the 1996 offense is "an equivalent crime" to an offense set forth in 42 Pa. C.S. § 9799.14;
- Defendant's Prior Record Score; and
- Whether any of the charges of which Defendant was convicted are subject to the mandatory minimums in either 42 Pa. C.S. § 9718 or § 9718.2.

This Opinion and Order addresses these issues.

DEFENDANT'S 1996 NEW YORK STATE OFFENSE

The mandatory minimums of 42 Pa. C.S. § 9718.2 apply when "[a]ny person who is convicted in any court of this Commonwealth of an offense set forth in section 9799.14 (relating to sexual offenses and tier system)… at the time of the commission of the current offense… had previously been convicted of an offense set forth in section 9799.14 or… an equivalent crime in another jurisdiction…."[3] The parties agree that on June 7, 1995 Defendant was charged with a violating New York Penal Law

[1] The Commonwealth had previously provided notice of its intent to pursue mandatory minimum sentences under 42 Pa. C.S. § 9718. The applicability of both § 9718 and § 9718.2 is discussed *infra*.
[2] On March 21, 2022, the Court did conduct a sexually violent offender hearing, at the conclusion of which the Court held the Commonwealth had met its burden to show that Defendant is a sexually violent predator.
[3] 42 Pa. C.S. § 9718.2(a)(1).

§ 130.20-1, "Sexual Misconduct," and that Defendant was 16 years old at that time. The parties disagree as to whether this was an adult conviction, in which case mandatory minimums may apply to certain of Defendant's current offenses, or a juvenile adjudication, in which case Defendant would not have a "previous… convict[ion] of… an equivalent crime in another jurisdiction," thus rendering the mandatory minimums inapplicable.[4]

Under § 9718.2(c), the Commonwealth has the burden of proving "by a preponderance of the evidence… the previous convictions of the offender…." In support of its contention that Defendant's 1996 case resulted in an adult conviction rather than a juvenile adjudication, the Commonwealth plans to introduce two exhibits at sentencing. The first exhibit is a set of documents from the Windsor, New York court system concerning Defendant's 1996 case. These documents contain an "Order and Conditions of Adult Probation," and consistently refer to the outcome of Defendant's case as a "plea" to a "conviction" rather than an adjudication. Tellingly, the words "adjudicated as" are crossed out in one place, and another area has the phrase "Convicted of: Sexual Misconduct PL 130.20-1" with the line following "or adjudicated as" left blank. The Commonwealth's second exhibit consists of certified records from the Broome County Probation Department, which similarly refer to Defendant's "conviction" and "sentence[]" of three years of probation, and leave the box for "youthful offender adjudication" unchecked. The Commonwealth has indicated that they have original, sealed and certified copies of these records, and argues that

[4] The parties also disagree as to whether NY P.L. § 130.20-1 is "equivalent" to a registrable offense in Pennsylvania; this issue is addressed *infra*.

they therefore may be admitted without authentication pursuant to Rule of Evidence 902.

In response, Defendant generally contends that the Commonwealth has not met its burden, though he concedes that the documents appear to suggest a conviction rather than an adjudication. Defendant also contends that the Commonwealth will not be able to authenticate these records.

Pennsylvania Rule of Evidence 902 describes documents that are self-authenticating, "requir[ing] no extrinsic evidence of authenticity to be admitted." Rule 902(A) provides that no authentication is required for a document that bears both "a seal purporting to be that of… any state, district, commonwealth, territory, or insular possession of the United States… or a department, agency, or officer of any [such] entity" and "a signature purporting to be an execution or attestation." Rule 902(B) provides that a document with no seal may be admitted if "it bears the signature of an officer or employee of an entity named in [Rule 902(1)]" and "another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine."

The Court is satisfied that the documents the Commonwealth intends to present at Defendant's sentencing demonstrate, by a preponderance of the evidence, that Defendant's 1996 New York case resulted in an adult conviction rather than a juvenile adjudication. Additionally, the exhibits proposed by the Commonwealth are admissible under Rule 902. Each page of Exhibit A contains the March 29, 2022 signature, acknowledgment, and certification of Richard R. Blythe, Town Justice, Town of Windsor, New York as well as the signature of the sentencing justice at the time of the resolution of Defendant's case. Exhibit B contains a notarized letter certification dated

April 1, 2022 from Jodie LaVare, Deputy Director of the Broome County Probation Department, certifying that the documents in Exhibit B are true and correct copies of Defendant's probation following his conviction for Sexual Misconduct. Because the records are self-authenticating under Rule of Evidence 902, the Commonwealth will not need to present "extrinsic evidence of authenticity" to admit them at Defendant's sentencing hearing on May 27, 2022.

EQUIVALENT CRIME

The next issue is whether New York P.L. § 130.20-1 is an "equivalent crime" to an offense listed in 42 Pa. C.S. § 9799.14, which lists all sexual offenses requiring registration with the Pennsylvania State Police under § 9799.15.

The Superior Court addressed the question of equivalent offenses in *Com. v. Bolden*.[5] In that case, the Court determined that Colorado's attempted second-degree burglary was an equivalent offense to Pennsylvania's criminal attempt of burglary.[6] In doing so, the Court directed a sentencing court to:

> "carefully review the elements of the foreign offense in terms of the classification of the conduct proscribed, its definition of the offense, and the requirements for culpability. Accordingly, the court may want to discern whether the crime is *malum in se* or *malum prohibitum*, or whether the crime is inchoate or specific. If it is a specific crime, the court may look to the subject matter sought to be protected by the statute, *e.g.* protection of the person or protection of property. It will also be necessary to examine the definition of the conduct or activity proscribed. In doing so, the court should identify the requisite elements of the crime – the *actus reus* and *mens rea* – which form the basis of liability.
>
> Having identified these elements of the foreign offense, the court should next turn its attention to the Pennsylvania Crimes Code for the purpose of determining the equivalent Pennsylvania offense. An equivalent offense is that which is substantially identical in nature and definition as the out-of-state or federal offense when compared with [the]

[5] *Com. v. Bolden*, 532 A.2d 1172 (Pa. Super. 1987).
[6] *Id*.

> Pennsylvania offense. The record of the foreign conviction will be relevant also when it is necessary to grade the offense under Pennsylvania law or when there are aggravating circumstances."[7]

In *Com. v. Northrip*, the Supreme Court of Pennsylvania adopted the *Bolden* test.[8] In *Northrip*, the Court found that New York's third degree arson was not equivalent to Pennsylvania's Arson Endangering Persons, highlighting that – although "the laws appear to have similar elements and burdens of proof" – the New York offense "focuses plainly on the protection of property," whereas the Pennsylvania offense "decidedly does not," instead focusing on the risk of arson to persons.[9] The Court noted that Pennsylvania has a separate arson offense addressed to the protection of property.[10] The Court also found relevant that New York graded third degree arson as a third degree felony (with higher gradings for arson risking harm to people), but Pennsylvania graded Arson Endangering Persons as a felony of the first degree.[11]

The Commonwealth contends that the specific offense of Sexual Misconduct under NY P.L. § 130.20-1 is equivalent to 18 Pa. C.S. § 3124.1 or, in the alternative, 18 Pa. C.S. § 3126(a)(1), both of which are listed in § 9799.14.

NY P.L. § 130.20-1 reads: "A person is guilty of sexual misconduct when he engages in sexual intercourse without such person's consent."

18 Pa. C.S. § 3124.1 reads: "Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a

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[7] *Id*. at 1175-76.
[8] *Com. v. Northrip*, 985 A.2d 734 (Pa. 2009).
[9] *Id*. at 736., 741-42.
[10] *Id.* at 742.
[11] *Id*. at 741.

felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent."

18 Pa. C.S. § 3126(a)(1) reads: "A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and… the person does so without the complainant's consent."

In support of its position, the Commonwealth stresses that the elements of P.L. § 130.20-1 and 18 Pa. C.S. § 3124.1 are essentially identical, or at least overlap, as both contain the elements of having sexual intercourse with another person without that person's consent. The Commonwealth notes that as recently as July 2021, the Superior Court of Pennsylvania held that it is proper for a trial court to "review[] only the elements of" an in-state and out-of-state offense to determine if they are equivalent for the purposes of the mandatory minimums of § 9718.2.[12]

Defendant, conversely, emphasizes the significant disparity between the grading and sentencing of P.L. § 130.20-1 and 18 Pa. C.S. § 3124.1; whereas the New York offense is a Class A Misdemeanor punishable by a maximum of one year of incarceration, three years of probation, and a fine of $1,000, the Pennsylvania offense is a felony of the second degree, punishable by up to ten years in prison and a fine of $25,000. Defendant highlights that, in *Com. v. Sampolski*, the Superior Court of Pennsylvania found that the defendant's conviction for a previous version of Pennsylvania's corruption of minor offense was not equivalent to the current version of

[12] *Com. v. Velasquez*, 260 A.3d 132 (Pa. Super. 2021) (unpublished, non-precedential).

Pennsylvania's sexual corruption offense, in part because the former offense "is a misdemeanor of the first degree, whereas [the current corruption offense] is a felony of the third degree."[13] In doing so, the Court explicitly rejected the Commonwealth's contention that "the grading of the offenses does not seem to be among the factors to consider when deciding whether the offenses are equivalent," noting that "the Supreme Court in *Northrip* specifically included 'classification of the conduct proscribed' as a key determinant in the equivalency analysis."[14]

The Court finds that Sexual Misconduct as proscribed by P.L. § 130.20-1 is equivalent to the Pennsylvania offense of Sexual Assault under 42 Pa. C.S. § 3124.1. A person who has been convicted of violating P.L. § 130.20-1 has necessarily 1) engaged in sexual intercourse 2) with another person 3) without that person's consent. A person who does each of those things in Pennsylvania is guilty of Sexual Assault. Both crimes are *malum in se*, inherent moral wrongs, as opposed to *malum prohibitum* offenses which criminalize certain conduct to structure society despite that conduct not being morally offensive. The offenses involve the same *actus reus* and *mens rea*, and are intended to protect the same class of people from the same harm.

Although the different gradings and maximum offenses for the two violations certainly cut against a finding of equivalence, this factor is not dispositive in light of the other factors the offenses share. The Commonwealth points out that New York's sexual offense scheme seems to uniformly assign lower gradings and maximum penalties than equivalent offenses in Pennsylvania; although the Court would reach the same decision in the absence of this broad difference between the states'

[13] *Id*. at 1289.
[14] *Id*. at 1289-90.

schemes, the consistency of this divergence undermines any suggestion that New York intended its classification of Sexual Misconduct to reflect a considered judgment that it is a less serious offense than the closest Pennsylvania crime.

Because the Court has concluded that Defendant has an adult conviction for NY P.L. § 130.20-1, and that this offense is equivalent to Pennsylvania's 18 Pa. C.S. § 3124.1, Defendant "ha[s] previously been convicted of an offense set forth in section 9799.14 or… an equivalent crime in another jurisdiction" and therefore the 25-year mandatory minimum of § 9718.2 applies to each of his current convictions for "offense[s] set forth in § 9799.14."[15]

PRIOR RECORD SCORE

When calculating a defendant's prior record score, "[a]n out-of-state… conviction… is scored as a conviction for the current equivalent Pennsylvania offense."[16]

Although Defendant contends his prior record score is a 4 in 998-CR-2020 and a 3 in 1409-CR-2020, he concedes that if the Court determines P.L. § 130.20-1 is equivalent to 18 Pa. C.S. § 3124.1, then his prior record score will be a 5 at both docket numbers. Because the Court has made this determination, Defendant's prior record score is a 5 for sentencing on his current offenses.

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[15] The current offenses Defendant was convicted of that are listed as registrable offenses in 42 Pa. C.S. § 9799.14 are 18 Pa. C.S. § 3125, aggravated indecent assault (Counts 1, 2, 9, and 10 on the verdict); 18 Pa. C.S. § 6301(a)(1)(ii), corruption of minors (Counts 3 and 16); 18 Pa. C.S. § 3126, indecent assault (Counts 4, 5, 11 and 12); 18 Pa. C.S. § 3123, involuntary deviate sexual intercourse (Count 8); 18 Pa. C.S. § 6318, unlawful contact with minor (Count 13); 18 Pa. C.S. § 7507.1, invasion of privacy (Count 21); 18 Pa. C.S. § 4302(b), incest (Count 24); and criminal attempts under 18 Pa. C.S. § 901(a) to violate 18 Pa. C.S. § 3121, rape (Count 6) and 18 Pa. C.S. § 3122.1(b), statutory sexual assault (Count 7).

[16] Pennsylvania Sentencing Guidelines, § 303.8(f)(1).

APPLICABILITY OF § 9718 AND § 9718.2 MANDATORY MINIMUMS

1. Mandatory Minimums under § 9718

42 Pa. C.S. § 9718 provides for mandatory minimum sentences on convictions of certain crimes against infant persons.[17] Defendant was convicted of violating 18 Pa. C.S. § 3125(a)(1) (Aggravated Indecent Assault without Consent, two counts) and § 3123 (Involuntary Deviate Sexual Intercourse, one count).

Under § 9718(c),

> "any provision of this section that requires imposition of a mandatory minimum sentence shall constitute an element enhancing the underlying offense. Any enhancing element must be proven beyond a reasonable doubt at trial on the underlying offense and must be submitted to the fact-finder for deliberation together with the underlying offense. If the fact-finder finds the defendant guilty of the underlying offense, the fact-finder shall also decide whether any enhancing element has been proven."

Here, Count 1 and Count 9 on the verdict form submitted to the jury were for Aggravated Indecent Assault without Consent in violation of § 3125(a)(1). Pursuant to § 9718, for the mandatory minimum to be applicable, the jury must make a finding as to whether "any enhancing element" – here, the victim's infancy – has been proven. The elements and charge for § 3125(a)(1), however, do not include the victim's infancy, and the verdict form did not include a separate space for the jury to make a finding of an enhancement. Thus, with respect to Counts 1 and 9, the requirements of § 9718 have not been met, and no mandatory minimum applies.

Count 8 was for Involuntary Deviate Sexual Intercourse with a complainant "who is less than 16 years of age." Although the verdict form did not include a separate space for the jury to make a finding of an enhancement, this count (and the

[17] For the purposes of § 9718, an "infant person" is one who is "less than 16 years of age."

associated jury instruction) included as an element that the victim was less than 16 years of age, and thus an infant. This element, then, was "submitted to the fact-finder for deliberation together with the underlying offense," and the jury's conviction necessarily entails a finding that the victim's infancy on this charge was proven beyond a reasonable doubt. Therefore, the Court holds that the ten-year mandatory term of imprisonment applicable under 42 Pa. C.S. § 9718 to a violation of 18 Pa. C.S. § 3123 against a victim less than 16 years of age applies to Count 8.

2. Mandatory Minimums under § 9718.2

Because the Court has concluded that "at the time of the commission of [Defendant's] current offense [he] had previously been convicted of an offense set forth in section 9799.14 or an equivalent crime… in another jurisdiction," the 25-year mandatory minimum sentences provided by § 9718.2(a)(1) apply to each of his current convictions for offenses listed in § 9799.14.

Defendant argues that imposing the mandatory minimums of § 9718.2 on him would violate the United States and Pennsylvania Constitutions' prohibitions on *ex post facto* punishment, because his out-of-state conviction predated the December 20, 2012 effective date of § 9718.2. Defendant cites *Com. v. Lippincott* in support of this contention.[18]

Defendant's contention is unavailing, and the case cited inapposite. *Lippincott* was decided in the wake of *Com. v. Muniz*, which "held that retroactive application of the registration and reporting requirements of SORNA violated the *ex post facto* clauses of the United States and Pennsylvania Constitutions."[19] In *Muniz*, the

[18] *Com. v. Lippincott*, 208 A.3d 143 (Pa. Super. 2019).
[19] *Id*. at 145 (citing *Com. v. Muniz*, 164 A.3d 1189 (Pa. 2017)).

Supreme Court of Pennsylvania held that, because the registration requirements constituted punishment rather than an administrative requirement, the law imposing the requirements could not be enforced against a defendant for crimes that defendant committed *prior to* the passage of SORNA.[20] In *Lippincott*, the Superior Court clarified that the *ex post facto* clause also bars enforcement of SORNA against people whose crimes were committed after its enactment but prior to its statutorily-designated effective date.[21]

The key difference here is that the mandatory minimums imposed are punishing Defendant for his *current* offenses – committed in 2019, well after § 9718.2's effective date – rather than for offenses occurring before that date. The *ex post facto* clauses embody the notion that it is unjust to subject a person to punishment for an act that was taken before the potential penalties for that act were codified, and thus before the defendant has notice of the possible punishment for his actions. Here, the acts underlying Defendant's convictions were committed over six years after the passage of the most current version of § 9718.2, and thus he was on notice during those intervening years that any further convictions for offenses listed in § 9799.14 would result in enhanced penalties.

CONCLUSION

For the foregoing reasons, the Court finds that the Commonwealth's exhibits, if they are as described, are admissible under Pennsylvania Rule of Evidence 902.[22] Furthermore, these documents satisfy the Commonwealth's burden of showing by a

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[20] *Muniz*, 164 A.3d 1189.
[21] *Lippincott*, 208 A.3d at 150.
[22] The Commonwealth will still need to admit the exhibits at Defendant's sentencing, and Defendant may of course renew his challenge to and make argument regarding their admissibility.

preponderance of the evidence that Defendant has an adult conviction for a violation of New York P.L. § 130.20-1 in 1996. Because this is an equivalent crime to Sexual Assault under 18 Pa. C.S. § 3124.1, which is listed in § 9799.14, Defendant's Prior Record Score on both dockets is a 5, and the twenty-five year mandatory minimum imposed by § 9718.2 applies to each of his current convictions for offenses listed in § 9799.14. Additionally, the ten-year mandatory minimum offense imposed by § 9718(a)(1) applies to Defendant's conviction for Involuntary Deviate Sexual Intercourse in violation of 18 Pa. C.S. § 3123(a)(7). No mandatory minimums under § 9718 apply to Defendant's convictions for Aggravated Indecent Assault without Consent in violation of 18 Pa. C.S. § 3125(a)(1).

By the Court,

_____
Eric R. Linhardt, Judge

ERL/jcr
cc: DA (Martin Wade)
PD (Tyler Calkins)
Collin Reid
Lycoming County Prison, Booking No. 05-22935; ID 00-07408
Court Administration/Court Scheduling
Adult Probation
Lycoming County Prison
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