

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA, :

v. :

STEVE RANDAL GUTHRIE,
Petitioner :

CR-690-2023
1283 MDA 2023

FILED
LYCOMING COUNTY
2023 NOV 17 AM 9:17
THOMAS HEAP
CLERK OF COURTS

Date: November 16, 2023

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

On April 3, 2023, Appellant entered a no contest plea to Count 27, corruption of minors, a felony of the third degree; Count 28, endangering the welfare of children, a felony of the third degree; and Count 30, unlawful contact with a minor, a felony of the third degree and was ordered to undergo a sexual violent predator assessment by the Sexual Offender Assessment Board ("SOAB"). On June 23, 2023, the SOAB issued its completed SVP assessment, wherein the board member's opinion, to a reasonable degree of professional certainty, found the Appellant to meet the criteria to be classified as a Sexually Violent Predator under Pennsylvania law.

Appellant was sentenced on August 22, 2023, to an aggregate sentence of two (2) to five (5) years in a state correctional institution. Additionally, following a hearing held on the same date, the Court found the Commonwealth proved by clear and convincing evidence that the Appellant met the criteria to be designated a Sexually Violent Predator. The sentencing Order and separate Order classifying Appellant as a Sexually Violent Predator was docketed on September 11, 2023. Appellant's Notice of Appeal was filed on September 12, 2023. On September 26, 2023, Appellant timely filed a Concise Statement of Matters Complained of on Appeal alleging that the Court erred "in finding Guthrie to be a sexually violent predator because

the Commonwealth failed to prove by clear and convincing evidence that Guthrie is a sexually violent predator.”

The precise line of inquiry for the Board's expert, as well as any other expert who testifies at an SVP hearing, is “whether the defendant satisfied the definition of a sexually violent predator set out in the statute, that is, whether he or she suffers from ‘a mental abnormality or personality disorder that makes [him or her] likely to engage in predatory sexually violent offenses.’” *Commonwealth v. Geiter*, 929 A.2d 648, 651 (Pa. Super. 2007) quoting *Commonwealth v. Dixon*, 907 A.2d 533, 536 (Pa. Super. 2006). “The salient inquiry to be made by the trial court is the identification of the *impetus* behind the commission of the crime and the extent to which the offender is likely to *reoffend*.” *Id.* quoting *Commonwealth v. Price*, 876 A.2d 988, 995 (Pa. Super. 2005).

Pennsylvania law requires the SOAB to consider 14 factors during the course of the assessment. As set forth by the Pennsylvania Supreme Court in *Dengler* (2005), *Conklin* (2005), and *Meals* (2006), the factors are not to be used for risk assessment, the factors cannot be balanced against each other, and SVP status may be based upon the presence of factors, while the absence of factors is not conclusive. In both his report and his testimony during the SVP hearing, C. Townsend Velkoff, M.S., SOAB member and qualified expert, discussed each of the 14 factors and whether they worked in favor of or against a SVP designation for the Appellant. Mr. Velkoff noted that the Appellant had only one victim and did not exceed the means necessary to achieve the ends or display unusual cruelty in the commission of the crime. However, he explained that the age of the victim (approximately 9 years old at the time she was coerced into performing oral sex and digital stimulation for money and candy) suggested that he is sexually reactive to prepubescent or early pubescent females, the duration of the sexual misconduct

(approximately 3 years), his adult criminal history consisting of more than 4 sentencing dates, and the fact that he was not related to the victim (he was in a relationship with the victim's mother and had access to an adult for sexual gratification but chose to wait until mother was not home to act on his impulses) may have been evidence of predatory behavior and are factors that are supported in the sexual assessment field as reasonably related to the risk of re-offense. (See Transcript of Proceedings, 8/22/23, pg. 7-8).

Mr. Velkoff next testified about the mental abnormality/personality disorder criterion, and indicated that there are 4 statutory criteria, including a congenital or acquired "condition" which is the impetus to the sexual offending. In his report, he indicated that to determine whether a defendant displays a congenital or acquired condition, he considers to what degree the defendant's conduct is similar to the criteria associated with any of the known personality disorders or paraphilias as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. Based on the available file material he concluded that the Appellant did not display characteristics associated with any of the personality disorders. However, the DSM-5 diagnostic criteria of Pedophilic Disorder requires evidence of sexually arousing fantasies, urges, or behaviors for at least six months. Mr. Velkoff testified that his review of the materials revealed the Appellant began molesting the victim when she was 9 and it continued until she disclosed the molestation at age 12. Based on this information, Mr. Velkoff found Appellant to display characteristics of Pedophilic Disorder, which is a congenital or acquired condition that gave impetus to the sexual offending. (See Transcript of Proceedings, 8/22/23, pg. 10). Because of this, it is assumed he suffers from a lifelong condition and said condition overrides his emotional/volitional control. As a result of this condition, Mr. Velkoff found the Appellant's risk for re-offense greater than other males around his age. Based upon this information, Mr. Velkoff

opined within a reasonable degree of professional certainty that Appellant suffers from the Mental Abnormality aspect of the definition of a Sexually Violent Predator.

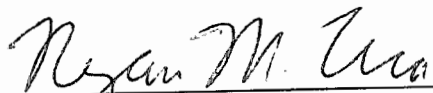
With regard to the predatory behavior criterion, the statute defines "predatory" as [a]n act directed at a stranger or at a person with whom a relationship has been initiated, established, maintained or promoted, in whole or in part, in order to facilitate or support victimization."

42 Pa.C.S. §9799.12. In the present case, both in his report and during his testimony at the SVP hearing, Mr. Velkoff emphasized the fact that Appellant gained access to the victim because he was living with the victim's mother. The Appellant used candy, money, and other favors to induce the victim into performing sexual acts on him. In this way, the Appellant established and maintained a predatory sexual relationship with the victim. The Appellant began this behavior when the victim was 9 years old and continued until the victim reported the conduct when she was 12 years old. Considering this behavior and credible sex offender research, Mr. Velkoff opined to a reasonable degree of professional certainty that the Appellant met the criteria to be classified as a Sexually Violent Predator under Pennsylvania law.

After viewing all evidence presented and all reasonable inferences therefrom in the light most favorable to the Commonwealth, this Court found that the Commonwealth, through the SOAB report and testimony of C. Townsend Velkoff, M.S., had proven by clear and convincing evidence that each element of the statute had been satisfied. As a result, there was no error in finding that the Appellant is a Sexually Violent Predator. Accordingly, this Court respectfully

requests that Appellant's appeal be denied and the designation of Appellant as a Sexually Violent Predator be affirmed.

By the Court,



Ryan M. Tira, Judge

RMT/jel

cc: Superior Court (Original +1)
DA
Jeana Longo, Esquire
Gary Weber, Esquire
Jennifer Linn, Esquire

