

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000156-2021
vs. :
BRIAN KEITH MOREHART, :
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 this court's judgment of sentence dated December 19, 2022, including its finding that Brian Keith Morehart (“Appellant”) is a Sexually Violent Predator (SVP)

By way of background, the Commonwealth charged Appellant with fourteen offenses arising out of his sexual contacts with an eight-year old juvenile during 2014. On June 28, 2022, Appellant entered a guilty plea to Count 1, Rape of a Child, a felony of the first degree, and Count 5, Aggravated Indecent Assault of the Child, a felony of the first degree.¹

On December 19, 2022, immediately prior to sentencing Appellant, the court conducted a hearing to determine whether Appellant was an SVP. Based on the testimony of Townsend Velkoff, the individual who conducted the assessment for the Sexual Offender Assessment Board, the court found that the Commonwealth met its burden and that Appellant met the statutory definition of an SVP. The court then sentenced Appellant in accordance

with the plea agreement to an aggregate term of 15 to 40 years' incarceration in a state correctional institution, consisting of 10 to 20 years on Count 1, Rape of a Child, and a consecutive term of 5 to 20 years on Count 5, Aggravated Indecent Assault of a Child.

On January 11, 2023, Appellant filed a notice of appeal. The court directed Appellant to file a concise statement of errors complained of on appeal. On January 31, 2023, Appellant filed his concise statement, which asserted the following sole issue:

- a. [Appellant] avers that the trial [c]ourt erred in determining that [Appellant] is a sexually violent predator.

Unfortunately, Appellant does not specify how or why he believes the court erred. Arguably, the vagueness of Appellant's concise statement renders this issue waived. *See Commonwealth v. Cannon*, 954 A.2d 1222, 1228 (Pa. Super. 2008)(vagueness of concise statement rendered the SVP issue waived).

Nevertheless, in an effort to permit this issue to be reviewed on the merits, the court will endeavor address the possible bases for Appellant's appeal based on the subjects explored in counsel's cross-examination of Mr. Velkoff's testimony, which seemed to focus on the 6-month requirement for a diagnosis of pedophilic disorder and the fact that Appellant only admitted to a single incident in his guilty plea. With respect to these subjects, the court notes that "[t]he statute does not require proof of a standard of diagnosis that is commonly found and/or accepted in a mental health diagnostic paradigm." *Commonwealth v. Dengler*, 586 Pa. 54, 890 A.2d 372, 383 (2005). Furthermore, "[t]he statute governing the SVP assessment does not limit the expert's consideration of information only to that admitted at trial or at the guilty plea proceedings." *Commonwealth v. Prendes*, 97 A.3d 337, 360 (Pa.

¹ 18 Pa. C.S.A. §§3121(c), 3125(b).

Super. 2014).

Mr. Velkoff testified regarding his assessment of the statutory factors and how he arrived at his conclusion that Appellant was an SVP. Transcript, 12/19/2022, at 3-20. The court found Mr. Velkoff's testimony credible and persuasive. *Id.* at 23-25, 31. Therefore, the evidence must be construed in the light most favorable to the Commonwealth as the prevailing party. *Commonwealth v. Meals*, 912 A.3d 213, 222 (Pa. 2006). The fact that one or more factors such as unusual cruelty is absent does not negate the SVP finding. *Id.* at 220.

DATE: 3/3/23

By The Court,

Nancy L. Butts, President Judge