IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	**No. CR-437-2019**
	:	
BRENT GETZ,	:	
Defendant	:	

Rebecca Elo, Esquire	Counsel for Commonwealth Attorney General's Office
John Waldron, Esquire	Counsel for Defendant
Rory Driscole, Esquire	Co-Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - January 17, 2023

The Defendant, Brent Getz, has appealed from our Order of November 21, 2022 denying the majority[1] of his Post-Sentence Motions filed on July 25, 2022. Therein, Getz moved for Judgment of Acquittal, a new Trial, a Dismissal and a Reconsideration of Sentence, among other requests.[2]

By Memorandum Opinion dated November 21, 2022, this Court explained the reasons for our decision on Defendant's Post-Sentencing Motions, a copy of which is attached for the convenience of the Court.

[1] This Court granted several aspects of Defendant's sentences which are not raised here on appeal.

[2] All of these requests, claims and sub-claims were addressed in the Memorandum Opinion.

Following Defendant's Notice of Appeal filed on December 19, 2022, this Court directed Defendant to file a Concise Statement of the Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On January 9, 2023, Defendant timely filed the requested Concise Statement.

Defendant's Concise Statement raises identical issues set forth in his Post-Sentence Motions and are therefore considered preserved for appeal. This Court addressed those issues in the November 21, 2022 Memorandum Opinion and refer the Superior Court to that Opinion to fulfill our responsibility under Pa.R.A.P. 1925(a).

BY THE COURT:

Joseph J. Matika, Judge

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MEMORANDUM OPINION

Matika, J. November 21 , 2022

Before the Court is Defendant's Post Sentence Motion in which he claims a plethora of reasons why either a judgment of acquittal should be granted, a new trial awarded, new sentences imposed, or the charges dismissed altogether. For the reasons stated in this Opinion, the Defendant's Post Sentence Motion shall be granted in part and denied in its majority.

FACTUAL AND PROCEDURAL BACKGROUND

On March 26, 2019, the Defendant, Brent R. Getz (hereinafter "Defendant" or "Getz") was charged with various criminal offenses by the Pennsylvania Office of Attorney General.[1] These charges

[1] The Criminal Complaint filed in this case included the charges of Rape of a Child (18 Pa.C.S. §3121(c)), Conspiracy to Commit Rape of a Child (18 Pa.C.S. §903), Involuntary Deviate Sexual Intercourse with a Child (18 Pa.C.S. §3123(b)), Conspiracy to Commit Involuntary Deviate Sexual Intercourse with a

stemmed from various sexual encounters with the victim, M.E. (hereinafter "the victim" or "M.E."; when the Defendant was between the ages of approximately 13 and 18 and the victim was between the ages of approximately 5 and 10 years. Once all charges were bound over after the finding of a *prima facie* case, Counsel for the Defendant and the Commonwealth engaged in the filing/defending of a number of Pre-Trial Motions and Petitions, two of which are the subjects of this Post-Sentencing Motion, namely parts VI and VIII.[2]

A trial by jury occurred from March 7, 2022, until March 10, 2022, when on the latter date, the jury returned guilty verdicts against Getz on the four (4) remaining charges[3], namely; Rape of a Child, Involuntary Sexual Deviate Intercourse, Aggravated Indecent Assault of a Child and Indecent Assault. Sentencing was deferred for purposes of a pre-sentence investigation and an S.O.A.B. (Sexual Offender Assessment Board) Evaluation. On July 15, 2022, Getz was sentenced to an aggregate sentence of sixteen (16) to thirty-two (32) years followed by three (3) years of State Parole

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Child (18 Pa.C.S. §903) Aggravated Indecent Assault of a Child (18 Pa.C.S. §3123(b)), Conspiracy to Commit Aggravated Indecent Assault of a Child (18 Pa.C.S. §903) and Indecent Assault (18 Pa.C.S. §3126(a)(7)).

[2] Part VI of the Post Sentencing Motion dealt with the Court denying the Defendant's Motion for Change of Venue and Part VIII dealt with the Court denying the Defendant the opportunity to cross examine both the victim and her mother, Melissa Matsick concerning criminal activity in which they were involved, for which the Defendant claimed they were given leniency in consideration for their testimony at trial.

[3] By Order of Court dated July 30, 2021, this Court dismissed the three (3) counts of Conspiracy as the statute of limitations had expired on those offenses.

supervision, *inter Alia*, Getz was directed to comply with all mandates of SORNA (Sexual Offender Registration and Notification Act) which include a lifetime registration.

Thereafter, on July 25, 2022, the Defendant filed a timely Post-Sentencing Motion. The Commonwealth filed a response to the Motion on August 16, 2022. A hearing/argument was originally scheduled for September 1, 2022, then continued until September 8, 2022, but ultimately cancelled by agreement of counsel allowing the Court to decide this motion on the record and filings already in the dockets along with any legal briefs/memorandums the parties wished to lodge. This motion is now ripe for disposition.

LEGAL DISCUSSION

Defendant's multifaceted Post-Sentence Motion seeks various forms of relief including requests for a judgment of acquittal, a new trial, a resentencing, and/or a dismissal of the charges. Specifically, as part of his request for post sentencing relief, Getz filed the following specific motions:

1. Motion for a Judgment of Acquittal based upon the insufficiency of the evidence as to all counts;
2. Motion for a New Trial based upon a claim that the verdicts were against the weight of the evidence;
3. Motion to Dismiss the Charges claiming that Getz should not have been tried as an adult for crimes committed as a juvenile;

4. Motion for a Reconsideration of the sentences imposed;

5. Motion for a New Trial due to "after discovered evidence;"

6. Motion to Exclude the Requirement that SORNA applies to him;

7. Motion for a New Trial based upon the Court denying a motion for a change of venue; and

8. Motion for a New Trial based upon the Court denying him the opportunity to cross examine both the victim and her mother regarding prior criminal activity they were each involved in *vis-à-vis* any expectation of leniency they expected in exchange for testimony and cooperation at trial.

I. Motion for Judgement of Acquittal - Sufficiency of the Evidence

Defendant contends here that the evidence is insufficient to sustain any of the guilty verdicts simply because the victim was not only unable to specify dates and times of the criminal conduct of the Defendant, but identified only a several year time period during which it occurred multiple times.

Pursuant to Pa.R.Crim.P. 606(A), "[A] defendant may challenge the sufficiency of the evidence to sustain a conviction of one or more of the defenses charged . . ." by filing "a Motion for Judgment of Acquittal Made After Sentencing Pursuant to Rule 720 B)" Pa.R.Crim.P. Rule 606(A)(6). For purposes of a challenge to this sufficiency of the evidence, the test requires viewing the evidence

in the light most favorable to the Commonwealth to determine whether it proves guilt beyond a reasonable doubt. *Commonwealth v. Klein*, 795 A.2d 424 (Pa. Super. Ct. 2002).

This Court first notes that the information filed in this matter by the Commonwealth claimed that the allegations made by the victim against Getz are alleged to have occurred "on or about 2005 through May 2012," (*See* Criminal Information filed on April 30, 2019). Getz then filed a "Motion for Bill of Particulars." At the hearing held on that motion the victim refined the time period. Getz argues here that pursuant to *Commonwealth v. Devlin*, 333 A.2d 888 (Pa. 1975), the charges against him should be dismissed as a violation of his 14th Amendment due process rights under the U.S. Constitution and Article 1, §9 of the Pennsylvania Constitution. The Supreme Court of Pennsylvania stated, "[W]e do not feel the Commonwealth's proof to the effect that the crime was committed on any single day within a fourteen-month period meets the 'sufficiency particularity' standard . . . to hold otherwise would violate the notions of fundamental fairness embedded in our legal process." *Comm. v. Devlin*, 333 A.2d 888, 891 (Pa. 1975). Getz proffers that the Court's decision in Devlin, supports a dismissal of these charges.

Getz' reliance, however, on *Devlin* is misplaced. First, as noted by the Commonwealth, it is appropriate to provide "broad latitude when attempting to fix the date of offenses which involve

a continuous course of criminal conduct." *See Commonwealth v. G.D.M., Sr.*, 926 A.2d 984, 990 (Pa. Super. Ct. 2007). This is especially true when dealing with a child victim, where those events are numerous and occur over any extended period of time. *Id* at 990. In the case *sub judice*, the victim testified as to a series of improper sexual incidents with Getz over several years. These acts occurred from between the starting age of 5 until almost 10. Further, at no time did Getz ever raise a possible alibi defense that could have heightened the obligation on the Commonwealth to provide even more specificity as to the dates and times these incidents occurred. Thus, this Court finds that the dates of offenses, as provided by the Commonwealth and as testified to by its witnesses were proven with sufficient specificity to support the jury's verdicts of guilty. As a result, the Defendant's Motion for Judgment of Acquittal will be denied.

II. <u>Motion for New Trial - Weight of Evidence</u>

"A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial: . . . (3) in a post-sentence motion." Pa.R.Crim.P. 607 (A)(3). Such a claim is addressed to the discretion of the trial court. *Commonwealth v. Diggs*, 949 A.2d 873 (Pa. Super. Ct. 2008). *Commonwealth v. Charron*, 902 A.2d 554 (Pa. Super. Ct. 2006). And while a motion such as this challenges the weight of the evidence, a court is not permitted to substitute its judgment for that of

the jury on the issue of credibility. *Commonwealth v. Morgan*, 913 A.2d 906 (Pa. Super. Ct. 2006); *Commonwealth v. DeJesus*, 860 A.2d 107 (Pa. Super. Ct. 2004). Thus, a trial court will only grant a motion for a new trial and reverse a jury's guilty verdict if that verdict is so contrary to the evidence that it "shocks one's sense of justice." *Diggs, supra* at 879, *Commonwealth v. Champney*, 832 A.2d 403, 408 (Pa. 2003).

In this case, the Commonwealth presented two eyewitnesses to some or all of the crimes charged. That testimony came from the victim herself and Getz' co-defendant, Greg Wagner. Getz argues that these two eyewitnesses gave wildly divergent accounts of what happened, when it happened and how often it happened. Admittedly, there were discrepancies in some of their testimony, however, the Court painstakingly made sure that the jury was provided with the appropriate instructions on the issue of weight and credibility of the testimony of various witnesses, and how to consider and address the conflicts in that testimony. Additionally, notwithstanding corroborating testimony, the Court provided instruction to the jury on their ability to convict Getz on the victim's uncorroborated testimony should they discount or disbelieve all other testimony.

This Court's review of the evidence presented in this case supports the verdicts of the jury and was not so "incredible" to shock any one's sense of justice. This Court believes that the

jury took their role as "Judges of the Fact" seriously and deliberately and rendered verdicts that justice dictated. This Court sees nothing in those verdicts to warrant a new trial.

III. Motion to Dismiss - Lack of Adult Court Supervision

Getz next contends that the Court should dismiss all charges as, even if these events are true, they were committed when Getz was a juvenile and not an adult.[4]

Notwithstanding Getz' argument herein, some crimes did occur after he reached majority age. At trial, there was testimony that the Defendant, Brent Getz was born on October 28, 1991, which means he would have attained the age of eighteen (18) on October 28, 2009. While there may have been a time, as noted in Defendant's brief, that the victim herself may not have known if Getz was ever over the age of 18 during any of these incidents, she indirectly confirmed that he was eighteen during the following colloquy on cross examination by Getz' counsel:

> Q: Okay. You said this stopped in 2010 or 2009, because you were nine or ten then, right?
> A: It was 2010. May birthday is in May. So I had not turned ten yet.
> Q: You had not turned ten yet?
> A: No. My birthday was in May.
> Q: So the last time was in 2010, sometime between January 1, 2010 to May 27, 2010?

[4] Counsel readily admitted that he was raising and preserving this issue notwithstanding the Superior Court decision in *Commonwealth v. Armolt*, 348 A.3d 504 (Pa. Super. Ct. 2021). The Supreme Court granted allocator and has since heard argument on this exact issue on September 15, 2022, however, no further decision has been rendered.

A: Yes.[5]

Consequently, this Court had adult jurisdiction over this case, Defendant's Motion to Dismiss the charges is denied.

IV. Motion for Reconsideration of Sentence

Getz next claims that the Court should resentence him on the four counts on which the jury convicted him claiming a number of errors or abuses by the Court, individually or in the aggregate.

In his motion requesting resentencing, Getz outlines twelve reasons (identified in paragraph 21, A-L) why the aggregate sentence is excessive. In the brief lodged in support of this motion, Getz simply restates claims without any supporting caselaw. Nonetheless, this Court will respond to each *seriatim*.

A. Inconsistent with Sentencing Code/Contrary to Fundamental Norms Which Underlie the sentencing Process

Getz does not explain nor expound upon this generalized claim in either his motion or his brief. Our review of the sentences, in the aggregate with all conditions appurtenant thereto are not inconsistent with the sentencing code nor are they contrary to any norms underlying the sentencing process.

B. Abuse of Discretion/Unreasonable and Excessive

Getz was charged and convicted of various sex related offenses for conduct which occurred multiple times with the victim. Thus,

[5] Notes of testimony, March 8, 2022 Trial, pp. 63-64.

it is appropriate for a court to impose sentences that are within the standard sentencing guideline range, involve mandatory sentences and run consecutive. The sentences imposed upon Getz were in the standard sentencing guideline ranges (with the exception of the mandatory sentence imposed on the IDSI[6] offense.) A sentence imposed within the standard sentencing guidelines is considered an appropriate sentence. *Commonwealth v. Moury*, 992 A.2d 162 (Pa. Super. Ct. 2010). Additionally, it is within the authority and discretion of the court to impose consecutive sentences. *Commonwealth v. Austin*, 68 A.3d 798, 808 (Pa. Super. Ct. 2013). There is nothing inappropriate with the sentences imposed here, as the consecutive sentences were imposed on different crimes occurring at different points in time. Therefore, this Court finds no abuse of discretion in these sentences either singularly or in the aggregate, nor does it find them to be excessive or manifestly unreasonable.

C. Getz' Rehabilitative Needs

Pursuant to 42 Pa.C.S.A. §9721(b), a court shall consider the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the Defendant. *Commonwealth v. Swope*, 123 A.3d 333 (Pa. Super. Ct. 2015).

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[6] Involuntary Deviate Sexual Intercourse (18 Pa.C.S.A. §3123(b)).

Getz denied any wrongdoing at trial. Getz did not testify at his sentencing hearing. Getz did not avail himself to speak to Dr. Mary Muscari, the representative of the Sexual Offender Assessment Board. At sentencing, his counsel did not even claim that any sentence should take into consideration the rehabilitative needs of the Defendant.

Notwithstanding, the sentence imposed, albeit consecutive in some respects, were within the standard range of the sentencing guidelines or where a mandatory was required to be imposed. This Court did consider the Defendant's "rehabilitative needs" in fashioning the state sentences and the likelihood of whether a defendant in denial will ever truly be rehabilitated.[7] This Court likewise balanced this factor against the other factors of protecting the public and that of how the gravity of the offenses impacted the victim. While there was reference made to Dr. Frank Datillio's psychological evaluation of the Defendant, an opinion of which suggests Getz is at low risk to re-offend[8], the other factors mitigate against any other type or shorter length of the sentences. Getz is a convicted child rapist of a victim who expressed significant anger and resentment towards Getz in her

[7] At the Sentencing hearing, this Court noted that prior to imposition of the sentences, it considered, among other things, the pre-sentence investigation which included the two sexual offender assessments. Included therein, were preferences to the rehabilitative needs of the Defendant.

[8] This is confirmed in some respect by the ORAS results attached to the PSI.

victim impact statement noting that "the hurt that I feel never goes away." Clearly, rehabilitative needs were considered but are outweighed by these other factors.

D. Mitigating Factors

Getz argued for mitigation of his sentences. In support of this request, he suggested a number of issues that should allow for the Court to sentence Getz in the mitigated ranges, namely, Getz' lack of any pedophilic or other sexual disorders, his education and work experience as a police officer, the various character reference letters, various newspaper articles, awards and citations that proclaim or evidence his work as a police officer and his young age at the time of the commission of these offenses.

Conversely, the Commonwealth argued that Getz' career as a police officer was not as exemplary as he made it out to be.[9] Additionally, Getz meets the diagnostic criteria for an unspecified personality disorder, turbulent type with histrionic, narcissistic, and compulsive personality features. This Court further noted that "even if I accepted everything regarding Mr. Getz' exemplary police record without taking into consideration

[9] Agent McGlynn, the affiant in this case testified that he conducted an investigation into Getz' police career. During that investigation, McGlynn learned that Getz was fired from one department (Palmerton), and resigned from four others in lieu of termination. Agent McGlynn also testified to watching a security camera video which purported to show Getz receiving oral sex while on duty in the Franklin Township Police Station. Lastly, McGlynn testified as to questionable conduct on the part of Getz while working for McAdoo Borough.

anything that the Commonwealth presented contrary to that, I do not find that to be a basis to mitigate a sentence . . . ." Even if the Court discounted this Commonwealth evidence, which occurred post-crime, there is still an insufficient basis to sentence the Defendant in any mitigated range.

E. Reasons for Sentence

Getz next argues that "[T]he Sentencing Court did not adequately explain its reasons for the sentence (sic)." Beyond this single sentence in the motion and absent any expansion of or argument in support in the brief, this Court cannot glean what Getz means in this assertion. At the time of sentencing, this Court noted:

> "The basis for these sentences are as follows:
>
> Number one, as I noted, these offenses have had a serious and long-lasting effect and will have a long-lasting effect on the psyche of the victim.
>
> These events occurred over a period of time on multiple occasions with the victim.
>
> Any lesser sentence would depreciate the seriousness of these offenses. And this sends a message not only to you, Mr. Getz, but to the community as a whole that this type of conduct will not be condoned here in this courtroom or anywhere else in Carbon County.
>
> I believe that these sentences also fall within either the standard guidelines or the mandatory guidelines or requirements, as

promulgated by the State Commission on Sentencing and the applicable caselaw."[10]

Additionally, the requirement of placing the reasons for imposing particular sentences is satisfied by reference to consideration of the pre-sentence investigation report (hereinafter "PSI").[11] *Commonwealth v. Edwards*, 194 A.3d 625 (Pa. Super. Ct. 2018); *appeal denied*, 202 A.3d 41 (Pa. 2019).

Thus, this Court feels it adequately explained, expressly and impliedly, the reasons for the sentences.

F. Agent McGlynn's Testimony

At the time of sentencing, Getz attempted to establish his good character and exemplary record as a police officer in support of his claim that he should be sentenced to low end standard range sentences or mitigated sentences. The Commonwealth, in order to rebut these claims presented by Getz, presented McGlynn to testify regarding an investigation he conducted into Getz' time as a police officer over the years. This investigation uncovered conduct committed by Getz while a police officer to refute these claims. Two incidents in particular suggested that Getz' engage in conduct "unbecoming" of a police officer. The first involved an incident while Getz was employed as a police officer in Franklin Township.

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[10] Notes of Testimony, Sentencing Hearing pp. 48-49.

[11] On several occasions, the Court made reference to not only what was said by the parties at time of sentencing, but the fact that we received and reviewed the PSI prior to sentencing of the Defendant.

McGlynn testified to watching a security camera video which purports to show that Getz was the recipient of oral sex from a woman who was no longer "on screen." The second involves Getz' employment in McAdoo Borough. McGlynn testified that there were complaints lodged by young women who were the subject of vehicle stops made by Getz. During the course of these stops, the young women claimed Getz asked for a date with at least one of them.

Pursuant to Pa.R.Crim.P. 704(c)(1), "[A]t the time of sentencing, the Judge . . . shall afford counsel for both parties the opportunity to present information and argument relative to sentencing." Here, Getz attempted to show the Court that he was of good character and an exemplary police officer throughout his career. The Commonwealth had the right to rebut that point, and with McGlynn's testimony, it succeeded.

G. Victim Relocation Expenses

Getz next argues that the Court erred in ordering that Getz be responsible to pay restitution of $1,000.00 to the Victims Compensation Assistance Program (hereinafter "VCAP") for monies paid to the victim to relocate from the residence she shared with her uncle, Greg Wagner, her other perpetrator. This Court tends to agree with Getz for a number of reasons. Notwithstanding the Commonwealth's argument that victimization at the hands of Getz and Wagner occurred in the home the victim removed herself from, there was no evidence presented that there was any casual

connection between Getz' conduct and the timing of the victim's vacating of that residence. Further, at the time of Wagner's sentencing he was ordered to pay this restitution. Since the abuse of this victim by Wagner continued beyond Getz' abuse of this victim, it can be presumed that Wagner's abuse ultimately caused the victim to eventually leave this residence sometime later.

H. Consecutive Period of Probation Pursuant to 42 Pa.C.S.A. §9718.5

Getz argues that the imposition of a consecutive period of probation pursuant to 42 Pa.C.S.A. § 9718.5, is an illegal, *ex post facto* penalty which should be vacated. Getz does not explain nor expound upon this isolated claim in either his motion or his brief. The Defendant failed to produce any precedent to demonstrate the Court made an error when adding a probationary tail to his sentence. Defendant did not elaborate what offense he was referring to and did not provide anything beyond one sentence claiming its an *ex post facto* penalty. The Court finding no binding precent on this issue declines to attempt to decipher the direction Getz requests the Court to go. Our review of the sentences reflect the correct punishment warranted under the crimes Getz has been convicted of.

I. Aggregate Mitigated Range Sentences

Previously, this Court addressed the reasons and rationale for not sentencing the Defendant to any mitigated range sentences therefore, it is not necessary to explain those reasons again here.

J. Disproportionate Sentences

Getz next argues that his aggregate sentence of 16 to 32 years is disproportionate to the 10 to 20 years imposed on his co-perpetrator, Greg Wagner, given that Wagner's abuse of the victim involved significantly more violations of the law over a longer period of time than that of Getz. This Court agrees that if all else was equal, Getz would be correct, however, there are dissimilarities in these two cases that justify the 16-32 year sentence. First, Wagner's aggregate sentence was imposed on one Count of Rape of a Child and one Count of Sexual Exploitation of Children; Getz' was on three charges.[12] Secondly, Wagner's sentence was an agreed upon concurrent sentencing scheme based upon the entry of a guilty plea and his agreement to testify against Getz. Getz maintained his innocence, choosing instead to go to trial where the victim was forced to relive these events. No agreement for sentencing existed for Getz.

As each case is sentenced based upon various factors and considerations unique within themselves, this Court finds no

[12] The charge of Aggravated Indecent Assault of a Child merged for sentencing purposes with the sentence imposed on the charge of Rape of a Child.

discernible error or abuse in its decision to sentence Getz in the manner in which it did.

K. Sentencing on Rape of a Child and IDSI Conviction not Supported by Testimony at Trial

As previously noted in our discussion under parts I and II, the jury's verdicts was supported by sufficient evidence provided by the Commonwealth and reached to such a degree that it will not be disturbed by an inapposite post-sentence ruling. Thus, sentencing on both of these charges stands.

L. Time Credit

Lastly, as it related to the issue of reconsideration of the sentences, Getz asserts that up until the time of sentence he should have been credited "at least" 230 days instead of the 196 days credit given to him by the Court.[13] At no time does Getz ever explain how he ever arrived at "at least 230 days" credit. Further, if he believed he was entitled to more than the 196 days given to him, he should have known the exact finite number of days he spent incarcerated. Without more, our decision to credit him 196 days stands.

V. After Discovered Evidence

Getz next argues that he is entitled to a new trial on what he refers to as "after discovered evidence," to wit: that the

[13] This credit is derived from the PSI.

victim received $1,000.00 from the victim compensation assistance program for relocation expenses from the home where she resided with her uncle, the other perpetrator, Greg Wagner. This move occurred in 2019 and Getz alleges he was unaware of the existence of this payment before trial as it was "confidential."

> The test for granting a new trial on a criminal conviction based on after-discovered evidence required defendant to prove the evidence could not have been obtained prior to the end of the trial by the exercise of reasonable diligence, the evidence is not merely corroborative or cumulative, it will not be used solely to impeach the credibility of a witness, and it would likely result in a different verdict if a new trial were granted. The test is conjunctive and the defendant must prove each factor by a preponderance of the evidence in order for a new trial to be warranted. *Commonwealth v. Woeber*, 174 A.3d 1096 (Pa. Super. Ct. 2017).

The Court scheduled a hearing on the entire post-sentencing motion originally for September 1, 2022, but continued it at the Defendant's request to September 8, 2022. At that time, counsel for the Defendant had indicated that they would like to simply submit argument on briefs. The Court obliged. Thus, no testimony was presented nor record created. Thus, without supporting evidence, Getz cannot and did not satisfy his burden on this matter. Further, Getz argues that had he been made more aware of this information prior to trial, he would have been able to cross-examine the victim about these monies being the motivation behind her testifying in this case. This is an absolutely dubious argument which insults the intelligence of this victim.

First of all, Getz' actions culminated in an investigation, the filing of charges and the holding of a preliminary hearing long before the victim ever received these monies. To say that she was motivated to continue to pursue a criminal action against Getz for Rape because of the argument of $1,000.00 for moving expenses under these circumstances is incredulous.

VI. A. Application for SORNA

Getz next argues that the Commonwealth has failed to prove that he committed sexually violent offenses on or after his eighteenth (18) birthday and therefore, requiring Getz to register as a sexual offender for crimes that were committed as a juvenile constitutes cruel and unusual punishment and violates his due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 9 of the Pennsylvania Constitution. Subsequently, Getz requests the Court to vacate the part of the sentence requiring Getz to register as a sex offender under the Sex Offender Registration and Notification Act (hereinafter "SORNA").

A condition of this Court's sentencing of Defendant required him to register as a sexual offender for life, however it can be construed that it was done pursuant to Subchapter H, Registration of Sexual Offender.[14] 42 Pa.C.S.A. §9799.10-9799.42. The Court

[14] While the Court did not explicitly say that the Defendant was subject to Subchapter H requirements, the "Court Notification Pursuant to 42 Pa.C.S.A.

agrees with Getz's argument that he is not required to register under Subchapter H, but not for the reasons he claimed, but, because the last offense occurred before December 20, 2012. Subchapter H is limited in scope, and is only applicable to "individuals who committed sexually violent offense on or after December 20, 2012." 42 Pa.C.S.A. §9799.11.

Further, the Commonwealth agrees that the correct Subchapter for him to register under is Subchapter I, which applies to individuals "convicted of a sexually violent offense committed on or after April 22, 1996, but before December 20, 2012." 42 Pa.C.S.A. §9799.52.

[15] The Court acknowledges that insofar as it made reference to the Defendant complying with the requirements of SORNA in a

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§9799.23 document and the "Sentencing Colloquy - Walsh Law Offense" document reference various parts of Chapter H of SORNA.

[15] Under Subchapter I of SORNA II, Getz is required to register for the remainder of his life. The statute states in relevant part:

> (b Lifetime registration.--The following individuals shall be subject to lifetime registration:
>
> (2) Individuals convicted:
> (i)(A) in this Commonwealth of the following offenses, if committed on or after April 22, 1996, but before December 20, 2012:
> 18 Pa.C.S. § 3121 (relating to rape);
> 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
>
> (3) Sexually violent predators.
>
> (4) An individual who is considered to be a sexually violent predator under section 9799.56(b) or who is otherwise required to register for life under section 9799.56(b), if the sexual offense which is the basis for the consideration or requirement for which the individual was convicted was committed, or for which registration with the Pennsylvania State Police under a former

general sense, the references made at the time of sentencing to the aforementioned documents suggest sentencing pursuant to Subchapter "H" and not Subchapter "I". Accordingly, this Court will grant this part of Defendant's motion insofar as correcting the Subchapter of SORNA Defendant is required to register under.[16]

Thus, under 42 Pa.C.S.A. §9799.55(b), individuals convicted on Rape (18 Pa.C.S. §3121), Involuntary Sexual Deviate Intercourse (18 Pa.C.S. §3123) or a Aggravated Indecent Assault (18 Pa.C.S. §3125) are subject to a lifetime registration. 42 Pa.C.S.A. §9799.55(b)(2)(i)(A). This registration requirement under Subchapter I is the same as that under the erroneously imposed registration requirement section under Subchapter H.[17]

Notwithstanding the lifetime requirement, a defendant, pursuant to 42 Pa.C.S.A. §9799.59(b)

> "may be exempt from the requirement to appear on the publicly accessible Internet website maintained by the Pennsylvania State Police and all other requirements of this subchapter if:

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sexual offender registration law of this Commonwealth was required, on or after April 22, 1996, but before December 20, 2012. 42 Pa.C.S.A. §9799.52.

[16] *See Commonwealth v. Hopper*, 237 A.3d 1064 (Pa. Super. Ct. 2020)(Unpublished Opinion in which the Superior Court was confronted with a Defendant who was sentenced under the incorrect Subchapter of SORNA. Defendant was sentenced under Subchapter H by mistake and the correct subchapter was Subchapter I. The Superior Court vacated the "portion of the judgment of sentence regarding Appellant's sex offender registration and reporting requirements under Subchapter H" and "remand[ed] the case to the trial court to impose the Subchapter I registration and reporting requirements of SORNA and to instruct Appellant on those requirements." *Commonwealth v. Hopper*, 237 A.3d 1064 (Pa. Super. Ct. 2020.)

[17] 42 Pa.C.S.A. §9799.19.

> (1) At least 25 years have elapsed prior to filing a petition with the sentencing court to be exempt from the requirements of this subchapter, during which time the petitioner has not been convicted in this Commonwealth or any other jurisdiction or foreign country of an offense punishable by imprisonment of more than one year, or the petitioner's release from custody following the petitioner's most recent conviction or an offense, whichever is later."

See 42 Pa.C.S.A. §9799.59(b)

These requirements are less stringent than those imposed upon a Defendant under Subchapter H.

Additionally, pursuant to 42 Pa.C.S.A. §9766.60(b), a defendant subject to Subchapter I, shall register annually as opposed to the more stringent quarterly requirement under Subchapter H, 42 Pa.C.S.A. §9799.15(e).

Since references to Subchapter H as opposed to Subchapter I imparts an illegal sentence, in part, under these circumstances it is necessary to correct that error. As neither the *Hopper Court*, nor the court in *Commonwealth v. Alston*, 212 A.3d 526 (Pa. Super. 2019) suggested a new sentencing proceeding, this Court will comply with the requirements to not only correct this error must in conformity with *Hopper* and *Alston* this Court will notify the Defendant accordingly. [8]

VI. B. Motion for Leave to File Additional Post-Sentence Motions

[8] The *Alston* court simply remanded "the case to the trial court to instruct appellant on his proper registration and reporting requirements" *Comm. v. Alston*, 212 A.3d 526, 530 (Pa. Super. 2019). In *Hopper*, the court remanded the case "for the trial court to correct its order and notify appellant of his registration requirements under Subchapter I." *Comm. v. Hopper*, 237 A.3d 1064 (Pa. Super. Ct. 2020)

Getz requested leave to amend or supplement these present motions should counsel's investigation uncover relevant information or changes in the law. Since no such motion for leave has been filed prior to the disposition of the post-sentencing motion, this request is denied.

VI. C. Motion for New Trial - Change of Venue

On July 15, 2019, Getz filed his Omnibus Pre-Trial Motion. Included in that motion was a request for a change of venue or *venire*, the basis for which was that Getz was a police chief in a municipality in Carbon County, a small sixth class county in this Commonwealth. Getz argued that the pre-trial publicity of this case in the media precluded him from being able to pick a jury and have a fair trial. After a hearing on that motion, this Court denied the request. In the footnote to that decision this Court noted:

> "While Getz has presented some evidence of media coverage about his case, he has failed to identify how, if at all, it may have reached a jury pool which has not even been summoned, let alone how it has impacted that potential jury pool. While these numbers may not lie for their inherent relevance, they do not add up to suggest that there are not potential jurors who would not be affected by knowledge of this case. That may be an issue to raise if a fair and impartial jury cannot be empaneled at a later date."[10]

See relevant portion of January 10, 2020 Order of Court.

See Footnote 4 of November 10, 2020 Order of Court for full discussion.

Jury selection was scheduled for March 7, 2022. A total of 104 potential jurors were summoned, qualified and appeared for this selection. Of those 104 potential jurors, 30 were stricken for cause due to the nature of the charges and 6 were stricken because of their knowledge of the case/parties and did not feel they could be fair and impartial. Of the remainder 68 jurors, 6 others were stricken for cause for other reasons. Thus, prior to exercising preemptory challenges there were 62 potential jurors remaining. A panel of 12 principal and 2 alternates were chosen. At no time during *voir dire* or after, did Getz raise any claim of being unable to obtain a fair and impartial jury nor renew his request for a change of venue or *venire*.

VII. Motion for New Trial - Prelusion of Cross Examination of Irrelevant and Inadmissible Criminal Activity

Lastly, Getz takes issue with the Court granting the Commonwealth's Motion in Limine prohibiting Getz from cross-examining both the victim and her mother, Melissa Matsick, regarding uncharged conduct (M.E.) and placement into the Accelerated Rehabilitative Disposition Program (M.M.).

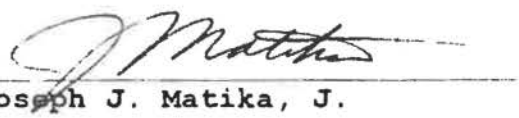
As noted by the Commonwealth in its motion, Pa.R.E. 607(b) allows a witness's credibility to be impeached by any relevant evidence, except as otherwise provided by statutes or the Rules of Evidence. The evidence which the Commonwealth sought to preclude and Getz sought to place into the record, involved the ARD

disposition or criminal conduct of Matsick and the uncharged conduct of the victim. Getz ultimately argued that the purpose for which he sought to elicit this testimony was to show that either or both were testifying against him in exchange for leniency and/or a more favorable outcome in regards to their respective cases. At the hearing this Court held on these issues, both witnesses testified that they did not expect anything with regard to any charged or uncharged conduct in exchange for testifying against Getz. Accordingly, this Court granted the Commonwealth's Motion and precluded Getz from cross-examining these witnesses on those issues and rightfully so.

CONCLUSION

For the reasons stated in this Opinion, this Court will grant in part, Getz' issue with ordering him to pay restitution to VCAP in the amount of $1,000.00. Further, Getz will not be required to comply with Subchapter H of SORNA. In granting this portion of his post-sentence motion however, he is not fully exonerated from SORNA requirements. By separate Order, this Court will be notifying him of these requirements under Subchapter I of SORNA.

BY THE COURT:



Joseph J. Matika, J.