

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JOSEPH KULP, III,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2707 EDA 2014

Appeal from the Judgment of Sentence July 28, 2014
in the Court of Common Pleas of Carbon County
Criminal Division at No.: CP-13-CR-0000750-2012;
CP-13-CR-0000754-2012

BEFORE: BOWES, J., JENKINS, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED APRIL 21, 2015

Appellant, Joseph Kulp, III, appeals from the judgment of sentence imposed following a jury conviction of two counts each of indecent assault without consent and indecent assault of a person less than sixteen years of age, defendant at least four years older.¹ Specifically, he challenges his classification as a sexually violent predator (SVP). We affirm on the basis of the trial court opinion.

The charges in this matter arose from two separate incidents over one year with one minor victim. In its October 27, 2014 opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 3126(a)(1) and (8), respectively.

case. (**See** Trial Court Opinion, 10/27/14, at 1-6). Therefore, we have no need to restate them here.

Appellant raises the following issues for our review:

[1]. Whether the [t]rial [c]ourt erred by considering the [s]exual [o]ffender[] report provided by Mary E. Muscari as this report was provided well beyond the time limits afforded under 42 Pa.C.S.A. § 9799.24?

[2]. Whether the [t]rial [c]ourt erred in determining the Commonwealth's evidence was sufficient to classify [Appellant] as a sexually violent predator?

[3]. Whether the statutory language of Sex Offender Registration and Notification Act ("SORNA"), 42 Pa.C.S.A. § 9799.10 et. seq, as it applies to [Appellant] is unconstitutionally vague and overbroad?

(Appellant's Brief, at 4).

Appellant first challenges Dr. Muscari's assessment as untimely under section 9799.24. Therefore, he raises a question of statutory construction. It is well-settled that "[b]ecause statutory interpretation is a question of law, our standard of review is *de novo*, and our scope of review is plenary." **Commonwealth v. Stotelmyer**, 2015 WL 668038, at *3 (Pa. Feb. 17, 2015).

Appellant's second claim raises "[q]uestions of evidentiary sufficiency[, which] present questions of law; thus, our standard of review is *de novo* and our scope of review is plenary. In conducting sufficiency review, we must consider the evidence in the light most favorable to the Commonwealth,

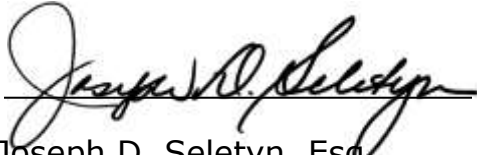
which prevailed upon the issue at trial.” ***Commonwealth v. Meals***, 912 A.2d 213, 218 (Pa. 2006) (citations and internal quotation marks omitted).

In Appellant’s third issue, he challenges the constitutionality of a statute. Therefore, “[a]s the constitutionality of a statute is a pure question of law, our standard of review is *de novo* and our scope of review is plenary.” ***Commonwealth v. Omar***, 981 A.2d 179, 185 (Pa. 2009) (citation omitted).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court, we conclude that there is no merit to Appellant’s first two issues and his third issue is waived. The trial court properly disposes of all of the questions presented. (**See** Trial Ct. Op., at 7-16) (finding: (1) consideration of late sexual offender report was proper where Appellant had the SOAB report over ten months before hearing and therefore was not prejudiced; (2) Commonwealth presented clear and convincing evidence sufficient to classify Appellant as SVP; and (3) Appellant’s third issue too vague for meaningful review). We note that contrary to the trial court’s conclusion that Appellant’s third issue is meritless, a vague claim or argument that impedes review is waived. ***See Commonwealth v. Hansley***, 24 A.3d 410, 4151 (Pa. Super. 2011), *appeal denied*, 32 A.3d 1275 (Pa. 2011). Accordingly, we affirm on the basis of the trial court’s opinion (except for the conclusion that Appellant’s third issue is meritless).

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/21/2015