

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :

v. : **CP-14-CR-0000790-2007**
:
JIMMIE ROGER FIELDS, :
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 dismissal of Appellant’s Motion for Habeas Corpus on April 19, 2024.

Jimmie Fields (hereinafter “Fields”) filed a document entitled Petition for Writ of Habeas Corpus Pursuant to 42 Pa. C.S.A. §6503(a). In his Petition, Fields asserted three issues: (1) his conviction and sentence were illegal as the statute at the time of his conviction was unconstitutional; (2) his conviction and sentence were illegal due to mandatory minimums being unconstitutional; and (3) his Sexually Violent Predator (SVP) status was struck down as unconstitutional. The first two claims of this filing were treated as a PCRA¹, found to be his third and served him with the required notice dated January 23, 2024 under Pa. R. Crim. P. 907 notifying him of the court’s intent to dismiss his petition. The third claim was denied based on the Pennsylvania Supreme Court’s decision in *Commonwealth v. Lacombe*, 234 A.3d 602 (Pa. 2020).

¹ Fields asserted that he was entitled to habeas corpus relief pursuant to 42 Pa. C.S.A. §6503. Section 6503 states:

(a) General rule.--Except as provided in subsection (b), an application for habeas corpus to inquire into the cause of detention may be brought by or on behalf of any person restrained of his liberty within this Commonwealth under any pretense whatsoever.

(b) Exception.--Where a person is restrained by virtue of sentence after conviction for a criminal offense, the writ of habeas corpus shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law.

Fields then filed an Objection to this court’s order alleging that the Court erred in considering his petition as an untimely PCRA and again challenging his SVP designation, conviction and sentence. The Court found that contrary to Petitioner’s assertions, *Commonwealth v. Neiman*, 84 A.3d 603 (Pa. 2013) does not render his SVP designation, conviction and sentence unconstitutional. In *Commonwealth v. Barger*, No. 440 WDA 2022, 297 A.3d 745, 2023 WL 3068632 (Pa. Super. 04/25/2023)(hereinafter *Barger II*), the appellant made arguments similar to those made by Petitioner. The Superior Court rejected the appellant’s claim based on *Neiman* as frivolous. *Id.* at *3. This Court recognizes that *Barger II* is a non-precedential opinion, but the court relied on it for its persuasive value. *See* Pa. R.A.P. 126(b). The court addressed those objections in greater detail in its subsequent Opinion and Order dated April 11, 2024.

On May 8, 2024, Fields requested an extension of time to file his appeal to the Superior Court. Without alleging fraud or a breakdown in court operations, the court found that it was without jurisdiction to grant his request.² Fields then submitted an untimely Notice of Appeal dated June 21, 2024, which was received by the Clerk of Courts on July 1, 2024.³ Fields then submitted his Concise Statement dated July 20, 2024 received by the Clerk of Courts on July 25, 2024.

In his Concise Statement, Fields stated the following:

² The time limits for filing an appeal are jurisdictional, and this court lacks the authority to extend the 30-day period for filing a notice of appeal. *See* Pa. R.A.P. 105(b); *Commonwealth v. Smith*, 501 A.2d 273, 275 (Pa. Super. 1985)(“A court may not enlarge the time for filing a notice of appeal as a matter of grace or indulgence.”); *State Farm Mut. Auto. Ins. Co. v. Schultz*, 421 A.2d 1224, 1225 (Pa. Super. 1980)(neither the lower court nor the Superior Court may enlarge the time for filing the notice of appeal).

³ Field’s appeal is untimely. *See* Pa. R.A.P. 903(a).

1. The [b]ench [t]rial [j]udge was in error and abused his discretion in the assignment of SVP status to [Fields] and enhancing [Fields'] sentence without having investigated [Fields'] background or using an independent assessor or obtaining a Pre-Sentence Investigation Report. [Fields] had a prior Sexual Offense of Statutory Rape from 15 years prior; however[,] the victim had misrepresented her age; consented to intercourse; and suffered neither physical nor psychological wounding. [Fields,] although possessing a low I.Q.[,] is not predisposed to committing violent sexual offenses.

2. [Fields] does not fit the repeat offender status of one who is a Tier-1 or Tier-2 second offender; as per SORNA guideline the instant offense which is the subject matter of this appeal was only relative to the offense of 15 years prior by the fact it involved sexual conduct. A low I.Q. is no indicator that one will be a sexually violent predator in the future!

3. [Fields'] objection(s) to Registration in compliance with S.O.R.N.A. is hereby withdrawn; since it is a consequence of the current conviction; that doesn't affect appellant currently!

Initially, the court notes issues with the timeliness of Fields' appeal and his preservation of his claims on appeal. Fields' appeal is likely untimely and subject to being quashed. The Court denied Fields' petition on April 11, 2024. On May 7, 2024, Fields signed and dated his request for an extension to perfect his appeal, which the Lycoming County Clerk of Courts docketed on May 13, 2024. The Court does not know why Fields did not simply prepare his notice of appeal and submit it at that time. The Court also does not know when Fields provided his request for an extension to prison authorities for mailing. The Court takes no position on whether the request for extension can or should be considered as a timely notice of appeal. On July 1, 2024, the Lycoming County Clerk of Courts docketed Fields' notice of appeal which was dated June 21, 2024. Both dates are more than 30 days after April 11, 2024. Therefore, Fields' appeal is likely untimely and subject to being quashed.

Even if the Superior Court does not quash this appeal, Fields has not properly preserved any issues for appeal. Fields did not appeal any issues that the Court addressed when it denied

his petition. Instead, Fields has asserted new issues in his Concise Statement. These issues were not asserted in his petition and were not presented to the court. “Issues not raised in the trial court are waived and cannot be asserted for the first time on appeal.” Pa. R.A.P. 302(a). Therefore, the issues that Fields asserted in his Concise Statement are waived.

Even if the issues are not waived, Fields’ issues are untimely and/or lack merit.

In his first issue, Fields contends that the trial court erred and abused its discretion in designating Fields as a Sexually Violent Predator (SVP) and enhancing his sentence without investigating Fields’ background, using an independent assessor or obtaining a PSI. He also contends that his prior conviction and low I.Q. do not make him predisposed to committing violent sexual offenses.

If Fields wished to challenge his SVP designation, he needed to file a timely appeal after his post-trial motion was denied. He cannot wait over 16 years to make such a challenge. The court recognizes that the PCRA is not the exclusive manner of challenging Pennsylvania’s registration statutes or one’s registration requirements under those statutes; instead, other filings are permitted. However, this does not mean that a petitioner can wait and file his challenge any time he wishes. Notably, he has not asserted his claims in the context of changes to his registration requirements due to new statutes; rather, he is challenging events that occurred in 2008.

Fields also misconstrues the court’s role in the assessment process. The court ordered an assessment by a member of the Sexual Offender Assessment Board (SOAB) as required by statute. At the time of Fields conviction, SVP hearing and sentencing, that statute was 42 Pa. C.S. §9795.4. With respect to individuals like Fields whose conviction occurred prior to

December 20, 2012, that statute is now 42 Pa. C.S. §9799.58. The fact that the citation for the statute changed does not matter because the statute has consistently stated the following:

The individual and district attorney shall be given notice of the hearing and an opportunity to be heard, the right to call witnesses, the right to call expert witnesses and the right to cross-examine witnesses. In addition, the individual shall have the right to counsel and to have a lawyer appointed to represent the individual if he or she cannot afford one. ***If the individual requests another expert assessment***, the individual shall provide a copy of the expert assessment to the district attorney prior to the hearing.

42 Pa. C.S. §9799.58(e)(2)(emphasis added). If Fields disagreed with the SOAB assessment and wanted an “independent” assessment, it was incumbent upon him or his counsel to request one. If a request had been made, the court would have granted it.

It is well-established that indigent defendants have a right to access the same resources as non-indigent defendants in criminal proceedings. *Commonwealth v. Curnutte*, 871 A.2d 839, 842 (Pa. Super. 2005). The state has an “affirmative duty to furnish indigent defendants the same protections accorded those financially able to obtain them.” *Commonwealth v. Sweeney*, 533 A.2d 473, 480 (Pa. Super. 1987). Procedural due process guarantees that a defendant has the right to present competent evidence in his defense, and the state must ensure that an indigent defendant has fair opportunity to present his defense. *Ake v. Oklahoma*, 470 U.S. 68, 76, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985). *Commonwealth v. Hardy*, No. 1353 WDA 2022, 2024 WL 2749693, at *8 (Pa. Super. Ct. May 29, 2024), *reargument denied* (July 30, 2024). Pennsylvania’s registration statutes provide for an additional assessment if the defendant requests it. *See* 42 Pa. C.S. §§9799.24, 9799.58.⁴ The law does not require the sentencing court to request an additional assessor without a request from the defendant or his counsel. There is

⁴ Pennsylvania’s Megan’s Law, which expired with the passage of SORNA, also contained such a provision and would have been in effect at the time of Defendant’s assessment and SVP hearing. *See Curnette*, 871 A.2d at 842.

no evidence that Fields or his counsel requested an assessor, so that issue fails. To the extent that Fields may contend that his counsel was ineffective for failing to request an independent assessment, such a claim would be barred by the timeliness requirements of the PCRA.

The PCRA requires that all petitions, including second or subsequent petitions be filed within one (1) year of the date that the petitioner's judgment becomes final. 42 Pa. C.S. § 9545(b)(1). In this instance, the trial court denied Fields' post-sentence motions on September 4, 2008. Fields' sentence became final thirty (30) days after this denial because Fields did not seek appellate review. *See* 42 Pa. C.S. §9545(b)(3). Fields filed his request for Habeas Corpus relief dated July 7, 2023 well beyond the one-year filing requirement. Therefore, on its face, the petition was untimely.⁵

However, the PCRA statute provides for three (3) exceptions to the timeliness requirement. *See* 42 Pa. C.S. § 9545(b)(1). These exceptions include:

- (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
- (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
- (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa. C.S. § 9545(b)(1)(i)-(iii). Yet, even these exceptions to the timeliness requirement have a timeliness element. Any PCRA petition raising one of these timeliness exceptions must be

⁵ Although Fields did not file a direct appeal, and tried to file an untimely appeal, in his prior PCRA petitions he never asked to reinstate his direct appeal rights.

filed within 60 days of the date the claim could have been presented if the claim arose prior to December 24, 2017 or within one year of the date the claim could have been presented if the claim arose on or after December 24, 2017. *See* 42 Pa. C.S. § 9545(b)(2). If a PCRA petitioner attempts to file an untimely PCRA petition, it is the burden of the petitioner to plead and prove one of the exceptions to the one-year timeliness requirement. *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999); *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. Ct. 2007). If a PCRA petition is found to be untimely, “[u]nder the plain language of Section 9545 [of the Post Conviction Relief Act], the substance of [petitioner’s] PCRA petition must yield to its untimeliness.” *Taylor*, 933 A.2d at 1043.

Fields failed to affirmatively plead one of the PCRA timeliness exceptions. *See Taylor*, 933 A.2d at 1039. In addition to failing to affirmatively pleading one of the timeliness exceptions, Fields did not plead any facts to support an exception. The lack of an independent assessment was due to the failure of Fields or his counsel to request one. Fields cannot satisfy the governmental interference exception because Fields’ counsel cannot be considered a government official. 42 Pa. C.S. 9545(b)(4)(“government officials” shall not include defense counsel, whether appointed or retained). Fields would have known that he was not evaluated by an independent assessor in June of 2008. Therefore, he can satisfy the newly discovered facts exception. Fields also cannot satisfy the new constitutional right exception. *Curnette*, which held that the statute gave an indigent defendant a due process right to the appointment of an independent assessment upon request, was issued by the Pennsylvania Superior Court on March 22, 2005. Superior Court decisions do not satisfy the new constitutional right exception, only decisions of the Pennsylvania Supreme Court or the United States Supreme Court do. *Curnette* was decided over three years before Fields’ SVP hearing. Finally, the Superior Court

did not expressly find that this right would apply retroactively. Since Fields cannot satisfy any of the timeliness exceptions under the facts and circumstances of this case, Fields claim that the trial court erred in failing to order an independent assessment is untimely.

His claim is also waived because it could have been presented in a direct appeal or in a prior PCRA petition. 42 Pa. C.S. 9544(b)(“For purposes of this subchapter, an issue is waived if the petitioner could have raised it but failed to do so ... on appeal or in a prior state postconviction proceeding.”).

Even if the claims were not barred by timeliness and waiver, Fields claims either lack arguable merit or he was not prejudiced. Assuming for the sake of argument that Fields wanted an independent assessment, he has not presented any facts or arguments to show that a separate assessment would have likely resulted in any different outcome. Fields has three separate convictions for having sexual contact with young female children. Given Fields prior and current convictions, the court doubts that counsel would have been able to find an assessor who would conclude that Fields was not a sexually violent predator.

Within his first issue, Fields also contends that the trial court erred in failing to investigate his background and/or failing to obtain a PSI report. The court questions the accuracy of Fields’ factual assertions in this claim. The undersigned was neither the trial judge nor sentencing judge in this case; however, according to the order entered on December 3, 2007, the trial court directed the Pennsylvania Board of Probation & Parole to prepare a PSI in this case. The court suspects that Fields may be confusing this case with his 1994 case. In 1994, Fields was charged with statutory rape and corruption of minors. He entered a guilty plea to corruption of minors in exchange for a negotiated sentence of one-year probation and a

\$300 fine. The statutory rape was dismissed. In the 1994 case, Fields waived his right to a PSI and requested immediate sentencing. *See* Commonwealth's Motion in Limine, Exhibit A.⁶

Regardless whether a PSI was actually prepared or not, Fields claims with respect thereto are barred by untimeliness and waiver for the same reasons as his claims related to a lack of an independent assessment.

Fields also states in his first issue that he had a prior sexual offense of statutory rape 15 years prior; however, the victim misrepresented her age, consented to intercourse, and suffered neither physical nor psychological wounding. This also is not entirely accurate. While Fields was charged with statutory rape, that charge was dismissed and he entered a guilty plea to corruption of minors. The victim in that case was thirteen years old and Fields was 18 years old. The affidavit of probable cause indicates that the couple who was camping with Fields and the victim told Fields that the victim was only 13 years old and that she was "jailbait." *See* Commonwealth Motion in Limine, Exhibit A. Furthermore, this prior conviction was used to establish that he had a mental abnormality – pedophilia- and not that he engaged in predatory or violent behavior. It was the facts and circumstances of his current convictions that formed the basis of the SOAB assessor's conclusion that the predatory element of the definition of an SVP had been met. *See* SVP and Sentencing Transcript, 06/18/08, at 5-8.

The term "sexually violent predator" or SVP is a term of art defined by statute and not the common definitions of the words sexually, violent or predator. *See Commonwealth v. Dengler*, 890 A.2d 372, 383 (Pa. 2005)(the terms "mental abnormality" and "sexually violent

⁶ A copy of the guilty plea and sentencing order, criminal complaint and affidavit of probable cause from Fields' 1994 case (94-10,963) was attached as Exhibit A to the Commonwealth's motion in limine filed on October 30, 2007. The guilty plea and sentencing order states: "The Defendant requests immediate sentencing in light of the plea agreement."

predator” are defined in detail in Megan’s Law II essentially making them terms of art). An SVP is an individual convicted of a “sexually violent offense” who has a mental abnormality or personality disorder that makes the individual likely to engage in predatory sexually violent offenses. *See Commonwealth v. Askew*, 907 A.2d 624, 629 (Pa. Super. 2006)(to deem an individual a sexually violent predator, the Commonwealth must show that the individual was convicted of a sexually violent offense and that the individual has a mental abnormality or personality disorder that makes him likely to engage in predatory sexually violent offenses).

Fields was convicted of three counts of involuntary deviate sexual intercourse (IDSI) two counts of aggravated indecent assault, two counts of indecent assault, and one count of endangering the welfare of a child. IDSI and aggravated indecent assault are sexually violent offenses.⁷

The SOAB assessor found that Fields had a mental abnormality based on his current and his prior convictions. The mental abnormality was pedophilia and the assessor testified that three criteria had to be met to find such an abnormality: (1) the individual had to display, over a period of at least six months, recurrent sexually intense, sexually arousing fantasies, urges or behaviors involving sexual activity with a prepubescent child or children, which are defined as a child or children age 13 years or younger; (2) the person has to act on these sexual urges and the urges, fantasies and behaviors must cause marked distress or interpersonal difficulty; and (3) the person is at least 16 years of age and at least 5 years older than the child. *See* Transcript of SVP and Sentencing Hearing, 06/18/08, at 6 According to the evidence

⁷ *See* 42 Pa. C.S. §9799.55(b)(2). In 2005 when Fields committed the conduct giving rise to his convictions in this case, indecent assault without consent was not a sexually violent offense. The court believes that it became a sexually violent offense as of December 20, 2012 when Pennsylvania’s Sexual Offender Registration and Notification Act (SORNA I) became effective. *See* 42 Pa. C.S. 9799.14(b)(6).

presented at the SVP hearing, Fields had two prior convictions – his 1994 conviction for corruption of minors that involved having sexual intercourse with a 13-year-old; and a 1997 conviction related to pulling down the pants of a girl and fondling her buttocks. *Id.* at 12-13. It appears that the age of this victim was likely 10 years old. *See id.* at 8. Fields activities with the four- or five-year-old child in this case along with his prior offenses satisfied the recurrent aspect of the criteria. *Id.* at 6. All of his convictions show that Fields had fantasies, urges or behaviors involving sexual activity with a child 13 years of age or younger for more than 6 months. He not only had these urges and fantasies, but he also acted on them. His actions caused distress or interpersonal difficulty related to “being prosecuted and having the stigma associated with that.” *Id.* Fields conduct in this case occurred between May 1, 2005 and August 31, 2005, when Fields (who was born in 1976) was 29 years old and the child was four or five years old. Therefore, he met all three criteria for the mental abnormality of pedophilia.

It is Fields sexual urges, fantasies and behaviors related to young female children that make him likely to engage in predatory sexually violent offenses. The assessor testified about Fields’ sophisticated predatory behaviors. *Id.* at 7. Furthermore, Fields had been convicted of engaging in three separate incidents of sexual contact with female children – the first child was age 13, the second child was age 10, and the third child was 4 or 5 years old.

Fields also claims that despite his low I.Q., he is not predisposed to committing violent sexual offenses. Again, Fields is misconstruing the statutory terms. The term “sexually violent offenses” is a term of art defined by statute. *See* 42 Pa. C.S. §§ 9799.14, 9799.53. Moreover, actions speak louder than words. Fields’ behavior progressively got worse. He engaged in various sexual offenses with younger and younger victims as he got older.

Fields next asserts that he “does not fit the repeat offender status of one who is a Tier-1 or Tier-2 second offender; as per SORNA guideline the instant offense which is the subject matter of this appeal was only relative to the offense of 15 years prior by the fact it involved sexual conduct. A low I.Q. is no indicator that one will be a sexually violent predator in the future!” Fields I.Q. was not discussed during the SVP hearing and sentencing. Therefore, his statements about his I.Q. are red herrings. Fields is subject to lifetime registration and counseling requirements because he was found to be an SVP. His prior convictions were used in designating him an SVP; they showed that he had the mental abnormality of pedophilia in that his convictions showed that he had sexual urges, fantasies and behaviors involving females 13 years old and younger for more than six months. Even without the SVP designation, Fields is subject to lifetime registration based solely on his convictions in this case. IDSI and aggravated indecent assault are lifetime registration offenses. *See* 42 Pa. C.S. §9799.55(b). He was not subject to lifetime registration due to having two or more convictions for Tier I or Tier 2 offenses. Fields is confusing Subchapter H and Subchapter I. Offenses are divided into Tier I, Tier II and Tier III under Subchapter H, which applies to convictions for offenses committed on or after December 20, 2012. None of Fields convictions occurred on or after December 20, 2012. Therefore, Subchapter H (42 Pa. C.S. §§9799.14 to 9799.42) does not apply to Fields. Fields is, however, subject to Subchapter I (42 Pa. C.S. §§9799.51 to 9799.75).

Date: September __, 2024

By the Court,

Nancy L. Butts, President Judge

cc: DA

Jimmie Fields, HQ-4908
SCI-Greene,
175 Progress Drive,
Waynesburg PA 15370
Superior Court (original & 1)

/nlb