

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
GREG DARIN ERLER	:	
	:	
Appellant	:	No. 1230 MDA 2025

Appeal from the Judgment of Sentence Entered August 13, 2025
In the Court of Common Pleas of Franklin County Criminal Division at
No(s): CP-28-CR-0001975-2014

BEFORE: KUNSELMAN, J., McLAUGHLIN, J., and BENDER, P.J.E.

MEMORANDUM BY McLAUGHLIN, J.:

FILED AUGUST 26, 2026

Greg Darin Erler appeals from the judgment of sentence imposed following his convictions for involuntary deviate sexual intercourse with a child ("IDSI"), complainant less than 16 years of age; aggravated indecent assault, complainant less than 13 years of age; aggravated indecent assault, complainant less than 16 years of age; and corruption of minors.¹ Erler argues the trial court erred in denying his motion to suppress and in denying his motion in limine; the evidence is insufficient to sustain the verdict; and the court imposed an unconstitutional sentence. We affirm.

Charges were initially brought against Erler by the Pennsylvania State Police in 2014. The police alleged Erler had sexually abused his minor stepdaughter ("the victim") between 2011 and 2014.

¹ **See** 18 Pa.C.S.A. §§ 3123(a)(7), 3125(a)(7) and (a)(8), and 6301(a)(1)(ii), respectively.

Erler pleaded guilty and was sentenced. His judgment of sentence was affirmed by this Court, and the Pennsylvania Supreme Court denied his allowance of appeal. **See Commonwealth v. Erler**, No. 1065 MDA 2015, 2016 WL 1221433 (Pa.Super. filed Mar. 29, 2016) (unpublished mem.), *appeal denied*, 157 A.3d 484 (Table) (Pa. 2016). However, Erler filed a timely petition for post-conviction relief, and the post-conviction court found merit to Erler's claim that his plea counsel had been ineffective in advising him that pleading guilty would not affect his right to have visitation with his sons. The court vacated Erler's guilty plea and sentence. **See** Opinion/PCRA Order, 12/11/2018. The case returned to the trial list.

Erler filed a pre-trial motion to suppress his recorded statement to the police. He argued that his **Miranda**² waiver was not knowing, intelligent, and voluntary. After a hearing, the court denied the motion. **See** Order, 8/17/20.

The Commonwealth filed a notice of intent to present evidence of Erler's prior bad acts, *i.e.*, statements made during Erler's police interview regarding a 1997 criminal case in which Erler had pleaded guilty to indecent assault³ of a different minor stepdaughter. Erler filed a motion in limine seeking to preclude evidence of the 1997 case. The court granted the motion in part and denied it in part. It forbade the Commonwealth from introducing direct evidence of the charges, guilty plea, or sentence in the 1997 case, but allowed

² **Miranda v. Arizona**, 384 U.S. 436 (1966).

³ 18 Pa.C.S.A. § 3126(a)(1).

the Commonwealth to introduce Erler's police statement in the instant case, which included references to the 1997 case. **See** Order, 6/13/25.

At a one-day trial in June 2025, the Commonwealth introduced the testimony of the victim, her mother, and the State Police trooper that took Erler's statement. It also introduced the recording of Erler's police statement. Erler testified in his defense.

At the conclusion of trial, the jury convicted Erler of the above-listed crimes.⁴ The court imposed an aggregate sentence of 25 to 50 years' incarceration, including mandatory minimum sentences pursuant to 42 Pa.C.S.A. § 9718.2(a)(1).⁵

Erler appealed. He raises the following:

I. Did the Trial Court err by denying [Erler]'s Omnibus Pre-Trial Motion to suppress [Erler]'s interview with Trooper Baney?

II. Did the Trial Court err by denying [Erler]'s Motion In Limine to exclude all references to Erler's 1997 conviction for M2 Indecent Assault?

III. Was the evidence presented by the Commonwealth at Trial insufficient to prove beyond a reasonable doubt that [Erler] was guilty of Involuntary Deviate Sexual Intercourse and Aggravated Indecent Assault?

IV. Did the Trial Court err by sentencing [Erler] to a statutory minimum of 25 years per 42 Pa.C.S.A. § []9718.2.?

Erler's Br. at 6 (suggested answers omitted).

⁴ The jury acquitted Erler of IDSI of a child. **See** 18 Pa.C.S.A. § 3123(b).

⁵ The court imposed three concurrent sentences of 300-600 months' incarceration. It imposed no further penalty on Erler's conviction for aggravated indecent assault, complainant less than 16 years of age.

I. Motion to Suppress

Erler first challenges the court's denial of his motion to suppress. Our review of this issue is guided by the following standard:

When reviewing an order denying a motion to suppress, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted. Our scope of review of suppression rulings includes only the suppression hearing record. We are bound by the suppression court's factual findings that are supported by the record. Where there is a question of law, our standard of review is *de novo*.

Commonwealth v. Ward, 318 A.3d 410, 413-14 (Pa.Super. 2024) (internal quotation marks and citations omitted), *appeal denied*, 346 A.3d 316 (Pa. 2025).

Erler alleges that his wife called him from the police barracks claiming that she and their children had been involved in an automobile accident, but that this was a ruse designed to induce him to come to the barracks. Erler claimed that once he arrived at the barracks, he was arrested and interrogated and made incriminating statements. He asserted a State Police trooper asked him to sign a form stating he had been advised of his rights to silence and to an attorney, and he signed it. However, Erler claimed this waiver was not voluntary, knowing, and intelligent, because "[t]he state of distress that [he] was in from believing that his family had just been in an auto accident had not subsided at the time when [he] signed his ***Miranda*** waiver. In the totality

of the circumstances, this rendered him incapable of intelligently waiving his rights.” Erler’s Br. at 12.⁶

After a hearing,⁷ the court denied the motion to suppress. The court found,

In this case, the Defendant Erler may have been lied to by the police to get him to enter into the Pennsylvania Police Barracks. But when he was presented the **Miranda** document, there was no indication that he didn’t appreciate the gravity of the words on the page. The words clearly advise him that he has the option to not speak to the officers conducting the interrogation or remain silent. He understood he had a right to counsel. He was within the police barracks, an environment that tells reasonable persons that the police are seeking information and so circumspection as to why you are being questioned must be appreciated. The document the defendant signed is prominently titled “WARNING AND WAIVER”. The ordinary use of the words of “warning” and “waiver” tells any ordinary citizen that you are not going to be having a casual conversation with the interviewing officers. While the court appreciates that the defendant may have had concerns about his family and an accident, the court cannot agree that those worries overcome the clarity of the language in the waiver. His common sense had to tell him that if the police simply wanted to advise him that his family members were in danger, they wouldn’t take the time to place him in an interview room and go through the effort of getting him to sign the **Miranda** waiver document. The defendant, like all persons who encounter the police and have the **Miranda** warnings read to them, must assume they are the target of a criminal investigation and possible prosecution. Thus if you answer the questions posed, the answers provided will likely surface as part of the evidence if criminally prosecuted.

⁶ In his motion, Erler also argued his statement should be suppressed because the Commonwealth had not apprised him of the nature of the charges against him prior to obtaining his **Miranda** waiver. Erler does not pursue this argument on appeal.

⁷ We note Erler never requested the transcript of the suppression hearing. As a result, the transcript is not included in the certified record.

Order, 8/17/20, at 3 (some italics added).

The applicable law is as follows:

When a defendant challenges the admission of a statement made during a custodial interrogation, the Commonwealth bears the burden to prove by a preponderance of the evidence that the defendant's **Miranda** waiver was knowing, intelligent, and voluntary. **In re T.B.**, 11 A.3d 500, 505 (Pa.Super. 2010). We engage in a two-part inquiry:

First[,] the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that **Miranda** rights have been waived.

Id. at 505-06 (quoting **Commonwealth v. Cephas**, 361 Pa.Super. 160, 522 A.2d 63, 65 (1987)).

An examination of the totality of the circumstances includes a consideration of "(1) the duration and means of an interrogation; (2) the defendant's physical and psychological state; (3) the conditions attendant to the detention; (4) the attitude of the interrogator; and (5) 'any and all other factors that could drain a person's ability to withstand suggestion and coercion.'" **Id.** at 506 (quoting **Commonwealth v. Nester**, 551 Pa. 157, 709 A.2d 879, 882 (1998)).

Commonwealth v. Smith, 210 A.3d 1050, 1058 (Pa.Super. 2019). Relevant here, "[p]olice may make coercive statements when questioning suspects, so long as the totality of the circumstances suggests the confession was voluntary." **Id.** at 1059.

We agree with the trial court that the Commonwealth carried its burden to prove that Erler knowingly, intelligently, and voluntarily waived his

Miranda rights. The portion of the statement quoted in Erler's motion to suppress shows that before signing the waiver, Erler understood his wife had engaged in subterfuge when he stated, "Something tells me I am not going home tonight since the wife pulled that crap." **See** Omnibus Pretrial Motions, 4/9/20, at ¶ 26. The trooper then read Erler his **Miranda** rights, and, when Erler expressed confusion over the reason for the interview, emphasized that Erler could stop the interview and ask for an attorney at any time. Erler signed the form acknowledging his rights. Under the totality of the circumstances, Erler was not coerced into making a statement. Erler understood there had been no accident; was apprised of his rights; and knowingly, intelligently, and voluntarily waived those rights.

II. Prior Bad Acts

In his second issue, Erler argues the court erred in allowing the Commonwealth to introduce those portions of Erler's police statement in which he referred to the 1997 case. Erler argues that during the interrogation, the trooper stated, "You've already done this once in your life, that's the other thing I know, that I found out . . . You were accountable for that. The house is square and I'm not judging you." Erler's Br. at 13 (quoting Recording of Interrogation, 5/30/14, at 18:40). Erler also referred to "the situation with my stepdaughter [1997 victim]," and exclaimed, "Lord, why another one like this?" **Id.** (quoting Recording of Interrogation, 5/30/14, at 38:30).

Erler argues this evidence was impermissible character evidence under Pa.R.E. 404(b)(1) because it made it obvious to the jury that he had a previous

conviction for a criminal offense. He claims his references to this incident were not admissible under any exception in Pa.R.E. 404(b)(2), due to “[t]he span of time between that incident and the present case, the difference in the ages of the victims, and the added factor of intoxication[.]” **Id.** at 14. He claims that in the 1997 case, he was intoxicated, and “attempted to climb into bed with his 17-year-old stepdaughter from his previous marriage, and also placed h[is] hand in her crotch area. Afterwards, he immediately apologized and made no further attempt to do so again.” **Id.**⁸

The court reasoned the 1997 case was “factually similar to [the] charges in this case,” and therefore “relevant to show [Erler’s] actions were not the result of a mistake or accident and to show his intent.” Trial Court Opinion, 11/17/25, at 7. The court found, “both the prior conviction and current charges involve factual allegations about a stepdaughter with whom, while seated behind, [Erler] put his hands down the front of their pants and touched their crotch.” **Id.** at 8. The court also determined the references to the 1997 case were not overly prejudicial because they were “sufficiently vague and minimally disruptive to the jury’s consideration of the case before them.” **Id.** The court noted Erler made non-committal statements such as, “I’ve done, this has happened before,” referred to the 1997 case as “all that crap,” and

⁸ Erler attached to his brief the criminal complaint and affidavit of probable cause from the 1997 case. **See** Erler’s Br. at Exh. D. However, we cannot consider documents that are not included in the certified record. **Commonwealth v. Preston**, 904 A.2d 1, 6-7 (Pa.Super. 2006) (*en banc*).

protested he “wasn’t ever allowed to make a defense.” ***Id.*** (quoting Commonwealth Exh. 2).⁹

“Admissibility of evidence is within the sound discretion of the trial court and we will not disturb an evidentiary ruling absent an abuse of that discretion.” ***Commonwealth v. Hicks***, 156 A.3d 1114, 1125 (Pa. 2017).

Rule 404(b) of the Rules of Evidence provides, in relevant part:

(b) Other Crimes, Wrongs, or Acts.

(1) *Prohibited Uses.* Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.

Pa.R.E. 404(b).

“Rule 404(b) precludes the admission of evidence of a person’s other bad acts (including other crimes) for the purpose of demonstrating the person’s bad character[.]” ***Commonwealth v. Walker***, 350 A.3d 54, 61-62 (Pa. 2026) (citing Pa.R.E. 404(b)(1)). However, the statute allows for the admission of prior bad acts evidence if offered “for another purpose, such as

⁹ The court also concluded the introduction of the bad acts was appropriate “to tell the complete story” under the *res gestae* exception. Trial Court Op. at 8. We need not address this conclusion.

proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Pa.R.E. 404(b)(2).

Where, as here, evidence of prior crimes is offered to prove absence of mistake or lack of accident, it is only admissible “where the manner and circumstances of two crimes are remarkably similar.” **Commonwealth v. Tyson**, 119 A.3d 353, 359 (Pa.Super. 2015) (*en banc*) (citation omitted); **see also Commonwealth v. Donahue**, 549 A.2d 121, 127 (Pa. 1988) (stating for lack of accident, the Commonwealth must show that “(1) the previous incident(s) are similar to the incident in question and (2) that a similar result obtained in both cases”). The rationale for this exception is that while “an unusual and abnormal element might perhaps be present in one instance, . . . the oftener similar instances occur with similar results, the less likely is the abnormal element likely to be the true explanation of them.” **Donahue**, 549 A.2d at 126 (quoting II Wigmore, *On Evidence*, § 302 (Chadbourn Rev. 1979)) (emphasis in **Donahue**). A remoteness of time between the two crimes will negatively affect the probative value of the prior crime, but the importance of the separation in time is “inversely proportional to the similarity of the crimes in question.” **Tyson**, 119 A.3d at 359 (citation omitted); **see id.** at 363 (stating remoteness analysis applies to evidence of absence of mistake or lack of accident); **Donahue**, 549 A.2d at 127.

If the prior bad crimes are found to be probative to show lack of accident or mistake, the evidence is only admissible if its probative value “outweighs its potential for unfair prejudice.” Pa.R.E. 404(b)(2). In this context, “unfair

prejudice” means “a tendency to suggest a decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially.” **Tyson**, 119 A.3d at 360 (citation omitted).

In **Tyson**, we found evidence of a similar prior rape relevant to prove the defendant did not mistakenly believe the victim was awake or gave her consent. **Id.** at 362. We noted the “prior conviction would tend to prove [the defendant] was previously in a very similar situation and suffered legal consequences from his decision to have what proved to be nonconsensual vaginal intercourse with an unconscious victim.” **Id.** at 363. We stated, “The jury must have a chance to decide if [the defendant], in light of his past legal experience and conviction for a substantially similar criminal episode,” had been mistaken about the later victim’s consent. **Id.**

Here, both victims were Erler’s minor stepdaughters. In the 1997 case, Erler was behind the victim and reached around her to touch her crotch. Erler suffered legal consequences from this decision. In the instant case, understanding the gravity of such actions, Erler nonetheless came up behind the victim in a swimming pool and put his hands underneath her swimsuit and in between her legs¹⁰ and, on another occasion, while seated behind the victim on a four-wheeler, he reached around her and placed his hands on her crotch.¹¹ These circumstances are sufficiently similar as to render the 1997

¹⁰ He also took his penis out of his swimsuit and attempted to grab the victim.

¹¹ In a third incident, Erler was seated next to the victim on the sofa, exposed his penis, and forced it into the victim’s mouth.

case admissible to determine whether Erler intentionally or “accidentally” touched his minor stepdaughter’s crotch in the instant case.

We also find the court did not abuse its discretion in concluding the probative value of the evidence relating to the 1997 case outweighed any potential for unfair prejudice. The jury was not exposed to the sordid details of the 1997 case. The jury was only made aware that “this” had “happened before” with another stepdaughter. While the trooper stated Erler had been “accountable” in the 1997 case, he did not elaborate that Erler had pleaded guilty or had served a sentence. And, rather than concede guilt to either the 1997 case or the instant case, Erler protested that the 1997 allegations had been “crap” against which he had not been able to defend himself. The trial court did not abuse its discretion in determining that the probative value of the evidence outweighed the risk of unfair prejudice.

III. The Sufficiency of the Evidence

Erler’s third issue challenges the sufficiency of the evidence. When reviewing the sufficiency of the evidence, “[o]ur scope of review is limited to considering the evidence of record, and all reasonable inferences arising therefrom, viewed in the light most favorable to the Commonwealth as the verdict winner.” **Commonwealth v. Smith**, 357 A.3d 159, 163 (Pa.Super. 2026) (quoting **Commonwealth v. Rushing**, 99 A.3d 416, 420-21 (Pa. 2014)).

“Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt.”

Commonwealth v. Widmer, . . . 744 A.2d 745, 751 ([Pa.] 2000). The trier of fact is free to believe, all, part, or none of the evidence presented when making credibility determinations. ***Commonwealth v. Beasley***, 138 A.3d 39, 45 (Pa.Super. 2016). “[T]his Court may not substitute its judgment for that of the factfinder, and where the record contains support for the convictions, they may not be disturbed.” ***Commonwealth v. Smith***, 146 A.3d 257, 261 (Pa.Super. 2016).

Id.

Erler contends that “the nebulous and at times contradictory evidence presented at trial was insufficient to prove beyond a reasonable doubt” that Erler abused the victim. Erler’s Br. at 16. Erler points to his own recitation of the events, and how it contradicts the victim’s testimony. For example, Erler said in his police statement and testified at trial that he did not put his penis in the victim’s mouth when they were sitting on the sofa, but that she “merely put her mouth on it while unsuccessfully attempting to perform oral sex[.]”

Id.

An argument that there were conflicts in the evidence, or a challenge to the credibility of a witness, ordinarily goes to the weight, and not the sufficiency of the evidence. ***See Commonwealth v. Juray***, 275 A.3d 1037, 1043 (Pa.Super. 2022). “A solitary witness’s testimony . . . may establish every element of a sexual offense.” ***Commonwealth v. Mancuso***, 357 A.3d 957, 966 (Pa.Super. 2026); ***see*** 18 Pa.C.S.A. § 3106 (“The testimony of a complainant need not be corroborated in prosecutions under this chapter”); ***see also Commonwealth v. Walker***, 341 A.3d 1271, 1285 (Pa. 2025).

Erler does not cite the rule that evidence is insufficient to prove guilt beyond a reasonable doubt if it “is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.” ***Commonwealth v. Bryant***, --- A.3d ----, 2026 WL 1409715, at *2 (Pa.Super. filed May 10, 2026) (cleaned up). To the extent his argument can be construed as making such a claim, we reject it. The evidence here was not “so weak and inconclusive” as to be as a matter of law incapable of proving guilt beyond a reasonable doubt.

Erler does not argue that the victim’s testimony did not establish the elements of the crimes, with one exception. Erler contends that for his conviction for aggravated indecent assault, complainant less than 13 years old, the Commonwealth did not prove the assaults occurred before the victim turned 13. He points to the victim’s testimony that she could not recall whether she was 12 or 13 when the first assault occurred.¹²

The trial court recounts that during Erler’s police interview, he was asked when the incident occurred wherein, according to Erler, the victim put her mouth on Erler’s penis. Erler answered that it occurred for the first time at age “12, I guess.” **See** Trial Ct. Op. at 15 (quoting Commonwealth’s Exh. 2). Erler does not address this recitation by the trial court. The jury was free to accept this evidence, and it was sufficient to enable the jury to conclude

¹² The victim was 14 years old when Erler was charged, and 25 years old when she testified.

beyond a reasonable doubt that the assaults began when the victim was 12 years old.

IV. Legality of Sentence

Erler's final issue is a challenge to the legality of his sentence. "When the legality of a sentence is at issue on appeal, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Prince***, 320 A.3d 698, 700 (Pa.Super. 2024) (citation omitted).

Erler argues that he was subject to three 25-year mandatory minimum sentences under 42 Pa.C.S.A. § 9718.2, because his 1997 conviction for indecent assault renders his instant convictions a "second [Sexual Offender Registration and Notification Act ("SORNA")] offense." Erler's Br. at 18. However, he argues that because SORNA was not enacted until after his 1997 conviction, "the 1997 conviction is now being retroactively used under SORNA to enhance the sentences in the instant matter above the otherwise lawful maximums." ***Id.*** at 18-19. He argues the mandatory minimum sentences therefore violate the *Ex Post Facto* Clauses of the federal and state constitutions. ***Id.*** at 19; ***see also id.*** at 18 (citing ***Commonwealth v. Lippencott***, 208 A.3d 143, 147 (Pa.Super. 2019) and ***Commonwealth v. Muniz***, 164 A.3d 1189 (Pa. 2017)).

"[I]n discussing recidivist statutes and *ex post facto* implications, courts have consistently noted that defendants are being punished not for the earlier criminal acts and convictions, but for the subsequent crime that occurred after the passage of the pertinent recidivist statute." ***Commonwealth v. Rose***, 81

A.3d 123, 135 (Pa.Super. 2013) (*en banc*), *aff'd*, 127 A.3d 794 (Pa. 2015).

“Thus, there is no *ex post facto* violation when a defendant commits a criminal act relevant to an element of the crime after a sentencing statute takes effect.”

Id.

Here, Erler was sentenced under 42 Pa.C.S.A. § 9718.2(a)(1), a recidivist statute which states:

(a) Mandatory sentence.--

(1) Any person who is convicted in any court of this Commonwealth of an offense set forth in section 9799.14 (relating to sexual offenses and tier system) shall, if at the time of the commission of the current offense the person had previously been convicted of an offense set forth in section 9799.14 or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction, be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. . . .

42 Pa.C.S.A. § 9718.2(a)(1) (eff. Jan. 1, 2007, as last amended on June 30, 2025). Section 9799.14, a SORNA statute that took effect in December 2012, lists all the instant offenses and the 1997 offense – indecent assault. **See** 42 Pa.C.S.A. § 9799.14 (eff. Dec. 20, 2012, as last amended June 30, 2025).

Erler does not argue that either of these statutes were not in effect at the time he committed the **instant** offenses, and he could not, as they indeed were in effect at the relevant time.¹³ They increase the punishment for Erler’s

¹³ We note that the jury found that at least one of the offenses – aggravated indecent assault, complainant less than 13 years of age – occurred before the
(Footnote Continued Next Page)

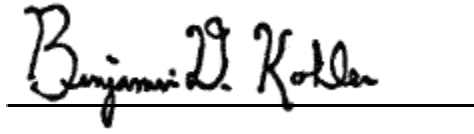
commission of a **second** enumerated crime, if committed after their enactment – they do not impose punishment on the 1997 offense itself. Therefore, Erler’s sentence does not violate the *ex post facto* clauses. **See Rose**, 81 A.3d at 135; **accord Commonwealth v. Winter**, No. 845 EDA 2023, 2025 WL 486633 at *11-12 (Pa.Super. filed Feb. 13, 2025) (unpublished mem.) (rejecting *ex post facto* challenge to 25-year mandatory minimum imposed under Section 9718.2 based on 1998 conviction), *appeal denied*, No. 622 MAL 2025, 2026 WL 1799290 (Pa. June 23, 2026).

Judgment of sentence affirmed.

victim turned 13 in June 2012. From January 1, 2007, until its amendment on December 20, 2012, Section 9718.2 provided for a 25-year mandatory minimum sentence for the commission of a second offense listed in Section 9795.1(a) or (b). **See** 42 Pa.C.S.A. § 9718.2(a)(1) (Jan. 1, 2007–Dec. 20, 2012). Until its expiration on December 20, 2012, Section 9795.1(a) and (b) listed indecent assault and aggravated indecent assault. **See** 42 Pa.C.S.A. § 9795.1(a), (b) (eff. July 10, 2000, expired Dec. 20, 2012).

Therefore, when Erler committed aggravated indecent assault, complainant less than 13 years of age, at some time between 2011 and June 2012, as was found by the jury, the sentencing statutes in effect at that time similarly provided that Erler would be sentenced to a 25-year minimum for that offense due to his previous commission of indecent assault. Moreover, the December 20, 2012 changes were adopted by the legislature a year prior, on December 20, 2011. **See Commonwealth v. McGarry**, 172 A.3d 60, 69 (Pa.Super. 2017) (stating operative date for *ex post facto* analysis is date the legislature adopted the statute, not its effective date).

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 08/26/2026