

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| | : | |
| v. | : | |
| | : | |
| SHAWN LEE HUNTER | : | |
| | : | |
| Appellant | : | No. 764 EDA 2025 |

Appeal from the Judgment of Sentence Entered February 19, 2025
In the Court of Common Pleas of Northampton County Criminal Division
at No(s): CP-48-CR-0003209-2022

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

MEMORANDUM BY McLAUGHLIN, J.: **FILED MARCH 10, 2026**

Shawn Lee Hunter appeals from the judgment of sentence imposed following his guilty plea to one count of possession of child pornography. 18 Pa.C.S.A. § 6312(d). Hunter asserts there was insufficient evidence for the trial court to designate him as a sexually violent predator (“SVP”)¹ and that the court failed to make specific findings to support the designation. We affirm.

Hunter entered a negotiated guilty plea. In exchange for Hunter’s pleading guilty to one count of possession of child pornography, the Commonwealth withdrew charges for dissemination of child pornography and criminal use of a communication facility. **See** 18 Pa.C.S.A. §§ 6312(c) and 7512(a). The court imposed the negotiated sentence of 12 to 24 months’ incarceration.

¹ **See** 42 Pa.C.S.A. § 9799.12.

The court held a hearing to determine whether Hunter should be designated an SVP. Two experts testified: Dr. Veronique Valliere, Sexual Offender Assessment Board (“SOAB”) member, testified for the Commonwealth, and Dr. Frank Dattilio, for the defense. Following the hearing, the court entered an order designating Hunter as an SVP.

Hunter appealed.^{2,3} He raises two issues:

² Hunter’s notice of appeal erroneously states that he appeals from the order designating him an SVP. We have amended the caption to reflect that Hunter’s appeal lies from the judgment of sentence. **See Commonwealth v. Schrader**, 141 A.3d 558, 561-63 (Pa.Super. 2016) (recognizing a direct appeal lies from the judgment of sentence, and holding judgment of sentence is not final until SVP determination).

³ The Commonwealth argues Hunter has waived all issues by filing an untimely Rule 1925(b) statement of errors. The court ordered Hunter to file a statement within 21 days of March 20, 2025. **See** Order, 3/20/25. However, Hunter’s counsel filed a motion to withdraw during this period, and Hunter filed a *pro se* document stating he released his plea counsel. After the deadline had passed, the court granted counsel’s motion to withdraw, and appellate counsel for Hunter entered his appearance. Counsel requested an extension to file a concise statement, which the court denied on the basis that it had already authored its Rule 1925(a) opinion and transmitted the record to this Court. Counsel nonetheless filed an untimely statement.

Where counsel in a criminal case fails to file a timely Rule 1925(b) statement, such that an appellate court is convinced that counsel has been *per se* ineffective, rather than finding all issues waived, we remand for the appointment of new counsel, the filing of a statement *nunc pro tunc*, and the preparation of a responsive trial court opinion. **See** Pa.R.A.P. 1925(c)(3). Here, we are convinced that, by failing to file a timely statement when ordered to do so, and when the court had not yet granted counsel leave to withdraw, Hunter’s plea counsel was *per se* ineffective. However, new counsel already represents Hunter, and has already filed a Rule 1925(b) statement. While the statement was submitted after the court transmitted its Rule 1925(a) opinion, *(Footnote Continued Next Page)*

A. Did the Commonwealth meet its burden of presenting [c]lear and [c]onvincing evidence that [Hunter] should be classified as a [SVP] as defined by 42 Pa.C.S.A. [§] 9799.12?

B. Did the trial court err when it did not author an opinion or put specific findings on the record at the time of sentencing, justifying its reliance on Dr. Veronique N. Valliere's opinion that [Hunter] should be classified as a[n SVP]?

Hunter's Br. at 7.

In his first issue, Hunter argues the court erred in finding the Commonwealth presented clear and convincing evidence that Hunter should be designated an SVP. He asserts that while Dr. Valliere testified that Hunter suffers from pedophilic disorder, and that this is a mental abnormality, Dr. Valliere relied only on secondary sources to form her opinion. She did not interview Hunter or conduct any psychological tests on him, and did not review other record documents, including a psychosexual report and polygraph test. Hunter points out that in contrast, his expert, Dr. Dattilio, "conducted two multiple-hour-long interviews with [Hunter], during which he performed a series of psychological tests, and conducted interviews with [Hunter's] biological mother and a close family friend who has known [Hunter] for most of his life." *Id.* at 11. Dr. Dattilio opined that Hunter does not suffer from a qualifying mental abnormality or personality disorder.

Hunter contends that Dr. Valliere's opinion was based on insufficient data and therefore did not rise to the level of clear and convincing evidence.

the opinion addresses the issues raised in Hunter's statement. Under these circumstances, we decline to find waiver, and a remand for *nunc pro tunc* relief is unnecessary.

He argues, “The fact that a trial court finds the testimony of an expert credible does not necessarily mean that the Commonwealth provided clear and convincing evidence.” *Id.* at 10 (citing ***Commonwealth v. Krouse***, 799 A.2d 835, 840 (Pa.Super. 2002)).

In his second issue, Hunter argues the court failed to put specific findings on the record to justify its reliance on Dr. Valliere’s opinion. He asserts the court must not depend solely on the credibility of expert testimony, but must make “a subjective determination of the individual’s potential future dangerousness[.]” *Id.* at 12 (citing ***Krouse***, 799 A.2d at 840). He argues the court made no such determination, and considered only Dr. Valliere’s testimony and report. We will address these issues together.

When reviewing a sufficiency challenge to an SVP designation, we must determine whether the Commonwealth presented clear and convincing evidence that the defendant meets the statutory definition of an SVP. ***See Commonwealth v. Hollingshead***, 111 A.3d 186, 189 (Pa.Super. 2015). This standard requires “evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” ***Commonwealth v. Morgan***, 16 A.3d 1165, 1168 (Pa.Super. 2011) (cleaned up). We view the evidence and the reasonable inferences drawn from it in the light most favorable to the Commonwealth. ***See Commonwealth v. Fuentes***, 991 A.2d 935, 942 (Pa.Super. 2010).

A defendant may be designated an SVP if the Commonwealth proves by clear and convincing evidence that the defendant has “a mental abnormality or personality disorder that makes [the defendant] likely to engage in predatory sexually violent offenses.” 42 Pa.C.S.A. § 9799.12 (“Sexually violent predator”). The statute defines “mental abnormality” as “[a] congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.” *Id.* (“Mental abnormality”). The defendant must also have engaged in “predatory” conduct, which is statutorily defined as “[a]n act directed at a stranger or at a person with whom a relationship has been initiated, established, maintained, or promoted, in whole or in part, in order to facilitate or support victimization.” *Id.* (“Predatory”). An SOAB member will examine whether the defendant meets the foregoing definition of an SVP by considering enumerated, statutory factors, and must submit a report on the assessment prior to a hearing before the court. 42 Pa.C.S.A. § 9799.24(a), (b), (d), (e)(1).

In its Rule 1925(a) opinion, the court explains that it “accepted the opinion of Dr. Valliere over Dr. Dattilio’s findings and opinion.” Trial Court Opinion, 5/15/25, at 2. The court provided the following analysis.

Consistent with her report which was admitted as Commonwealth Exhibit 1, Dr. Valliere testified that [Hunter] met the criteria for a diagnosis of pedophilic disorder. This finding was based on [Hunter] demonstrating sexual urges for prepubescent children for at least a six[-]month period. In addition to [Hunter]

possessing and viewing child pornography, Dr. Valliere found that [Hunter] also disseminated the material and engaged in virtual role playing with others about having sex with children. She further found that this disorder is a lifelong condition and constituted the diagnosis of a mental abnormality. After determining that [Hunter] demonstrated predatory behavior, she provided her expert opinion that [Hunter] met the factors for classification as a sexually violent predator under 42 Pa. C.S.A. § 9799.12. See Testimony of Dr. Valliere - Official Transcript of February 19, 2025 Hearing.

Dr. Dattilio testified that he disagreed with Dr. Valliere's findings and stated that [Hunter] had a general anxiety condition and not [pedophilic] disorder. In providing his expert opinion, he concluded that [Hunter] was not a sexually violent predator. See Testimony of Dr. Dattilio - Official Transcript of February 19, 2025 Hearing.

We found Dr. Valliere's opinion to be more compelling. Accordingly, this expert testimony was a basis for our finding by clear and convincing evidence that [Hunter] should be classified as a sexually violent predator.

Id. at 2-3.

We find the court's determination was supported by sufficient evidence. We disagree that the court could not rely solely on Dr. Valliere's expert opinion. An expert's opinion regarding an SVP designation is, itself, substantive evidence; a challenge to its credibility or reliability of the expert's opinion goes to the weight, and not the sufficiency, of the evidence. **See Fuentes**, 991 A.2d at 944; **Commonwealth v. Feucht**, 955 A.2d 377, 382 (Pa.Super. 2008). A complaint that an expert's opinion lacked an adequate basis pertains to admissibility. **See, e.g., Detterline v. D'Ambrosio's Dodge, Inc.**, 763 A.2d 935, 938, 940 (Pa.Super. 2000). Here, as the trial court described in the passage quoted above, Dr. Valliere explained the basis

for her opinion that Hunter has a mental abnormality or personality disorder that makes him likely to engage in predatory sexually violent offenses.

Furthermore, an SVP expert's opinion is not unreliable or lacking an adequate basis merely because the expert did not personally interview the defendant. A defendant may waive the right to be interviewed, ***Commonwealth v. Torres***, 327 A.3d 640, 645 (Pa.Super. 2024), and SOAB members are permitted to rely on the information in an assortment of documents when forming their opinions, ***Commonwealth v. Aumick***, 297 A.3d 770, 781-82 (Pa.Super. 2023) (*en banc*). ***See also Commonwealth v. Meals***, 912 A.2d 213, 216 (Pa. 2006) ("[The SOAB member's] analysis and opinions were based on his review of records provided by the [SOAB], but did not include input from [the defendant], who had elected not to participate in the evaluation process"). Here, Hunter refused to be interviewed by Dr. Valliere, and may not now complain that that decision renders her opinion unreliable. The contrary findings by Hunter's expert also go to the weight, and not the sufficiency of the evidence.

Hunter's reliance on ***Krouse*** is misplaced. In ***Krouse***, we did not hold an expert's opinion could not satisfy the "clear and convincing evidence" standard on the basis that the expert did not personally interview the defendant. Rather, we refused to "suggest that the elements of an SVP designation cannot be met . . . in situations where the defendant exercises his or her right to refuse personal evaluation by the Assessment Board." ***Krouse***, 799 A.2d at 842. We found there was insufficient evidence in that case

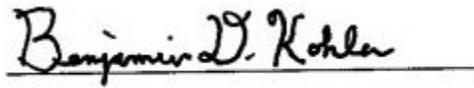
because the facts upon which the expert relied in forming an opinion that the defendant engaged in grooming behavior, and was likely to reoffend, were contrary to the record. **Id.** at 841, 843. Here, Hunter makes no argument that Dr. Valliere's opinion is based on facts contrary to the record.⁴

Hunter also misconstrues **Krouse's** requirement for a "subjective assessment" by the trial court. **Krouse**, 799 A.2d at 840 (quoting **Commonwealth v. Williams**, 733 A.2d 593, 607 (Pa. 1999)). The sufficiency of the evidence is a question of law, over which our standard of review is *de novo* and our scope of review is plenary. **Aumick**, 297 A.3d at 776. While, in **Krouse**, we admonished the trial court for failing to provide us with findings to support its conclusion, we nonetheless were able to determine whether the evidence was sufficient, based on our own review of the record. Furthermore, in the case *sub judice*, the court reviewed and summarized the pertinent facts leading to the expert's opinion that Hunter meets the statutory definition of an SVP. We find the court's recitation of its reasoning to be adequate. The SVP finding is supported by clear and convincing evidence.

Judgment of sentence affirmed.

⁴ In **Krouse**, we also found certain statutory factors weighed against the trial court's SVP designation. **Krouse**, 799 A.2d at 842. In **Meals**, the Pennsylvania Supreme Court disapproved the portion of **Krouse** suggesting that the statutory factors "operate as a checklist where each factor weighs, in some absolute fashion, either for or against an SVP classification." **Meals**, 912 A.2d at 222.

Judgment Entered.

Handwritten signature of Benjamin D. Kohler in cursive script, underlined.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 3/10/2026