

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1644-2017
Appellant	:
vs.	: CRIMINAL DIVISION
	:
	:
CLARENCE DISHONG,	:
Appellee	: 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 order entered on November 9, 2017.

On November 7, 2011, Clarence Dishong (hereinafter “the appellee”) entered a guilty plea to corruption of minors, a violation of 18 Pa. C.S. §6301(a)(1)(ii) and was sentenced to five years of supervision under the Intermediate Punishment Program. See CP-41-CR-0001339-2011. At that time, he was not required to register as a sexual offender under the law then applicable.

On December 20, 2011, the Pennsylvania legislature enacted the Sexual Offender Registration and Notification Act (SORNA), which became effective on December 20, 2012. Pursuant to SORNA, individuals who were convicted of corruption of minors in violation of 18 Pa. C.S. §6301(a)(1)(ii) prior to SORNA’s effective date, but who were still serving a sentence of intermediate punishment after SORNA’s effective date were required to register with the Pennsylvania State Police (PSP) for a period of 15 years. 42 Pa. C.S. §§9799.13(2), 9799.14(b)(8), 9799.15(a)(1). These registration requirements included,

but were not limited to, notifying the PSP within three business days of any commencement of, change in, or termination of residence or temporary lodging.

On July 22, 2017, in *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017), the Pennsylvania Supreme Court held that the retroactive application of SORNA's registration requirements violated the *ex post facto* clauses of the United States and Pennsylvania Constitutions.

Nevertheless, on September 20, 2017, the South Williamsport police filed a criminal complaint against the appellee charging him with two counts of failure to comply with SORNA's registration requirements by failing to report a change in his residence and failing to report a commencement of, change in, or termination of his temporary lodging in a timely manner.

On October 10, 2017, the appellee filed a motion to dismiss the charges based on *Muniz*. The court held a hearing and argument on the appellee's motion on November 2, 2017. At the argument, the Commonwealth opposed the motion to dismiss on the basis that the *Muniz* decision was stayed and did not constitute binding precedent. The court granted the appellee's motion to dismiss in an Opinion and Order entered on November 7, 2017.

The Commonwealth filed a timely appeal. The sole issue asserted on appeal is that the trial court erred in granting the motion to dismiss by finding that *Muniz* was applicable in holding that SORNA was found unconstitutional as constituting punishment and therefore the application of SORNA was an *ex post facto* law.

This appeal is frivolous. At the time the charges were filed, there was no basis in Pennsylvania law for them. The Pennsylvania Supreme Court had already declared that the retroactive application of SORNA constituted an *ex post facto* violation.

The Commonwealth argued that the court could not apply the *Muniz* decision because the Cumberland County District Attorney had filed a petition for writ of certiorari with the United States Supreme Court; therefore, *Muniz* was stayed and did not constitute binding precedent.

The court disagreed with the Commonwealth. The court noted that the Pennsylvania Supreme Court implicitly affirmed the *Muniz* decision in the matter of *Spann v. Pa. Bd. of Prob. & Parole*, 71 MAP 2016 (August 16, 2017)(per curiam). Even Chief Justice Saylor and Justice Mundy, who dissented in *Muniz*, described the decision and its conclusions as “prevailing precedent” and “the law of this Commonwealth” in their concurring statements in *Spann* and other cases. *Commonwealth v. Gilbert*, 168 A.3d 145 (Pa. Aug. 22, 2017)(per curiam); *Commonwealth v. Reed*, 168 A.2d 132 (Pa. Aug. 22, 2017)(per curiam).

Since that time, the Pennsylvania appellate courts have been reversing and remanding decisions of lower courts based on *Muniz*, even though the Cumberland County District Attorney filed a petition for writ of certiorari with the United States Supreme Court on October 17, 2017. See *Commonwealth v. Bricker*, 2018 Pa. LEXIS 86 (Jan. 3, 2018)(per curiam); *Commonwealth v. Brooks*, 2018 Pa. LEXIS 88 (Jan. 3, 2018)(per curiam); *Commonwealth v. Rivera-Figueroa*, 2017 PA Super 359, 2017 Pa. Super. LEXIS 919 (Nov. 14, 2017); *Commonwealth v. Hart*, 2017 PA Super 355, 2017 Pa. Super. LEXIS 911 (November 13, 2017); *Commonwealth v. McCullough*, 2017 PA Super 352, 2017 Pa. Super. LEXIS 899 (November 9, 2017); *Commonwealth v. Butler*, 2017 PA Super 344, 2017 Pa. Super. LEXIS 873 (Oct. 31, 2017). This court was bound to follow these appellate court decisions.

Moreover, regardless whether *Muniz* was binding precedent at the time the court entered its order, it is binding precedent now. On January 22, 2018, the United States Supreme Court denied the petition for writ of certiorari filed by the Cumberland County District Attorney. *Pennsylvania v. Muniz*, 2018 U.S. LEXIS 822, 2018 WL 491630 (Jan. 22, 2018).

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)