

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-10,696
: :
vs. : CRIMINAL DIVISION
: :
DANNY LEWIS, :
Defendant : Motion for Extraordinary Relief

COMMONWEALTH OF PENNSYLVANIA : NO. 00-10,958
: :
vs. : CRIMINAL DIVISION
: :
RANDY JAY WILSON, :
Defendant : Motion for Extraordinary Relief

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,704
: :
vs. : CRIMINAL DIVISION
: :
HARRY VANANUAL THORNE, :
Defendant : Motion for Extraordinary Relief

OPINION AND ORDER

Danny Lewis pled guilty on August 14, 2000 to indecent assault¹, graded as a misdemeanor of the first degree. Randy Wilson pled guilty on February 8, 2001 to, inter alia, aggravated indecent assault, graded as a felony of the first degree. Harry Thorne pled no contest on January 4, 2001, to, inter alia, indecent assault, graded as a misdemeanor of the first degree. Since these offenses are predicate offenses under 42 Pa.C.S. Section 9795.1 (Pennsylvania’s Megan’s Law), the Court ordered an assessment by the State Sex Offender Assessment Board. Hearings on the issue of whether Defendants are “sexually violent predators” and sentencings are pending. Defendants have meanwhile filed the instant motion for

¹18 Pa.C.S. § 3126

extraordinary relief, challenging the constitutionality of Pennsylvania's Megan's Law.

Defendants contend the statute imposes ex post-facto punishment, violates due process, violates their right to avoid self-incrimination, violates their right against double jeopardy, constitutes cruel and unusual punishment, violates their right to privacy, and violates the requirement of separation of powers, inter alia. Because the Court agrees with Defendants that the sexually violent predator provisions violate their right to due process under the 14th Amendment of the United States Constitution, Defendants' Motion for Extraordinary Relief will be granted, without reaching the other issues presented.

The original version of Megan's Law was adopted in 1995 but found unconstitutional by the Pennsylvania Supreme Court in 1999. In Commonwealth v Williams, 733 A.2d 593 (Pa. 1999), the Court found the sexually violent predator provisions violated the procedural due process rights guaranteed by the 14th Amendment of the United States Constitution because the statute put the burden on a defendant to rebut the presumption that he was a sexually violent predator once convicted of one of the enumerated offenses. The Court noted that a determination that an offender was a sexually violent predator resulted in a mandatory maximum sentence of life incarceration, as well as a mandatory life sentence for any subsequent conviction of a predicate offense. The Court then held that because such constituted heightened criminal punishment, the defendant was entitled to the "full panoply of relevant protections which due process guarantees in state criminal proceedings." Williams, supra, at 603, quoting the Court in Specht v. Patterson, 386 U.S. 605,608-609 (1967). The Court stated that the determination of whether one is a sexually violent predator is not an element of the predicate offense, but, rather, a separate factual question that commences following an offender's conviction. A defendant alleged to be a sexually violent predator would therefore be entitled to a hearing at which the Commonwealth had the burden of proof.

In amending Megan’s Law, the legislature eliminated the presumption, shifted the burden of proof from the defendant to the Commonwealth, and eliminated the mandatory maximum sentence and mandatory life sentence. 42 Pa.C.S. § 9795.4 now provides that at the hearing to determine whether an individual is in fact a sexually violent predator, the burden of proof shall be placed on the Commonwealth. The Court believes, however, the legislature did not go far enough. The burden placed on the Commonwealth by the statute is proof merely by “clear and convincing evidence.” The Court cannot justify that burden in light of the additional consequences attached to the failure of a sexually violent predator to register his address with the State Police or to report to verify his residence and be photographed quarterly. Such failures constitute a felony of the first degree, with a mandatory minimum sentence of probation for life and a possible sentence of life incarceration. 42 Pa.C.S. §§ 9795.2(d)(2) and 9796(e)(2). Subjected to the analysis of the Court in Williams, the amended statute still does not meet the constitutional requirements of due process.

Whether one is a sexually violent predator remains a separate factual question that commences following an offender’s conviction. A finding that a defendant is a sexually violent predator still potentially subjects that defendant to an enhanced punishment of a mandatory minimum sentence of probation for the remainder of that person’s lifetime and possibly a period of incarceration of up to that individual’s lifetime.² That defendant is thus entitled to the “full panoply of relevant protections which due process guarantees in state criminal proceedings.” Williams, *supra*.

As the Court noted in Commonwealth v. Wright, 494 A.2d 354, 360 (Pa. 1985),

When the State brings a criminal action to deny a defendant liberty or life, however, ‘the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of erroneous judgment.’ The stringency of the ‘beyond a reasonable doubt’ standard bespeaks the ‘weight and gravity’ of the private interest affected, society’s interest in avoiding erroneous convictions, and a judgment that those interests together require that ‘society impos(e) almost the entire risk of error upon itself.’

Accordingly, we believe the Commonwealth must be required to prove a defendant’s status as a sexually violent predator beyond a reasonable doubt, and by requiring proof only “by clear and convincing evidence,”

²Since the registration provisions of the statute are determined to constitute enhanced punishment due to the penalty for violation of such, we find it unnecessary to address whether the notification or counseling provisions also constitute punishment.

the statute violates the due process guarantees of the 14th Amendment.³

ORDER

AND NOW, this ____ day of June, 2001, after oral argument and upon consideration of Briefs submitted by all interested parties, it is hereby ORDERED and DECREED that the sexually violent predator provisions of 42 Pa.C.S. § 9795.4 are hereby declared unconstitutional, and accordingly, the Petitions for Extraordinary Relief Challenging the Constitutionality of Pennsylvania’s Megan’s Law are GRANTED.

BY THE COURT EN BANC,

Kenneth D. Brown, Judge

Nancy L. Butts, Judge

Dudley N. Anderson, Judge

- cc: DA
- PD
- Hon. Nancy L. Butts
- Hon. Kenneth D. Brown
- Hon. Dudley N. Anderson
- Gary Weber, Esquire

³While Williams did not specifically address the standard of proof required, the Court did point out for the legislature’s benefit, which was apparently overlooked, that Kansas’ version of Megan’s Law was upheld because in that state a defendant is entitled to a trial at which the state must prove beyond a reasonable doubt that the defendant is a sexually violent predator. Williams, 733 A.2d at 603, footnote 13.