

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 99-11,953 and 00-10,077</b>
	:	<b>CRIMINAL DIVISION</b>
<b>CHESTER E. BOWERS,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

Before this Honorable Court, is the Defendant's Petition under the Post Conviction Relief Act (PCRA), filed March 27, 2006. The Defendant alleges that being required to comply with the registration requirements under Megan's Law II, 42 Pa.C.S. § 9791, *et seq.*, is a violation of the Constitutions and/or laws of the United States and the Commonwealth of Pennsylvania, a result of ineffective assistance of counsel, not required when he plead guilty thereby rendering making said plea unlawfully induced, and an imposition of sentence greater than the lawful maximum; all of which so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place. For the following reasons, the Court finds the Defendant's allegations without merit.

***Background***

On January 24, 2006, the Defendant pled guilty to one count each of Indecent Assault (a misdemeanor of the first degree), Corruption of Minors (a misdemeanor of the first degree), and Escape (a felony of the third degree). On March 23, 2000, the Court sentenced the Defendant, as to the Escape charge, to undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be three and half (3 ½ ) years and the maximum of which shall be seven (7) years, effective November 12, 1999; as to the Indecent Assault charge, incarceration in a State Correctional Institution for an indeterminate period of

time, the minimum of which shall be five (5) months and the maximum of which shall be twelve (12) months, to run consecutive to the Corruption of Minors charge but concurrent to the Escape charge; and as to the Corruption of Minors charge, incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall three (3) months and the maximum of which shall be twelve (12) months, to run consecutive to the Indecent Assault charge but concurrent to the Escape charge. The Court did not order the Defendant to undergo a Megan's Law assessment because he was convicted prior to the July 8, 2000 effective date of that Law.

Sometime in January 2006, the Defendant, by way of letter, informed the Court that someone with the Parole Board informed him that he would have to register pursuant to Megan's Law. Believing this to be an error, the Defendant requested the Court "correct" said error. The Court, in a letter dated February 7, 2006, informed the Defendant that because his conviction occurred prior to July 8, 2000 (the effective date of Megan's Law), it did not order him to undergo a Megan's Law assessment. The Defendant then proceeded to file the instant PCRA Petition on March 27, 2006.

### ***Discussion***

It is well established that the registration requirements under Megan's Law are not punitive; i.e. said requirements are not, for constitutional purposes, criminal punishment. *Commonwealth v. Anthony*, 841 A.2d 542 (Pa. Super. Ct. 2004), *Commonwealth v. Rhoads*, 2003 PA Super 419, 836 A.2d 159 (Pa. Super. Ct. 2003), and *Commonwealth v. Williams*, 574 Pa. 487, 832 A.2d 962 (Pa. 2003). Therefore, if said requirements, although not applicable at the time of an individual's conviction, become applicable prior to the Defendant's release from prison, the Defendant must adhere to said requirements. *Commonwealth v. Gaffney*, 702 A.2d 565 1997 Pa.

Super. LEXIS 3390 (Pa. Super. Ct. 1997). Furthermore, because said requirements are not criminal in nature, and necessarily do not increase an individual's punishment, state and federal ex post facto laws do not apply. *Id.*

Instantly, the Defendant was convicted before the enactment of Megan's Law II, and therefore, the sentencing court did not order him to undergo a Megan's Law assessment; however, while incarcerated, Megan's Law II became effective and before the Defendant became eligible for parole, he was informed of his registration requirements under the Law. At first blush, the retroactivity of the registration requirements evokes notions of ex post facto law, but because Pennsylvania Court's have held said requirements are not punitive, an ex post facto analysis is improper; consequently, the Defendant 's PCRA petition fails to raise a colorable claim for relief.

### ***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. None will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this court's intention to deny the Petition. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the Petition.

**ORDER**

**AND NOW**, this \_\_\_\_ day of June 2006, the Defendant and his attorney are notified that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date.

By the Court,

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Nancy L. Butts, Judge

cc: DA  
James R. Protasio, Esq.  
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Judges  
Honorable Nancy L. Butts  
Gary L. Weber, Esq.  
Laura R. Burd, Law Clerk