

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

OPINION AND ORDER

Before this Honorable Court, is the Defendant's *pro se* 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, a condition that was not required when he pleaded guilty thereby 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 that the Defendant's allegations do not provide a basis for relief under the PCRA.

I. Background

In late 1990, the mother of the victim reported to the Williamsport Police Department that her four (4) year old son revealed to her that the Defendant had sexually abused him earlier that year. After interviewing the victim, police officer Glenn R. Bunce interviewed the Defendant at the Lycoming County Prison (where he was serving a sentence on an unrelated matter). The next day, the Defendant escaped from custody while working on the prison work crew. In December 1999, the Defendant was apprehended in Milwaukee, Wisconsin and returned to the custody of the Lycoming County Prison.

On March 23, 2000, this Court sentenced the Defendant, as to the felony escape charge,

to an indeterminate period of time in a state correctional institution (hereinafter “SCI”), the minimum of which is three and one-half (3 ½) years and the maximum of which is seven (7) years; as to the misdemeanor indecent assault charge, an indeterminate period of time in a SCI, the minimum of which is five (5) months and the maximum of which is twelve (12) months; and, as to the misdemeanor corruption of minors charge, an indeterminate period of time in a SCI, the minimum of which is three (3) months and the maximum of which is twelve (12) months. The Court ordered the sentences for the indecent assault and the corruption of minors charges to run consecutive to each other and concurrent to the sentence on the escape charge.

Sometime in early 2006, when the Defendant became eligible for parole, he learned that, although not a condition of his plea and sentencing, he was required to comply with the registration requirements under Megan’s Law or forego being considered parole.

Understandably confused by this news, the Defendant contacted, via letter, the Pennsylvania State Police, the Public Defender’s Office, and this Court. Not satisfied with the responses from these offices, the Defendant filed the instant PCRA petition on March 20, 2006.

After counsel was appointed, the Court, at the June 7, 2006 court conference on the Defendant’s petition, announced its intent to dismiss the petition for failure to state cognizable grounds for relief. More specifically, this Court’s June 8, 2006 Opinion and Order states:

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. 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.*

The Defendant then filed, *pro se*, his objection to said dismissal on June 25, 2006. The

Defendant's objection restated the arguments propounded in his March 2006 PCRA petition. For the following reasons, the Court maintains its June 8, 2006 finding that the Defendant's petition fails to state sufficient grounds for relief under the PCRA.

II. Discussion

To be eligible for relief under the PCRA, the Defendant (1) must have been convicted of a crime in Pennsylvania, and at the time the relief is granted, must be currently serving a sentence of imprisonment, probation or parole; (2) said conviction must have been the result of a violation of the Constitutions of the Commonwealth and/or the United States, a result of ineffective assistance of counsel, a result of an unlawfully induced guilty plea, and/or involve a sentence that is greater than the lawful maximum; (3) the alleged deficiencies cannot have been previously waived or litigated; and (4) the failure to previously litigate the issue was not a rational, strategic or tactical decision by counsel. 42 Pa.C.S. § 9543. Also, the Defendant must have filed his petition within one (1) year of the date the judgment becomes final, unless the petition alleges, and the petitioner proves, that the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; if the petitioner so proves, the petition must be filed within sixty (60) days of the date the claim could have been presented. 42 Pa.C.S. § 9545(b).

A. *Timeliness*

Although neither party raised the timeliness of the Defendant's PCRA petition, the Court feels it necessary, in light of the age of this case, to address the issue.

Judgment in this matter became final on March 23, 2000 (the Defendant's sentencing date); however, he did not file his PCRA petition until almost six (6) years later on March 20, 2006. The Defendant's *pro se* PCRA petition does not state the reason for this delay, but it is clear to the Court that the delay falls under the second exception to the one (1)

year filing deadline; specifically, the facts upon which the Defendant's claim is predicated were unknown to him and could not have been ascertained by the exercise of due diligence, therefore, he has sixty (60) days from the date he discovered these facts to file his petition. 42 Pa.C.S. § 9545(b).

Here, the Defendant bases his petition on the retroactive application of the registration requirements under Megan's Law. Because these requirements were not applicable at the time of his sentence, the Defendant was not aware of them until his institution notified him of said requirements at the time he became eligible for parole in or around early 2006. Attached to the Defendant's PCRA petition, was a letter from the Commander of the Megan's Law Section formally notifying him of his registration requirements under Megan's Law; because the Court is not aware of the exact date the Defendant learned of his registration requirements under Megan's Law, it will treat the date of said letter (February 10, 2006) as the date the Defendant ascertained the facts on which he based his PCRA petition. Accordingly, because the Defendant filed the petition within sixty (60) days of the date of the letter from the Commander of the Megan's Law Section (the Defendant filed the petition on March 20, 2006), the Court accepted his petition, without objection by the Commonwealth, for review.

B. *The registration requirements, pursuant to Megan's Law, being imposed on the Defendant are not grounds for relief under the PCRA*

In his March 2006 PCRA petition, the Defendant alleges that his trial counsel was ineffective and his guilty plea was unlawfully induced thereby violating his Constitutional rights because he is now being required to comply with the registration requirements under Megan's Law – requirements that, because not imposed at the time of his plea or sentencing, exceed the maximum statutory penalty. Although the Defendant correctly notes that said registration requirements he must now comply with, were not a

condition of his plea or sentencing, this fact, for the foregoing reasons, is not grounds for relief under the PCRA.

In *Commonwealth v. Williams*, 574 Pa. 487, 832 A.2d 962 (Pa. 2003) (hereinafter “*Williams I*”), the Supreme Court of Pennsylvania declared the provisions of Megan’s Law, which imposed a lifetime sentence on persons adjudicated to be sexually violent predators (hereinafter “SVP”) who failed to comply with the lifetime registration, notification, and counseling provisions, constitutionally infirm. The *Williams II* decision did not however address the penalty provisions regarding non-SVP offenders’ failure to register; this issue was addressed in *Commonwealth v. Killinger*, 585 Pa. 92, 888 A.2d 592 (Pa. 2005).

In *Killinger*, the Supreme Court of Pennsylvania reviewed a decision by a Centre County trial court that found, as a logical conclusion of *Williams II*, the penalty provisions applicable to non-SVP offenders who fail to comply with the registration requirements under Megan’s Law unconstitutional. The *Killinger* court distinguished the penalty provisions for non-SVP offenders and SVPs who fail to fulfill the registration requirements under Megan’s Law:

. . . any increase in a penal sanction beyond the statutory maximum for the underlying offense may only occur upon findings of fact proved to a jury under a reasonable doubt standard. In *Williams II*, we held that the sanctions [i.e. lifetime imprisonment for failure to comply with the lifetime registration, notification, and counseling provisions] constituted an increased penalty as a consequence of a party’s SVP status. That status under the Act, however, does not require proof beyond a reasonable doubt as found by a jury. Instead, under Megan’s Law II, SVP status is determined by a judge upon a showing by the Commonwealth by clear and convincing evidence that the offender is, in fact, an SVP. Thus, the sanctions specifically targeting SVP offenders for enhanced punishment, insofar as they depended on that underlying finding by a diminished standard of proof, violated *Apprendi*¹. . . . In the instant case, however,

¹ *Apprendi* requires that, any fact, other than the fact of prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (2000).

Appellee committed a predicate offense under Megan's Law II [thereby automatically classifying him as a non-SVP offender] and thus was subject, upon conviction by proof beyond a reasonable doubt, to such punishment as attaches by law to that offense. Thus, Appellee was subject to the penalty for the underlying offense, the applicable registration provisions of Megan's Law II, and the sanctions imposed upon violation of these provisions, all of which are plainly visible on the face of the governing statute, and none of which depend on judicial fact-finding under a diminished standard of proof.

Commonwealth v. Killinger, 585 Pa. 92, 104, 888 A.2d 592, 600 (Pa. 2005).

Similar to the Appellee in *Killinger*, the Defendant committed a predicate offense under Megan's Law and, as a non-SVP offender, he was automatically subjected to the ten (10) year registration requirement and the applicable penalties for failure to comply with said registration requirements. However, unlike the Appellee in *Killinger*, the crux of the Defendant's current petition is that Megan's Law was not in effect at the time he committed the offense for which he is currently incarcerated and consequently, was not a condition of his guilty plea and sentence. As stated in its Opinion and Order of June 2006, this Court explained that, because

. . . 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. 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.*

Accordingly, the forecited decisions of the Supreme Court of Pennsylvania foreclose this Court's ability to provide the Defendant relief under the PCRA.

ORDER

AND NOW, this _____ day of July 2006, the Court having received a response from the Defendant to this Court's proposed dismissal of his Post Conviction Relief Act (PCRA) Petition, which does not set forth sufficient grounds to delay the disposal of his cases, the Defendant's PCRA petition, is hereby DISMISSED.

The Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter, and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, the defendant may lose forever his right to raise these issues.

A copy of this order shall be mailed to the Defendant by certified mail, return receipt requested.

By The Court,

Nancy L. Butts, Judge

xc: DA (KO)
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Hon. Nancy L. Butts
Judges
Gary L. Weber, Esq. (Lycoming Reporter)
Laura R. Burd, Esq. (Law Clerk)