

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

**COMMONWEALTH**

**v.**

**DANIEL HYKES,  
Defendant**

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**No.: 1105-2009  
2209-2009**

**OPINION AND ORDER**

Defendant was arrested on November 12, 2008 by the Pennsylvania State Police (PSP) for violations of Megan's Law, specifically sections 4915(a)(1) and 4915(a)(2), alleging that he failed to comply with the Megan's Law registration requirement pursuant to 42 Pa.C.S. §9795.1(b)(2). Commonwealth alleges that Defendant is an Out of State Sexual Offender subject to lifetime registration and failed to inform the PSP of his change of residence within 48 hours of the change, failed to verify his address and be fingerprinted and photographed as required under 42 Pa.C.S. §9596. On April 7, 2009 after a hearing on the Habeas Corpus petition filed by Counsel on Defendant's behalf and without additional testimony from the Commonwealth, this Court granted Defendant's request and dismissed the charges. Commonwealth filed a timely Reconsideration motion on April 17, 2009. On May 14, 2009 after additional testimony was presented by the Commonwealth on the Habeas claim, this Court orally granted the Commonwealth's request to reconsider. However, once the Court realized that it no longer had jurisdiction to reconsider the Commonwealth's request as 37 days had elapsed since the original order was issued, the charges under 2037-2008 remained dismissed. Charges against the Defendant were refiled on May 15, 2009. At the time of

Defendant's arraignment on Information 1105-2008 he was given a pretrial date of December 15, 2009, with trial to commence in January 2010.

Defendant was also arrested May 28, 2009 by the PSP for an additional violation of section 4915(a)(1) of the Crimes Code for his failure to register his address while housed at the Lycoming County Prison from May 15 to May 19, 2009. Defendant's Motion for Habeas Corpus also challenges the evidence presented by the Commonwealth in this case on June 19, 2009. Defendant has not submitted any transcript of the testimony presented at the preliminary hearings held in these cases from May 12, 2009 or July 8, 2009 for 1105-09 or June 19, 2009 in 1022-09.

The Court also notes that Defendant has filed a Motion for Mandamus compelling the Court to dismiss all charges filed by the Commonwealth alleging that collateral estoppel and res judicata precludes the refiling of the original charges as well as the new set of charges under 1022-2009. In the alternative, Defendant alleges that the charges should be dismissed as violative of 18 Pa.C.S. Section 110.

### ***Discussion***

#### ***The charges under both 1105-2009 and 1022-2009 should be dismissed***

Defendant in his Habeas motion is relying upon the testimony and argument from the first hearing (2037-08) to support his argument that the Commonwealth has failed to present prima facie evidence on the charges filed. Since a new preliminary hearing was held on the same set of charges, this Court believes that it cannot review the testimony from the prior hearing. The Court was presented with no evidence regarding the testimony from 1022-09. To make this determination [on a Habeas Corpus claim], the

trial court should accept into evidence the record from the preliminary hearing as well as any additional evidence which the Commonwealth may have available to further prove its *prima facie* case. Commonwealth v. Morman, 541 A.2d 356, 359 (Pa. Super. Ct. 1988). Therefore, without testimony from the prior hearing alleging the Commonwealth's failure of evidence on a particular element, this Court believes that it cannot rule on Defendant's motion.

***The charges against Defendant should be dismissed based upon the theories of collateral estoppel and res judicata.***

Defendant alleges that since this Court dismissed the charges filed to information 1105-09 (by the granting of a Habeas petition under 2037-08) the Commonwealth's charges must be dismissed. Defendant claims that the refiling of the charges violates res judicata, collateral estoppel principles as well as and 18 Pa. C.S. Section 110.

The doctrine of collateral estoppel is a part of the Fifth Amendment's guarantee against double jeopardy, which was made applicable to the states through the Fourteenth Amendment. See Ashe v. Swenson, 397 U.S. 436, 437 (1970) (citing Benton v. Maryland, 395 U.S. 784, (1969)); Commonwealth v. Brown, 469 A.2d 1371, 1372 (Pa. 1983). The phrase "collateral estoppel," also known as "issue preclusion," simply means that when an issue of law, evidentiary fact, or ultimate fact has been determined by a valid and final judgment, that issue cannot be litigated again between the same parties in any future lawsuit. Ashe, 397 U.S. at 443. Collateral estoppel does not automatically bar a subsequent prosecution, but rather, it bars redetermination in a second prosecution of those issues necessarily determined between the parties in a first

proceeding that has become a final judgment. Commonwealth v. Smith, 540 A.2d 246, 251 (Pa. 1988) (emphasis in original).

18 Pa. C.S. Section 110 sets forth when a prosecution is barred by former prosecution for a different offense under certain circumstances in pertinent part:<sup>1</sup>

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when prosecution barred by former prosecution for same offense) and the subsequent prosecution is for:

(i) any offense of which the defendant could have been convicted on the first prosecution;

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense; or

(iii) the same conduct, unless:

(A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or

(B) the second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination

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<sup>1</sup>Defendant also claims that the Commonwealth has violated Rule 110 in failing to file both sets of charges against him in one case. Despite the fact that knowledge of the latter charge was not discovered until the Defendant was recommitted to the Lycoming County Prison, the issue is moot as this Court has consolidated the cases for trial in a companion decision issued this same date.

inconsistent with a fact which must be established for conviction of the second offense.

- (3) The former prosecution was improperly terminated, as improper termination is defined in section 109 of this title (relating to when prosecution barred by former prosecution for same offense) and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

The Court also believes that consideration of 18 Pa C.S. Section 109 should be made to properly decide the issue.

When a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

- (1) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.
- (2) The former prosecution was terminated, after the indictment had been found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.
- (3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.
- (4) The former prosecution was improperly terminated after the first witness was sworn but before a verdict, or after a plea of guilty was accepted by the court.

“Under state law it has uniformly been held that the discharge of an accused person upon a preliminary examination for want of probable cause constitutes no bar to a

subsequent preliminary examination before another magistrate. Such an examination is not a trial in any sense, and does not operate to put the defendant in jeopardy."

Commonwealth v. Smith, 334 A.2d 741, 742 (Pa. Super. Ct. 1975)

"To support a claim of res judicata, the party asserting this defense must show the concurrence of four conditions; (1) identity of the thing sued upon; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or sued." Callery v. Municipal Authority of Blythe Township, 243 A. 2d 385, 387 (1968). While not a single case in this Commonwealth has made exception to the necessity of establishing these four identities, our cases have judicially determined that the third requirement of the identity of the parties may be met whenever the parties are the same or where "their privies" appear on the same cause of action. Stevenson v. Silverman, 208 A. 2d 786, 787 (Pa. 1965); Hurt v. Stirone, 206 A. 2d 624 (Pa. 1965). Once it is determined that the concurrence of four identities exist, the only remaining inquiry of the court should be to determine "whether the ultimate and controlling issues have been decided in a prior proceeding in which the present parties had an opportunity to appear and assert their rights." Thompson v. Karastan Rug Mills, 323 A.2d 341, 344 (Pa. Super. Ct. 1974).

The Court in 2039-08 dismissed the charges initially against Defendant finding that the Commonwealth failed to meet its *prima facie* burden. Since the Court made no determination as required by Rule 109 to preclude the refiling of the charges, jeopardy has not attached. The only determination made by the Court was that the Commonwealth failed to meet its burden of proof at the preliminary hearing level. Since neither the Court nor a jury made a decision on the ultimate issue of guilt, res judicata

and collateral estoppel are not applicable. Defendant's request for Mandamus must be dismissed as Defendant cannot request this Court stop the Commonwealth from doing what they are legally authorized to do.

**ORDER**

AND NOW, this 15<sup>th</sup> day of December, 2009 after argument, the Defendant's Motion for Habeas Corpus, Motion to Dismiss on Collateral Estoppel, Res Judicata and Rule 110 Grounds and Mandamus are hereby DENIED.

By The Court,

Nancy L. Butts, Judge.

xc: Paul Petcavage, Esq.  
Aaron Biichle, Esq.  
Defendant, c/o Lycoming County Prison  
Gary Weber, Esq. (LLA)