

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-905-2008  
vs. : CRIMINAL  
:   
DUSTIN EDWARD WILSON, : Petition To Strike Megan's Law  
Defendant : Registration Requirements

**OPINION AND ORDER**

This matter came before the Court on Defendant's Petition to Strike Megan's Law Registration Requirements. The relevant facts follow.

On June 9, 1995, Defendant was a twenty-three year old male who was working at a local carnival. He fondled a 13 year old female under a carnival ride and had her perform oral sex on him. Defendant had been warned earlier in the evening by police that the girl was only 13 and to stay away from her. On the same date Defendant was arrested and charged with involuntary deviate sexual intercourse, statutory rape, corruption of minors and indecent assault.<sup>1</sup>

The police charged the indecent assault under former 18 Pa.C.S. §3126(a)(6) for having contact with another not his spouse, knowing he was over 18 years of age and she was under 14 years of age. This statute, however, was amended on March 31, 1995 so that subsection (a)(6) became indecent assault of a complainant with a mental disability; subsection (a)(7) prohibited indecent contact with a complainant less than 13 years of age; and subsection (a)(8) made it unlawful to have indecent contact where the complainant was less than 16, the person was

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<sup>1</sup> The case number for Defendant's 1995 convictions is CP-41-CR-1144-1995 or Lycoming County No. 95-11,144.

four or more years older than the complainant, and the complainant and person were not married to each other. The amendment became effective in 60 days, i.e., on or about May 30, 1995. Under this amendment, only indecent contact with a person less than 13 years of age was graded as a misdemeanor of the first degree. The Information filed by the Commonwealth also lists the former language of section 3126(a)(6).

On July 17, 1995, Defendant pleaded guilty to statutory rape, indecent assault, and corruption of a minor. The guilty plea order does not list the grading of the indecent assault.

On October 3, 1995, the Court sentenced Defendant to 11 ½ months to 23 months incarceration in the county prison for statutory rape, a concurrent six to twelve months for indecent assault, and a period of state incarceration of one to two years for corruption of minors which was suspended and Defendant was placed on two years consecutive probation for that offense. Defendant received credit for time served from June 9, 1995.

Pennsylvania's initial version of Megan's Law (Megan's Law I) was passed on October 24, 1995 and the registration provisions became effective in 180 days, i.e., on or about April 23, 1996. 1995 Pa. Laws 24. None of the offenses to which Defendant pleaded guilty were offenses requiring registration under Megan's Law I, former 42 Pa.C.S.A. §9793.

With the credit for time served, Defendant's sentence for indecent

assault was completed on or about June 8, 1996.<sup>2</sup> Sometime thereafter, Defendant absconded from supervision and a bench warrant was issued March 16, 1998.

On May 10, 2000, Megan's Law was amended to require an individual to register for ten years if he was convicted of indecent assault where the offense is a misdemeanor of the first degree. 42 Pa.C.S.A. §9795.1. This amendment took effect on or about July 9, 2000.

Defendant was picked up on the bench warrant on October 13, 2003. Defendant was found in violation of his probation for corruption of minors and sentenced to one to two years incarceration in a state correctional institution. When Defendant was released from his incarceration, his parole officer told him to register under Megan's Law, so Defendant registered with the Pennsylvania State Police.

On May 7, 2008, the police charged Defendant with failing to comply with the registration requirements by failing to inform the State Police within 48 hours of a change of residence.

Defendant, through his counsel, filed a Petition to Strike Megan's Registration Requirements on the basis that Defendant had no obligation to register. The Court held argument on Defendant's motion on March 31, 2009. Defense counsel argued that Defendant did not have a predicate offense under Megan's Law and Defendant should not suffer additional sanctions<sup>3</sup> or be required to continue to register when he voluntarily registered at the direction of his parole officer. The

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<sup>2</sup> Even if Defendant only received credit for time served on the statutory rape, his sentence for indecent assault was completed no later than October 2, 1996.

<sup>3</sup> On or about May 5, 2006, Defendant, pro se, pleaded guilty to failure to comply with registration

Commonwealth appeared to argue that regardless of whether Defendant's indecent assault conviction is a predicate offense under Megan's Law, it was too late for Defendant to challenge his failure to register; the only relief he could obtain would be prospective, that is, he could be relieved of the registration requirement from the date of the filing of his petition forward. The Commonwealth analogized this situation to either an illegal sentence, which the defendant could only challenge through an appeal or a timely Post Conviction Relief Act (PCRA) petition, or to an illegal order that cannot be challenged after a defendant has violated it and contempt proceedings are being pursued.

After review of the arguments and a search for relevant case law, the Court rejects the Commonwealth's arguments and rules in favor of Defendant.

The Court notes Defendant is not trying to vacate his underlying conviction or attempting to change any of the criminal sanctions imposed against him in 1995; he is trying to get a court to determine whether his 1995 conviction subjects him to the collateral consequence of Megan's Law registration.

Furthermore, the time limits for an appeal or a PCRA of Defendant's 1995 conviction would have passed years before indecent assault became a Megan's Law offense.

The Commonwealth charged Defendant with a violation of section 4915(a)(1) of the Crimes Code, which states:

An individual who is subject to registration under 42 Pa.C.S. §9795.1(a) (relating to registration) or an individual who is subject to registration under 42 Pa.C.S. §9795.1(b)(1), (2) or (3) commits an offense if

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requirements.

he knowingly fails to: (1) register with the Pennsylvania State Police as required under 42 Pa.C.S. §9795.2 (relating to registration procedures and applicability)....

18 Pa.C.S.A. §4915(a)(1). An individual cannot be prosecuted for failing to register unless he is subject to registration under 42 Pa.C.S.A §9795.1(a) or (b). To be subject to registration under section 9795.1(a) or (b), an individual must have a conviction for a “predicate offense,” i.e., one of the offenses listed in section 9795.1(a) or (b).<sup>4</sup> Statutory rape and corruption of minors are not, and have never been, predicate offenses. Indecent assault became a predicate offense in 2000, but it is only a predicate offense when it is graded as a misdemeanor of the first degree or higher. 42 Pa.C.S.A. §9795.1(a)(1). At the time Defendant’s parole officer told him he had to register, the only subsection of indecent assault that was a misdemeanor of the first degree was indecent contact with a complainant less than 13 years of age.<sup>5</sup> The indecent assault to which Defendant pleaded guilty did not involve a complainant less than 13 years of age. Instead, his conviction either was a violation of subsection (a)(8), which is a misdemeanor of the second degree, or it is the equivalent of such a violation.<sup>6</sup> Therefore, Defendant’s indecent assault

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4 Although an individual is also subject to registration if he is a sexually violent predator, a conviction for a predicate offense triggers the assessment process to determine whether the offender is a sexually violent predator. In other words, all sexually violent predators have a conviction for at least one predicate offense.

5 Under the current indecent assault statute, all subsections are graded as a misdemeanor or higher except: subsection (a)(1) pertaining to indecent contact without a complainant’s consent; and subsection (a)(8) pertaining to indecent contact where the complainant is less than 16 years of age, the person is four or more years older than the complainant, and the complainant and the person are not married to each other. 18 Pa.C.S.A. §3126(a)(1) and (8).

6 The Court has not found any case law indicating how a misgraded offense or a conviction under a former version of a criminal statute is to be treated under Megan’s Law. For prior record score purposes, misgraded offenses and convictions under former Pennsylvania law are scored as a conviction for the current equivalent Pennsylvania offense. 204 Pa.Code §§303.8(d) and 303.8(e). If the same concept applies to Megan’s Law, Defendant’s 1995 indecent assault conviction would be treated as a misdemeanor of the second degree since the victim in that case was not under the age of

conviction is not a predicate offense under Megan's Law.

Even if Defendant's conviction for indecent assault was graded as a misdemeanor of the first degree under the version of the statute in effect prior to May 30, 1995, (despite the fact that Defendant's conduct did not occur until June 9, 1995) and it is now too late for Defendant to challenge the improper grading of that offense, he was not required to register once indecent assault became a predicate offense under Megan's Law in 2000, because Defendant's sentence for indecent assault was completed in 1996. See *Commonwealth v. Richardson*, 2001 PA Super 257, 784 A.2d 126 (Pa. Super. 2001)(defendant, who was re-committed to a state correctional institution in 1996 on a technical parole violation for a non-Megan's Law offense and paroled in 1998, was not required to register under Megan's Law when sentences for Megan's Law offenses maxed out in 1993, prior to the enactment of Megan's Law).

**ORDER**

**AND NOW**, this \_\_\_\_ day of June 2009, the Court GRANTS Defendant's Petition to Strike Megan's Law Requirement.

By The Court,

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Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)

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13, regardless of whether it was incorrectly charged under former 18 Pa.C.S. §3126(a)(6), was misgraded as a misdemeanor of the first degree, or both.

Mark Schappell, Esquire  
Hill, Hill & Schappell  
411 Cumberland St., Suite 2, Lebanon, PA 17042  
Gary Weber, Esquire (Lycoming Reporter)  
Work file