IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1328 - 2009
	:	
vs.	:	
	:	
JAY KENNETH HARTSOCK, JR.,	:	
Defendant	:	

OPINION IN SUPPORT OF ORDER OF FEBRUARY 29, 2012,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed the Order of February 29, 2012, which deemed his post-sentence motion denied by operation of law.[1]

After a bench trial on November 16, 2010, Defendant was convicted of one count of failure to comply with registration requirements of sexual offenders.[2] In his Statement of Matters Complained of on Appeal, Defendant contends the court erred in its application of the law in finding him guilty.

At trial, the evidence showed that Defendant had previously been registered with the Pennsylvania State Police in Montoursville, Pennsylvania, and that he had registered on June 8, 2009, the address of 830 Funston Avenue, Williamsport. On July 9, 2009, Defendant left the Funston Avenue address and relocated to 446 Jordan Avenue, Montoursville, his mother's residence. He was transported from one address to the other by his probation officers. He thereafter failed to report under his probation supervision and a bench warrant for his arrest was issued. Simultaneously, Defendant's probation officer contacted the State Police to

1 After argument on the post-sentence motion, the court requested preparation of a transcript of the trial in this matter. That transcript was not completed prior to the expiration of 120 days from the filing of the motion and thus the motion was deemed denied by operation of law pursuant to Pa.R.Crim.P. 720(B)(3)(a).

2 18 Pa.C.S. Section 4915.

inquire whether Defendant had registered a new address, in the process informing the State Police that Defendant had left his previously registered address. Since he had not registered a new address, the State Police issued an arrest warrant. Defendant was picked up on one or both warrants on July 30 or 31, 2009.

Under Megan's Law II, offenders and sexually violent predators[3] "shall inform the Pennsylvania State Police within 48 hours of … any change of residence or establishment of an additional residence or residences." 42 Pa.C.S. Section 9795.2(a)(2)(i). Further, "residence" is defined in the Act as "[a] location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year." *Id.*, Section 9792.

Defendant argued at trial that since the address to which he had relocated after leaving Funston Avenue was intended to be temporary, the evidence showing that he was looking for another place and that he could stay there only two to three weeks, he was "homeless" or " transient" within the meaning of Commonwealth v. Wilgus, 975 A.2d 1183 (Pa. Super. 2009), and therefore the registration requirement did not apply to him. In Wilgus, the Superior Court concluded that Mr. Wilgus was not required to register as he was without a residence to register, defining residence as a "fixed place of habitation or abode", and referencing the thirty-day language of Section 9792 in defining "fixed". Defendant contended that here, the Commonwealth was required to show that Defendant either lived or intended to live at the 446 Jordan Avenue address for more than thirty days and since they showed neither, he could not be found guilty.

The court found Wilgus distinguishable, however, as there, Mr. Wilgus was living on the streets but in the instant case, Defendant was living with his mother.

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3 That Defendant was required to register under Megan's Law II is not at issue in this appeal.

The court relied on a footnote in the Wilgus opinion which cautioned that

> "not all "homeless persons" will escape registration requirements. There will be those persons, regarded as homeless, but who have temporary abodes, such as the home of a relative or friend or a shelter, and who, therefore, will be expected to register.

Id. at 1188, fn. 8. The court therefore found the 446 Jordan Avenue address to constitute a residence that Defendant should have registered, and found him guilty for failing to do so.

It appears that our Supreme Court has in the meantime answered the question raised by this appeal, however, and that neither Defendant's argument nor this court's holding need be addressed further. In Commonwealth v. Wilgus, 2012 Pa. LEXIS 637 (March 26, 2012), our Supreme Court reversed the Superior Court's ruling and instead ruled that "[i]t is clear from the plain language of the statute, …, appellee's obligation to notify police was triggered when he changed his previous residence, not when his new residence was established." *Id*. at 16-17. In the instant case, since the evidence clearly showed that Defendant left the residence at 830 Funston Avenue, he was required to notify police and, since he did not do so, his conviction under Section 4915 was in accordance with law.

Dated: April 25, 2012

Respectfully submitted,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson