

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-377-2010**
v. :
 :
ADAM LEE FISHER, : **CRIMINAL DIVISION**
Defendant :

OPINION AND ORDER

On August 1, 2014, the Defendant filed a Motion to Dismiss the Charge. A hearing on the motion was held on August 21, 2014.

I. Background

In November of 2004, Act 152 of 2004 was signed into law. Act 152 included Megan’s Law III, which replaced Megan’s Law II.

On April 8, 2010, the Defendant was charged with Failure to Comply with Registration of Sexual Offenders Requirements under Megan’s Law III.¹ October 15, 2010, the Defendant pled guilty to the offense and was sentenced.

On December 16, 2013, the Supreme Court of Pennsylvania declared Act 152 unconstitutional in Commonwealth v. Neiman.² On July 21, 2014, this Court vacated the Defendant’s guilty plea and sentencing order of October 15, 2010. The Defendant then filed the present motion.

The Defendant argues that he cannot be charged under Megan’s Law III since the law was declared unconstitutional. Additionally, he argues that Commonwealth cannot amend the information to charge the Defendant under Megan’s Law II. The Commonwealth argues that it

¹ The Defendant was charged with the offense because he allegedly failed to notify the Pennsylvania State Police that he changed his address in February of 2010.

² 84 A.3d 603, 615 (Pa. 2013).

can amend the information to charge Defendant under Megan's Law II. It relies on the *en banc* opinion of the Court of Common Pleas of Lebanon County in Commonwealth v. Bavis.³

II. Discussion

In Bavis, the defendants were charged with failure to comply with the registration requirements of Megan's Law III. After Neiman, the defendants filed motions to dismiss the charges and argued that the defendants could not be charged under Megan's Law II. The Court found that Megan's Law II was in effect from May 10, 2000 to December 20, 2012. The Court held that since Megan's Law II was in effect when the defendants allegedly failed to comply with registration requirements, the Commonwealth could amend the information to charge defendants under Megan's Law II.

This Court agrees with the reasoning of the Lebanon County Court of Common Pleas in Bavis. The information can be amended to charge the Defendant under Megan's Law II.

³ This Court is using Commonwealth v. Bavis as an abbreviation for an opinion that decided motions in four cases. The cases are Commonwealth v. Bavis (CP-38-CR-127-2013), Commonwealth v. Day (CP-38-CR-1045-2013), Commonwealth v. Service (CP-38-CR-1005-2013), and Commonwealth v. Rivera-Figeroa (CP-38-CR-866-2013). The Opinion was written by the Honorable Charles T. Jones, Jr. It was filed on June 17, 2014.

III. Conclusion

Because Megan's Law II was in effect when the Defendant allegedly violated the registration requirements, the Commonwealth can amend the information to charge the Defendant under Megan's Law II.

ORDER

AND NOW, this _____ day of October, 2014, the Defendant's Motion to Dismiss is hereby DENIED. The Commonwealth has 30 days from the date of this Order to amend the information.

By the Court,

Nancy L. Butts, President Judge