

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-2057-2004</b>
<b>v.</b>	:	
	:	
<b>ROBIN SHRAWDER,</b>	:	<b>CRIMINAL DIVISION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On July 7, 2014, Defendant (Petitioner) filed a Petition to Enforce Plea Agreement or for Writ of Habeas Corpus. A hearing on the petition was held on August 14, 2014.

**I. Background**

On April 12, 2005, Petitioner pled *nolo contendere* to two counts of Luring a Child into a Motor Vehicle<sup>1</sup> and two counts of Corruption of Minors.<sup>2</sup> On May 26, 2005, Petitioner was sentence to serve a period of probation of three years under the supervision of the Lycoming County Adult Probation Office. Around August of 2006, the Pennsylvania State Police (PSP) notified Petitioner that he was required to register as a sexual offender for a period of ten years. On August 13, 2006, Petitioner registered as a sexual offender. Since his registration in 2006, Petitioner has been made a Tier III sexual offender under Section 9799.14(d)(16) of Pennsylvania’s Sexual Offender Registration and Notification Act (SORNA).<sup>3</sup> As a Tier III sexual offender, Petitioner will be required to register for life. 42 Pa. C.S. § 9799.15(a)(3).

At the time of his plea, Petitioner believed that he would not be required to register as a sexual offender because Megan’s Law, a predecessor of SORNA, had not been amended until after the commission of his offenses. Petitioner’s attorney at the time of the plea did not notify Petitioner that he was required to register as a sexual offender for a period of ten years.

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<sup>1</sup> 18 Pa. C.S. § 2910.

<sup>2</sup> 18 Pa. C.S. § 6301(a)(1).

<sup>3</sup> 42 Pa. C.S. § 9799.14(d)(16).

Petitioner argues that he should not be required to register as a sexual offender because he was not told at the time of his plea or sentencing that he would be required to register. In the alternative, Petitioner argues that he should not be required to register for more than fifteen years because under the current law, the crimes of which he was convicted require registration for a period of fifteen years. Petitioner argues that he does not fall under 42 Pa. C.S. § 9799.14(d)(16) because his convictions resulted from one criminal act.

The Commonwealth argues that this Court does not have jurisdiction to decide the petition because the Defendant is no longer under supervision. The Commonwealth also argues that under Commonwealth v. Perez,<sup>4</sup> the registration requirements apply retroactively. Finally, the Commonwealth argues that the Petitioner should be required to register for life since the Petitioner has two or more Tier I convictions and 42 Pa. C.S. § 9799.14(d)(16) plainly states that a person with two or more Tier I convictions is classified as a Tier III sexual offender.

## **II. Discussion**

In Perez, the Superior Court of Pennsylvania held that “the new registration regime pursuant to SORNA is constitutional under the Federal and State Ex Post Facto Clauses.” 97 A.3d at 29. Petitioner’s argument that he should not be required to register fails because under Perez, a court can retroactively apply the requirements of SORNA. Petitioner’s understanding of the requirements of Megan’s Law at the time of the plea is irrelevant in this matter since the subsequent changes in the sexual registration requirements can be applied to him.

In Commonwealth v. Hainesworth,<sup>5</sup> a defendant “was assured no less than twice by the Commonwealth that the plea did not obligate [him] to register as a sex offender. Moreover, these statements were made as part of the Commonwealth’s recitation of the terms of the plea

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<sup>4</sup> 97 A.3d 747 (Pa. Super. 2014).

<sup>5</sup> 82 A.3d 444 (Pa. Super. 2013).

agreement, which were laid out carefully on the record. It [was] unambiguous from the record that both parties . . . and the trial court, understood that a registration requirement was not included as a term of [defendant's] plea agreement.” 82 A.3d at 448. The Superior Court held that the trial court did not err when it ordered specific enforcement of “a plea bargain that contained a negotiated term that [the defendant] did not have to register as a sex offender.” *Id.* at 450.

Here, at the time of his plea and sentencing, Petitioner was not told that he would be required to register as a sexual offender. However, Petitioner did not receive assurance that he did not have to register, and there is nothing in the record revealing an understanding with the Commonwealth that he did not have to register. Although Petitioner believed he did not have to register, his plea bargain did not contain such a term. Therefore, Hainesworth is distinguishable from this case.

Since Petitioner's conviction, Pennsylvania has amended its Corruption of Minors statute. In Commonwealth v. Sampolski,<sup>6</sup> the Superior Court of Pennsylvania held that a person convicted of Section 6301(a)(1) of the former Corruption of Minors statute is not required to register as a sexual offender. 89 A.3d at 1290. *Accord* Commonwealth v. Bundy, 2014 PA Super 144, 13 n. 5; 42 Pa. C.S. § 9799.13(3.1)(ii)(A). Here, Petitioner was convicted of Section 6301(a)(1) of the former Corruption of Minors statute. Therefore, Petitioner is not required to register as a result of his Corruption of Minors convictions.

However, Petitioner was also convicted of two counts of Luring a Child into a Motor Vehicle. Under SORNA, a person convicted of Luring a Child into a Motor Vehicle is required to register as a sexual offender for a period of fifteen years. *See* 42 Pa. C.S. §§ 9799.14(b)(4), 9799.15(a)(1).

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<sup>6</sup> 89 A.3d 1287 (Pa. Super. 2014).

The only question remaining is whether Petitioner falls under 42 Pa. C.S. § 9799.14(d)(16), which requires registration for life.<sup>7</sup> In Commonwealth v. Merolla,<sup>8</sup> the defendant pled *nolo contendere* to two separate counts of indecent assault at the same plea hearing. 909 A.2d at 340. The trial court required the defendant to register for life pursuant to Section 9795.1(b)(1) of Megan’s Law II,<sup>9</sup> which provides that “[a]n individual with two or more convictions of any of the offenses set forth in subsection (a)” shall be subject to lifetime registration. Id. at 341; *see* 42 Pa. C.S. § 9795.1(b)(1). The Superior Court of Pennsylvania held that the plain language of Section 9795.1(b)(1) required that the defendant register for life. 909 A.2d at 346-47. The Court found it was “irrelevant that the defendant had not been sentenced for his first offense before the commission of his second crime” because Megan’s Law II was “based on concern for public safety” rather than “heightening punishment for criminals who have failed to benefit from the effects of penal discipline [sic].” Id.

Here, 42 Pa. C.S. § 9799.15(a)(3) in conjunction with 42 Pa. C.S. § 9799.14(d)(16) provides that an individual with “two or more convictions of offenses listed as Tier I or Tier II sexual offenses” shall register for life. Given the similarity between the language of Section 9795.1(b)(1) of Megan’s Law II and the language of 42 Pa. C.S. § 9799.14(d)(16), this Court finds that Merolla is controlling. Since Petitioner pled *nolo contendere* to two counts of Luring a Child into a Motor Vehicle, a Tier I offense, Petitioner is required to register for life.

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<sup>7</sup> In Commonwealth v. Mielnicki, the Supreme Court of Pennsylvania may address the meaning of “two or more convictions” in 42 Pa. C.S. § 9799.14(d)(16).

<sup>8</sup> 909 A.2d 337 (Pa. Super. 2006).

<sup>9</sup> Megan’s Law II was replaced by SORNA.

### **III. Conclusion**

The registration requirements of SORNA can be applied to Petitioner. Since Petitioner was convicted of two counts of Luring a Child into a Motor Vehicle, he is required to register for life.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of November, 2014, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition to Enforce Plea Agreement or for Writ of Habeas Corpus be hereby DENIED.

By the Court,

Nancy L. Butts, President Judge