



update. The letter stated that the Defendant had to report in the time period of November 28, 2014 to December 7, 2014. The Defendant did not report to a registration site in that time period.

### **C. Trooper McGee's Testimony during the Hearing on the Petition for Habeas Corpus**

In June of 2014, McGee received a letter from PSP's Megan's Law Unit. The letter asked him to investigate the Defendant for failing to comply with the reporting requirements of SORNA. Via a phone call, McGee told the Defendant that he had to update his information. On October 2, 2014, which was the day after call, the Defendant went to the PSP barracks in Washington, PA and updated his information. McGee spoke with a deputy sheriff in Ohio, who said that the Defendant had registered in Ohio. On November 24, 2014, the Defendant was sent a letter, which stated that the Defendant was required to appear at a Pennsylvania registration site in the period of November 28, 2014 to December 7, 2014.

### **D. William Place's Testimony during the Hearing on the Petition for Habeas Corpus**

William Place (Place) is an operations supervisor for Newalta Environmental. The Defendant was employed by Newalta from April 23, 2012 to January 14, 2015. While employed by Newalta, the Defendant worked in Ohio with the exception of January 4, 2014 to January 7, 2014, when he worked in Pennsylvania.

### **E. Commonwealth's Exhibit 2**

Commonwealth's Exhibit 2 is a five-page document with the title "Pennsylvania State Police Sexual Offender Registration Megan's Law." The document was signed by the Defendant on October 2, 2014, which is the date at the bottom of each page of the document. Also at the bottom of each page is "Original Information Provided by Offender," which indicates that the

information in the document was provided by the Defendant. The third page of the document has a section with the title “Address Information.” The section provides that the Defendant’s address as 72632 Kaczmarek Rd., Flushing, Ohio 43977. The fourth page of the document has a section with the title “Employment 1.” This section provides that the Defendant’s employer is Newalta. The section also provides that Newlata’s street address is 145 Miller Avenue, Montgomery, PA 177521419. The last page of the document has a section with the title “Offenses.” The section provides that the Defendant was convicted of rape in Pennsylvania on March 9, 1987.

## **F. Arguments**

In his petition, the Defendant argues that the Commonwealth failed to establish a *prima facie* case of Failure to Comply. The Defendant asserts that the Commonwealth did not present any evidence that he failed to verify his place of residence or his place of employment. He argues that he was not subject to registration in Pennsylvania because he was neither working nor living in Pennsylvania. The Commonwealth asserts that it has established a *prima facie* case because it presented evidence that the Defendant did not appear in person at a registration site for his required information verification. The Commonwealth argues that, even though he lived and worked in Ohio, the Defendant was required to appear in person at a registration site since “his subcategory does not require employment in Pennsylvania.”

## **II. Discussion**

“An individual who is subject to registration under 42 Pa.C.S. § 9799.13 (relating to applicability) commits an offense if he knowingly fails to verify his address or be photographed as required under 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25.” 18 Pa.C.S. § 4915.1(a)(2). For a

person to commit an offense under 18 Pa.C.S. § 4915.1(a)(2), the person must knowingly fail to comply with 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25. The information is incorrect because it charges that the Defendant committed a crime by knowingly failing to comply with “42 Pa.C.S. section 9796,” which expired on December 20, 2012. Section 9796 was listed in an expired version of the Failure to Comply statute, but it is not listed in the current version. Although the information is incorrect, it still provides the Defendant with notice that the alleged crime is his alleged knowing failure to verify his address or to be photographed as statutorily required. In addition, the complaint provided the Defendant with notice of the alleged crime because it charges that the Defendant “did knowingly fail to verify his residence or to be photographed at PSP or an approved register site as required under 42 C.S. 9799 E(3).” Although 42 C.S. 9799 E(3) does not exist, it is clearly an attempted reference to 42 Pa.C.S. § 9799.15(e)(3), which is a section listed in Failure to Comply.

As mentioned above, “[a]n individual who is subject to registration under 42 Pa.C.S. § 9799.13 (relating to applicability) commits an offense if he knowingly fails to verify his address or be photographed as required under 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25.” 18 Pa.C.S. § 4915.1(a)(2). The Defendant argues that he is not a subject to registration under Section 9799.13, and, therefore, the Commonwealth has not established a *prima facie* case of Failure to Comply.

“A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. Notably, the Commonwealth does not have to prove the defendant’s guilt beyond a reasonable doubt. Further, the evidence must be considered in the light most favorable to the Commonwealth so that inferences that would support a guilty

verdict are given effect.” Commonwealth v. Santos, 876 A.2d 360, 363 (Pa. 2005) (citations omitted).

42 Pa.C.S. § 9799.13 specifies the individuals who are subject to registration. The Commonwealth argued that the Defendant is subject to registration because he is an individual specified in 42 Pa.C.S. § 9799.13(3)(i), which provides that the following individual is required to register:

An individual who was required to register with the Pennsylvania State Police pursuant to this subchapter prior to December 20, 2012, and who had not fulfilled the individual’s period of registration as of December 20, 2012.

42 Pa.C.S. § 9799.13(3)(i). Therefore, to establish a *prima facie* case against the Defendant, the Commonwealth must produce evidence that the Defendant was required to register prior to December 20, 2012.

On October 24, 1995, the General Assembly enacted Megan’s Law I, which began Pennsylvania’s registration requirement for sexual offenders. Megan’s Law I was applicable as follows:

(1) All offenders convicted of an offense set forth in 42 Pa.C.S. Section 9793(b) before the effective date of this section, *who remain under the jurisdiction of the Pennsylvania Board of Probation and Parole or the Department of Corrections*, shall be subject to the provisions of this act, with the exception of 42 Pa.C.S. Sections 9794, 9795(A), 9796(A), 9797, 9798 AND 9799.4, which relate to sexually violent predators.

(2) All offenders convicted of an offense set forth in 42 Pa.C.S. Section 9793(b) committed on or after the effective date of this section shall be subject to all provisions of this act.

Commonwealth v. Rivera, 10 A.3d 1276, 1283 (Pa. Super. 2010) (quoting Act No. 1995-24, Section 3, enacted October 24, 1995). Here, the Commonwealth produced evidence that the Defendant was convicted of rape before the effective date of Megan’s Law I. It did not produce evidence of other convictions or evidence that the Defendant was under the jurisdiction of the

Pennsylvania Board of Probation and Parole or the Department of Corrections on the effective date of Megan’s Law I. Therefore, the Commonwealth did not produce evidence that the Defendant was required to register under Megan’s Law I.

On May 10, 2000, the General Assembly enacted Megan’s Law II, which included provisions concerning a requirement to undergo lifetime registration. The enabling legislation for Megan’s Law II provides that the law applies as follows:

- (1) To proceedings initiated on or after the effective date of this act.
- (2) The reenactment and amendment of 42 Pa.C.S. Ch. 97 Subch. H shall *apply to individuals incarcerated or convicted on or after the effective date of this act.*
- (3) This act shall not affect the requirements for individuals registered pursuant to 42 Pa.C.S. Ch. 97 Subch. H prior to the effective date of this act.

Rivera, 10 A.3d at 1281-82 (quoting Act No. 2000-18, Section 5, enacted May 10, 2000).

Section 9795.2 of Megan’s Law II sets forth the applicability of the law’s registration provisions and provides as follows:

Offenders . . . shall be required to register with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the *commencement* of a sentence of intermediate punishment or probation. . . .

Id. at 1284. (42 Pa.C.S.A. § 9795.2(a)(1) (expired on December 20, 2012)). “[T]he legislature clearly intended that offenders be required to register at the *commencement* of their probation and not at some point in the middle of their term.” Id. “[T]he term ‘imprisonment’ was intended by the legislature to apply only to the original term of confinement served pursuant to a conviction for a Megan’s Law sex offense.” Id. at 1285. However, the “most current version of Megan’s Law is applicable so long as the defendant remains in the custody of correctional authorities to discharge any part of his sentence for the sex offense.” Commonwealth v. Hitner, 910 A.2d 721, 723 n.6 (Pa. Super. 2006) (citing Commonwealth v. Benner, 853 A.2d 1068, 1072

(Pa. Super. 2004)). Here, the Commonwealth did not produce evidence that, on the effective date of Megan's Law II, the Defendant was in the custody of correctional authorities to discharge any part of a sentence for a sex offense. Therefore, the Commonwealth did not produce evidence that the Defendant was required to register under Megan's Law II.

On November 24, 2004, the General Assembly enacted Megan's Law III, which became effective on January 24, 2005. See Hitner, 910 A.2d at 723 n.6. Megan's Law III was applicable as follows:

Offenders and sexually violent predators shall be required to register with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the commencement of a sentence of intermediate punishment or probation.

42 Pa.C.S. § 9795.2(a)(1) (expired on December 20, 2012). Here, the Commonwealth did not produce evidence that, on the effective date of Megan's Law III, the Defendant was in the custody of correctional authorities to discharge any part of a sentence for a sex offense. Therefore, the Commonwealth did not produce evidence that the Defendant was required to register under Megan's Law III.

SORNA, the current sexual offender registration law, became effective on December 20, 2012.<sup>3</sup> Commonwealth v. Giannantonio, 114 A.3d 429, 432 n.1 (Pa. Super. 2015). As mentioned above, SORNA's applicability is contained in 42 Pa.C.S. § 9799.13. Because the Commonwealth did not produce evidence that the Defendant was required to register under Megan's Law I, Megan's Law II, or Megan's Law III, it has not produced evidence that the Defendant was subject to registration under 42 Pa.C.S. § 9799.13(3)(i). The Court notes that the Defendant may have been required to register under Megan's Law I, II, or III, but the Commonwealth did not produce evidence that he was required. For the reasons discussed above,

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<sup>3</sup> "Pennsylvania courts have also referred to [SORNA] as 'Megan's Law IV,' 'Act 111 of 2011,' 'Adam Walsh Child Protection and Safety Act,' and the 'Adam Walsh Act.'" Giannantonio, 114 A.3d at 432 n.1.

the 1987 rape conviction, alone, is not evidence that the Defendant was required to register prior to December 20, 2012. Furthermore, the Court notes that Trooper McGee's statement that the Defendant was required to register is not evidence that Defendant was subject to registration under 42 Pa.C.S. § 9799.13. It is simply a restatement of an element of Failure to Comply.

### **III. Conclusion**

The Commonwealth did not established a *prima facie* case of Failure to Comply because it did not produce evidence that the Defendant was subject to registration under 42 Pa.C.S. § 9799.13.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of August, 2015, based on the foregoing Opinion, the Defendant's Petition for Habeas Corpus is hereby GRANTED. It is ORDERED and DIRECTED that the charge of Failure to Comply is hereby DISMISSED.

By the Court,

Nancy L. Butts, President Judge