

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-534-2015
v.	:	
	:	
ROBERT FRANK BALDWIN III,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

I. Background

On August 31, 2015, the Commonwealth filed two motions: a motion requesting the Court to reconsider its Opinion and Order filed on August 25, 2015 and a motion requesting that the Court re-open the record. The Order filed on August 25, 2015 granted the Defendant’s Petition for Habeas Corpus and dismissed the charge against the Defendant. A factual background is contained in the Court’s Opinion filed on August 25, 2015.

II. Discussion

A. Motion for Reconsideration

1. Alone, Commonwealth’s Exhibit 2 is not Evidence that the Defendant was Subject to Registration.

The Defendant argues that the Court “erred by not recognizing the recitations in the signed registration document as evidence that the Defendant was subject to registration.” The document to which the Commonwealth refers is the document that the Court called “Commonwealth’s Exhibit 2” in the Opinion filed on August 25, 2015. The document is five pages and has the title, “Pennsylvania State Police Sexual Offender Registration Megan’s Law.” At the bottom of each page is the phrase “Original Information Provided by Offender.” The first two pages contain several “blocks,” and each “block” has a number or a letter next to it. The

sentences in Blocks 1 through 6 are not written or provided by the Defendant. Block 1 contains the following:

You are required to register as a sex offender because you have been convicted of a sexually violent offense

The Defendant's signature is on the second page in block 7. The following sentence is above the Defendant's signature.

I acknowledge that I have read and understand the requirements set forth in blocks 1 through 6. I verify that the facts set forth in this registration form are true and correct to the best of my knowledge, information, and belief.

Information provided by the Defendant is contained in the last three pages.

Here, the sentences in blocks 1 through 6 were not written or provided by the Defendant. Therefore, in acknowledging that he understood the requirements in blocks 1 through 6, the Defendant acknowledged that he understands the Pennsylvania State Police believe he has a conviction that requires him to register. Alone, the Pennsylvania State Police belief that he has a conviction requiring him to register is not evidence that he is required to register because the Pennsylvania State Police do not decide who registers; 42 Pa.C.S. § 9799.13 specifies the individuals who are required to register. Reasons for the Pennsylvania State Police's belief or evidence of the process that the police used to come to that belief could have provided evidence that the Defendant was subject to registration. But the Commonwealth did not produce evidence of the process or reasons for the belief beyond the 1987 rape conviction, which was discussed in the Opinion filed on August 25, 2015.

2. The Commonwealth had Notice that the Defendant was Arguing that He was not Subject to Registration in Pennsylvania.

The Commonwealth argues that the Court should reconsider its Opinion because the “Defendant did not allege that his prior criminal convictions for sex crimes did not bring him within the purview of Megan’s Law or SORNA.” The Commonwealth contends that it did not need to produce evidence that the Defendant had a conviction that required him to register because it did not have notice that the Defendant was contesting the conviction. It argues that the Defendant only alleged that he was not subject to registration in Pennsylvania because he was living and working in Ohio. This Court believes that the Commonwealth’s argument fails because, in the Petition for Habeas Corpus, the Defendant argued that he “was not subject to registration in Pennsylvania.” 42 Pa.C.S. § 9799.13 specifies the individuals who are subject to registration. Therefore, the Commonwealth had notice that the Defendant was arguing that he was not an individual in 42 Pa.C.S. § 9799.13. The Commonwealth’s assertion that it did not have notice is belied by the fact that the Commonwealth argued the Defendant was a person in 42 Pa.C.S. § 9799.13(3).

3. Even if the Commonwealth had the Notice it has Alleged, and Even if Commonwealth’s Exhibit 2 is Evidence that the Defendant was an Individual in 42 Pa.C.S. § 9799.13, the Petition for Habeas Corpus Would Still be Granted.

The Commonwealth admits that the Defendant argued that he was not subject to registration in Pennsylvania since he was living and working in Ohio. The Commonwealth provided Exhibit 2, which says that, on October 2, 2014, the Defendant’s employer was Newalta and Newalta’s address was 145 Miller Avenue, Montgomery, PA 177521419. The Commonwealth also called William Place (Place), who, on direct examination, testified that the

Defendant was employed by Newalta from April 23, 2012 to January 14, 2015 and worked in Ohio with the exception of January 4, 2014 to January 7, 2014. In addition, the Commonwealth argued that the Defendant's "subcategory does not require employment in Pennsylvania."

SORNA should be interpreted and construed to effectuate the following purpose:

To require individuals convicted or adjudicated delinquent of certain sexual offenses to register with the Pennsylvania State Police and to otherwise comply with this subchapter if those individuals reside within this Commonwealth, intend to reside within this Commonwealth, attend an educational institution within this Commonwealth or are employed or conduct volunteer work within this Commonwealth.

42 Pa.C.S. § 9799.10(2).

The General Assembly intended for SORNA to apply to individuals who "reside within this Commonwealth, intend to reside within this Commonwealth, attend an educational institution within this Commonwealth or are employed or conduct volunteer work within this Commonwealth." The applicability of SORNA to the Defendant is an element of Failure to Comply. Therefore, the Commonwealth must produce evidence that, during the relevant time, the Defendant resided in Pennsylvania, intended to reside within Pennsylvania, attended an educational institution within Pennsylvania, or was employed or conducted volunteer work within Pennsylvania.

The Commonwealth did not produce evidence that the Defendant resided or intended to reside in Pennsylvania during the relevant time period. It did not produce evidence that the Defendant attended an educational institution in Pennsylvania during the relevant time period. It did not produce evidence that the Defendant conducted volunteer work in Pennsylvania during the relevant time period. Therefore, the Commonwealth must produce evidence that the Defendant was employed within Pennsylvania during the relevant time. Commonwealth's Exhibit 2 would be evidence that the Defendant was employed within Pennsylvania during the

relevant time if the Commonwealth did not also introduce the testimony of Place. On direct examination, Place testified that the Defendant worked in Ohio with the exception of January 4, 2014 to January 7, 2014. By introducing Place, the Commonwealth disproved the allegation that the Defendant was employed within Pennsylvania during the relevant time period, which was November 28, 2014 to December 7, 2014. Therefore, the Commonwealth did not produce evidence that the Defendant was subject to SORNA during the relevant time period.

The Court is aware that if the Defendant was an individual in 42 Pa.C.S. § 9799.13 and began working in Ohio, he was required to appear in person within three business days of a change in employment and inform the Pennsylvania State Police of the change. The Commonwealth, however, has not alleged that the Defendant committed a crime by not appearing in person within three business days of the change in employment and informing the police of the change. It has alleged that the Defendant committed a crime by failing to either verify his address or be photographed as required under 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25. See 18 Pa.C.S. § 4915.1(a)(2). 42 Pa.C.S. § 9799.15(g) is the SORNA section that provides the requirements for an individual who changes employment. The section does not require an individual to verify his address if he only changes employment. In addition, the section does not subject an individual to a photograph.

B. Motion for Re-Open the Record

The Commonwealth argues that the Court should re-open the record because “the evidence was inadvertently omitted based on a mistaken belief by the Commonwealth’s attorney, consistent with the pleadings and the arguments presented at the habeas hearing, that the Defendant was not challenging the fact that he had a prior conviction that brought him under the purview of SORNA.” The Commonwealth wants to introduce evidence that the “Defendant was

incarcerated continuously from February 3, 1994 to March 18, 2012, serving sentences for Rape, Attempted Rape, Aggravated Indecent Assault, and related offenses.” The motion is denied because the Commonwealth had notice that the Defendant was arguing that he was not a person subject to registration in Pennsylvania. After saying that the Commonwealth had no further witnesses, the attorney for the Commonwealth argued that the Defendant was an individual in 42 Pa.C.S. § 9799.13(3). Furthermore, even if the Commonwealth had presented the evidence mentioned in its motion, the Petition for Habeas Corpus still would have been granted for the reasons discussed in Section II. A. 3.

III. Conclusion

Even if the Commonwealth had presented the evidence mentioned in its motion, the Petition for Habeas Corpus still would have been granted.

ORDER

AND NOW, this _____ day of September, 2015, based on the foregoing Opinion, both the Commonwealth’s Motion for Reconsideration and the Commonwealth’s Motion to Re-Open the Record are hereby DENIED.

By the Court,

Nancy L. Butts, President Judge