

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1220-2015
 :
 JOHN BALEVICZ, : Opinion and Order re: Defendant's
 Defendant : Petition to Enforce Guilty Plea/Motion to Dismiss

OPINION AND ORDER

By way of background, Defendant is charged in the above-captioned case with failing to comply with sexual offender registration requirements. His requirement to register allegedly arises out of a guilty plea and sentencing in Delaware County for the offense of criminal attempt to commit involuntary deviate sexual intercourse. At the time of Defendant's sentencing such a conviction required registration for ten years under Megan's Law.¹ Today, such a conviction would require lifetime registration under the Sexual Offender Registration and Notification Act (SORNA).²

As evidenced by Exhibit A to the petition, on June 1, 2004 Defendant was sentenced to 36 months to 72 months of incarceration in a state correctional institution. In Box C of that exhibit there is a notation that Defendant is to register his current address and provide other information to the Pennsylvania State Police in accordance with 42 Pa.C.S.A. §9791 et seq. for 10 years.

On September 29, 2015, Defendant filed his petition to enforce guilty plea/motion to dismiss. In this motion, Defendant contends that: he is entitled to enforce the

1 42 PA. CONSOL. STAT. ANN. §9795.1(a)(2).

2 42 PA. CONSOL. STAT. ANN. §§9799.14(d)(14), 9799.15(a)(3).

plea agreement for a registration requirement of 10 years; this is a “contract matter;” venue is appropriate in Lycoming County pursuant to Pennsylvania Rule of Civil Procedure 1006; the 10-year period expired June 1, 2014; and therefore, the criminal complaint filed on June 25, 2015 should be dismissed. The court cannot agree for several reasons.

First, sexual offender registration is a collateral consequence of Defendant’s Delaware County conviction. Although a petition to enforce a plea agreement related to such registration is determined on contract principles, the court has not found any case which indicates that converts the matter into a civil case for which the venue provisions of Rule 1006 would apply or that Defendant’s petition could be heard anywhere but Delaware County. The plea agreement was entered in Delaware County. The records and witnesses related to that plea agreement are in Delaware County, and that is where any petition to enforce the agreement should be heard.

Second, Exhibit A is a “CERTIFICATE OF IMPOSITION OF JUDGMENT OF SENTENCE”. It does not set forth the plea agreement in the case as averred in paragraph 6 of Defendant’s petition. The 10-year registration period could have been imposed either as part of the plea agreement or simply as a matter of law as a result of Defendant’s conviction.

Third, even if the court were to assume that Defendant is entitled to enforcement of the plea agreement and his registration requirement remains ten years, he has not fulfilled his 10-year registration requirement. Act 127 of 2002 amended Megan’s Law so that the version of Megan’s Law in effect as of the date of Defendant’s sentencing stated:

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 commencement of a sentence of intermediate punishment or probation. For purposes of registration, offenders and sexually violent predators shall provide the Pennsylvania State Police with all current or intended residences, all information concerning current or intended employment and all information concerning current or intended enrollment as a student.

42 Pa.C.S.A. § 9795.2(a)(1).

According to Exhibit A of the petition, Defendant was sentenced to serve 36 months (3 years) to 72 months (6 years) in a state correctional institution and he was not given any credit for time served. Thus, the earliest date Defendant would have been eligible for parole and release from incarceration was June 1, 2007. Given the provisions of section 9795.2(a)(1) and Defendant's sentence, the earliest date his registration period would have begun was June 1, 2007 and the earliest it would expire is June 1, 2017. Therefore, he is not entitled to dismissal of the charge in this case.

ORDER

AND NOW, this ___ day of October 2015, the court summarily denies Defendant's petition to enforce guilty plea/motion to dismiss filed on September 29, 2015.

This ruling is without prejudice to Defendant challenging his registration requirement by filing an appropriate petition in Delaware County.³

By The Court,

Marc F. Lovecchio, Judge

³ According to Defendant's petition he is currently required to register as a Tier III sexual offender. The court believes that this is due to the provisions of 42 PA. CONSOL. STAT. ANN. §9799.13(3).

cc: Aaron Bicchle, Esquire (ADA)
Jeff Frankenburger, Esquire (APD)
Work file