

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 625 – 2014
	:	
vs.	:	CRIMINAL DIVISION
	:	
SAMUEL ALLEN McHENRY,	:	
Defendant	:	Motion to Dismiss

**OPINION AND ORDER**

Before the Court is Defendant’s Motion to Dismiss, filed March 3, 2015. Argument was heard March 11, 2015.

Defendant has been charged with one count of Failure to Comply With Registration Requirements in violation of 42 Pa.C.S. Section 9799.15.<sup>1</sup> By Order dated September 8, 2014, in response to Defendant’s Petition for Habeas Corpus, the Honorable Marc F. Lovecchio limited the charge to a “fail[ure] to register temporary lodging.”<sup>2</sup> The evidence before Judge Lovecchio was that, for a year or more, Defendant has been staying overnight on weekends and during the week “a night or two” at his girlfriend’s residence and Judge Lovecchio concluded that such evidence supported the charge. Defendant had argued that the registration requirement at issue requires registration only where the temporary lodging is for a period of seven or more *consecutive* days, even though the word consecutive is not used in the definition of “temporary lodging.”<sup>3</sup> Judge Lovecchio rejected that

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<sup>1</sup> 18 Pa.C.S. Section 4915.1(a)(1).

<sup>2</sup> The petition for habeas corpus was granted to the extent the charge claimed that Defendant failed to register a change of residence, commencement of a residence and/or transient status.

<sup>3</sup> “Temporary lodging” is defined as “The specific location, including street address, where a sexual offender is staying when away from the sexual offender’s residence for seven or more days.” 42 Pa.C.S. Section 9799.12.

interpretation. In the instant motion, Defendant contends that even if Judge Lovecchio's interpretation is reasonable, there are other reasonable interpretations and thus the statute is void for vagueness.

The Void for Vagueness Doctrine is set forth in Commonwealth v. Habay, 934 A.2d 732, 737 (Pa. Super. 2007), quoting Commonwealth v. Thur, 906 A.2d 552, 560-61 (Pa. Super. 2006), (some citations omitted), as follows:

[T]o be valid, a penal statute must set forth a crime with sufficient definiteness that an ordinary person can understand and predict what conduct is prohibited. The law must provide reasonable standards which people can use to gauge the legality of their contemplated, future behavior. At the same time, however, the void for vagueness doctrine does not mean that statutes must detail criminal conduct with utter precision. "Condemned to the use of words, we can never expect mathematical certainty from our language." Mikulan, 470 A.2d at 1343 (quoting Grayned v. City of Rockford, 408 U.S. 104, 110-12, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)). Indeed, due process and the void for vagueness doctrine are not intended to elevate the "practical difficulties" of drafting legislation into a "constitutional dilemma." Id. (quoting Colten v. Kentucky, 407 U.S. 104, 110, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972)). Rather, these doctrines are rooted in a "rough idea of fairness." Id. As such, statutes may be general enough to embrace a range of human conduct as long as they speak fair warning about what behavior is unlawful. Id. Such statutes do not run afoul of due process of law. Id.

The statute at issue here is 42 Pa.C.S. Section 9799.15(g)(7):

(g) In-person appearance to update information.--In addition to the periodic in-person appearance required in subsections (e), (f) and (h), an individual specified in Section 9799.13 shall appear in person at an approved registration site within three business days to provide current information relating to:

(7) A commencement of temporary lodging, a change in temporary lodging or a termination of temporary lodging. In

order to fulfill the requirements of this paragraph, the individual must provide the specific length of time and the dates during which the individual will be temporarily lodged.

As stated previously, the genesis of Defendant's argument lies in the definition of "temporary lodging" - "The specific location, including street address, where a sexual offender is staying when away from the sexual offender's residence for seven or more days." 42 Pa.C.S. Section 9799.12. Defendant argues that vagueness arises because the statute "fails to provide adequate guidance with respect to the timeframe in which the seven or more days" must fall. In other words, because it does not make it clear that the seven days need not be consecutive.<sup>4</sup> Like Judge Lovecchio, however, this court believes that since the word "consecutive" was used in the definition of "residence",<sup>5</sup> but not in the definition of "temporary lodging", the statute means what it says: any seven days, whether or not consecutive. There is nothing in the language of the statute that implies otherwise and the court believes a reasonable person would be able to understand that, where, as here, a person required to register stays at another location for more than seven days total, it becomes necessary for him to register that location. While the requirement may be onerous, it is not vague.

The constitutional validity of duly enacted legislation is presumed. A statute will not be declared unconstitutional unless it clearly, palpably, and plainly violates the Constitution; all doubts are to be resolved in favor of a finding of constitutionality.

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<sup>4</sup> Any other timeframe, such as seven days in a month or seven days in a two-week period, or even seven days in a year, would not help Defendant's cause as he would be in violation of any of them according to the evidence offered at the habeas hearing. The court must consider Defendant's void for vagueness argument in light of his actual conduct. *Commonwealth v. Habay*, 934 A.2d 732 (Pa. Super. 2007).

<sup>5</sup> "Residence" is defined as "[a] location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year." 42 Pa.C.S. Section 9799.12.

Commonwealth v. Crawford, 24 A.3d 396 (Pa. Super. 2011)(citations omitted). Here, Defendant has not shown that the definition of temporary lodging “clearly, palpably and plainly” violates his right to due process.<sup>6</sup> Accordingly, the court enters the following:

**ORDER**

AND NOW, this            day of March 2015, for the foregoing reasons, Defendant’s Motion to Dismiss is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
Peter Campana, Esq.  
Eileen Dgien, DCA (email only)  
Gary Weber, Esq.  
Hon. Dudley Anderson

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<sup>6</sup> Although Defendant mentioned at argument that he believed the statute was also “facially” unconstitutional, asserting that it violated his right to associate with whom he wished, this argument was not raised in the motion, nor developed at argument and therefore the court will not address it.