

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-766-2005
v.	:	
	:	
IAN MONTE ARTHUR,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On September 18, 2015, the Defendant, through counsel, filed a Motion for Modification of Sex Offender Registration Requirement. A hearing on the motion was scheduled for November 10, 2015. At the time scheduled for the hearing, neither the Defendant nor the Commonwealth called any witnesses, but both offered argument.

I. Background

On August 2, 2005, “the Court accept[ed] the Defendant’s plea of guilty to Count 2, Indecent Assault, a misdemeanor of the first degree.” Order filed on August 12, 2005. The Court found that the Defendant entered the plea “in a knowing, intelligent and voluntary manner.” Id. The Defendant asserts that the plea agreement made no mention of the requirement to register as a sexual offender. On September 29, 2005, the Defendant signed a sexual offender registration notification form, which said that he understood the sexual offender registration requirements. The Pennsylvania State Police currently requires the Defendant to register for life as a sexual offender for this offense.

The Defendant argues that he should not be required to register as a sexual offender “since [his] plea agreement made no mention of being required to register at all, let alone for life.” To support this argument, the Defendant cites Commonwealth v. Hainesworth.¹ In addition, the Defendant contends that “at the time he signed [the] Notification form, [he] was not

¹ 82 A.3d 444 (Pa. Super. 2013).

mentally capable of understanding what he was signing, or the ramifications of doing so.” The Commonwealth argues that the Defendant must register as a sexual offender even though registration was not an explicit term of the plea agreement.

II. Discussion

“Hainesworth stand[s] for the proposition that [the Superior Court] will specifically enforce parties’ plea bargains.” Commonwealth v. Giannantonio, 114 A.3d 429, 435 (Pa. Super. 2015). In Hainesworth, the dispositive question was “whether registration was a term of the bargain struck by the parties.” 82 A.3d at 448. The Superior Court found the parties “entered into a plea bargain that contained a negotiated term that Hainesworth did not have to register as a sex offender.” Id. at 450. In support, the Superior Court relied upon the Commonwealth’s statements at Hainesworth’s guilty plea hearing, as follows:

The trial court and Hainesworth were assured no less than twice by the Commonwealth that the plea did not obligate Hainesworth to register as a sex offender. Moreover, these statements were made as part of the Commonwealth’s recitation of the terms of the plea agreement, which were laid out carefully on the record. It is unambiguous from the record that both parties to this appeal, and the trial court, understood that a registration requirement was not included as a term of Hainesworth’s plea agreement.

Id. at 448.

Unlike the plea bargain in Hainesworth, the Defendant’s plea bargain did not contain a negotiated term that the Defendant did not have to register as a sex offender. In fact, the Defendant asserts that there was no mention of the registration requirement. Therefore, the Defendant’s reliance on Hainesworth is misplaced.

Section (a)(7) of the Indecent Assault statute provides, “A person is guilty of indecent assault if the person has indecent contact with the complainant [or] causes the complainant to have indecent contact with the person . . . and . . . the complainant is less than 13 years of age.”

18 Pa.C.S. § 3126(a)(7). When the Defendant entered his guilty plea, an indecent assault under section (a)(7) was the only indecent assault graded as a misdemeanor of the first degree. See 18 Pa.C.S. § 3126(b) (expired in January 2006). Since the Defendant pled guilty to indecent assault graded as misdemeanor of first degree, he pled guilty to 18 Pa.C.S. § 3126(a)(7). 18 Pa.C.S. § 3126(a)(7) is a Tier III sexual offense. 42 Pa.C.S. § 9799.14(d)(8). “An individual convicted of a Tier III sexual offense shall register for the life of the individual.” 42 Pa.C.S. § 9799.15(a)(3). Therefore, the Defendant is required to register for life. It is irrelevant whether the Defendant was able to understand the notification form when he signed it because his “knowing, intelligent and voluntary” plea requires that he register for life.

The Court is aware that the Information charged the Defendant with 18 Pa.C.S. § 3126(a)(1), not 18 Pa.C.S. § 3126(a)(7). However, the guilty plea order says that the Defendant pled guilty to indecent assault, a misdemeanor of the first degree. Therefore, the record presented to this Court shows that the Defendant pled to 18 Pa.C.S. § 3126(a)(7).

III. Conclusion

The Defendant's reliance on Hainesworth is misplaced because the Defendant's plea agreement did not contain a negotiated term that he did not have to register as a sex offender. Since the record presented to this Court shows that the Defendant pled guilty to 18 Pa.C.S. § 3126(a)(7), he is required to register as a sexual offender for life.

ORDER

AND NOW, this _____ day of January 2016, it is ORDERED and DIRECTED that the Motion for Modification of Sex Offender Registration Requirement is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge