

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-2173-2015
:
vs. :
:
:
GREGORY PERSON, :
Defendant :

OPINION AND ORDER

This matter came before the court on Defendant’s petition for writ of habeas corpus. The relevant facts follow.

Defendant pled guilty to statutory rape, involuntary deviate sexual intercourse (IDSI) and corruption of minors under CR-566-1994. As a result of the IDSI conviction, Defendant is a Tier III lifetime registrant under Pennsylvania’s Sexual Offender Registration and Notification Act (SORNA), 42 Pa.C.S.A. 9799.10 et seq. As pertains to this case, SORNA requires lifetime registrants to notify the Pennsylvania State Police (PSP) of any change in their employment within three (3) business days and to provide or verify their employment information quarterly, see 42 Pa.C.S.A. §9799.15(g).

Defendant became employed with Staimans on September 15, 2014. The criminal complaint in this case charges Defendant with six (6) counts of failure to comply with sexual offender registration requirements. Count 1 alleges that Defendant failed to report his employment with Staimans within three business days of September 15, 2014. Counts 2 through 6 allege that Defendant failed to disclose this employment when he appeared for his quarterly verifications or when he appeared to update other information on the following dates: December 15, 2014; March 5, 2015; April 24, 2105; June 5, 2015; and

September 5, 2015.

In his petition for writ of habeas corpus, Defendant seeks to have these charges dismissed because: (1) at the time of the preliminary hearing the Commonwealth failed to establish that a crime had been committed where Defendant offered evidence that he had reported a change in employment; (2) by a decision from the Commonwealth Court, Defendant is no longer required to personally report changes within 72 hours; and (3) each failure to report does not constitute a separate offense but is part of one ongoing offense.

No testimony was presented by either party at the hearing on Defendant's petition. Each party, however, submitted exhibits in support of their positions. Defendant submitted an audiotape of the preliminary hearing as exhibit 1 and a registration form showing Defendant's employment at "Staimans" dated and time stamped "12/5/2014 8:09:32 PM." The Commonwealth submitted five exhibits, which were registration forms dated and time stamped 12/5/2014 8:09:29 p.m. (Exhibit 1); 3/5/2015 7:50:54 p.m. (Exhibit 5); 4/24/2105 8:19:43 p.m. (Exhibit 4); 6/5/2105 9:32:19 p.m. (Exhibit 3); and 9/5/2015 7:52:59 p.m. (Exhibit 2). On each of the Commonwealth exhibits, the employment section was blank.

A petition for writ of habeas corpus is the proper means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a prima facie case.

Commonwealth v. Black, 103 A.3d 70, 77 (Pa. Super. 2015).

"A prima facie case consists of evidence, read in the light most favorable to the Commonwealth that sufficiently establishes both the commission of the crime and that the accused is probably the perpetrator of that crime. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, the Commonwealth must show

sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.” *Id.* (quoting *Commonwealth v. Fountain*, 811 A.2d 24, 25-26).

“In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect.” *Commonwealth v. Hendricks*, 927 A.2d 289, 291 (Pa. Super. 2007).

Furthermore, a prima facie case merely requires evidence of each of the elements of the offense charged; not evidence beyond a reasonable doubt. *Commonwealth v. Patrick*, 933 A.2d 1043, 1047 (Pa. Super. 2007) (en banc). At this stage of the proceedings, the court must view the evidence in the light most favorable to the Commonwealth. *Commonwealth v. Santos*, 876 A.2d 360, 363 (Pa. 2005). The court, at this stage of the proceedings, also cannot make credibility determinations or weigh the evidence. *Commonwealth v. Landis*, 48 A.3d 432, 448 (Pa. Super. 2012).

Defendant first asserts that the Commonwealth failed to establish a prima facie case because he reported his employment in his quarterly verification on December 5, 2014 as evidenced by Defendant’s exhibit 2. The court cannot agree.

The law requires Defendant to update any change in his employment status within three days. 42 Pa.C.S.A. §9799.15(g). Defendant began working at Staimans on September 15, 2014, but he did not report this employment to the state police on or before September 18, 2014.

Trooper McGee testified that the completed registration form cannot be

printed until it has been submitted on the computer. Once the information is submitted, it is in the system permanently. When changes are made, the previous information will not be reflected on the current printout, but it will still be in the system. Defendant's employment at Staimans was not contained in the system at any time between September 18, 2014 and September 5, 2015. Defendant's employment also is not reflected on any of the Commonwealth's exhibits. Each of these exhibits is signed and verified by Defendant.

This evidence is sufficient to establish a prima facie case that Defendant failed to update his employment information within three days of obtaining his employment at Staimans and that Defendant failed to provide such information at any of the other times he updated information or appeared quarterly to provide or verify his information from December 5, 2014 through September 5, 2015.

The court recognizes that although Trooper McGee is one of the Megan's Law liaisons for PSP's Troop F in Montoursville, he was not the registering official on any of the registration forms submitted as exhibits. The court also recognizes that there is an apparent conflict between Defendant's Exhibit 2 and Commonwealth's Exhibit 1. The authenticity of the exhibits and the credibility and weight of Trooper McGee's testimony, however, are issues for the jury to resolve at trial.

Defendant next asserts that, by a decision of the Commonwealth Court, he is entitled to habeas corpus relief on Count 1, because he is no longer required to personally report a change in employment within 72 hours. See *Person v. PSP, Megan's Law Section*, 2015 Pa. Commw. Unpub. LEXIS 807 (Nov. 3, 2015). Again, the court cannot agree.

At the time Defendant obtained employment with Staimans in September

2014, neither the Commonwealth Court’s decision in his case nor its decision in *Coppolino v. Noonan*, 102 A.3d 1254 (Oct. 14, 2014) were in existence. Therefore, at the time Defendant obtained his employment at Staimans he was required to report in person any change in his employment status within 72 hours.

Subsequent to those decisions, Defendant is still required to report any change in employment within 72 hours; he simply is no longer required to do so in person.

Coppolino, 102 A.3d at 1279 (The only part of section 9799.15(g) that is unconstitutionally punitive with regard to individuals convicted prior to the enactment of this provision is the requirement that such updates be made in person; the requirement that registrants promptly update the PSP with current information will be preserved).

The evidence presented by the Commonwealth and the reasonable inferences that can be drawn from that evidence establish a prima facie case that Defendant did not provide his employment information to the PSP within 72 hours. Therefore, Defendant is not entitled to habeas corpus relief.

Finally, Defendant argues that each failure to report is not a separate offense, but rather a single, ongoing offense. Defendant’s argument is contrary to the clear and unambiguous language of SORNA.

Defendant is a Tier III offender due to his conviction for IDSI. 42 Pa.C.S.A. §9799.14(d)(4). Tier III offenders must appear **quarterly** to provide or verify the information set forth in section 9799.16(b). 42 Pa.C.S.A. §§9799.15(e), 9799.25(a)(3). The information an offender must provide includes, but is not limited to, “the name and address of where the individual is or will be employed.” 42 Pa.C.S.A. §9799.16(b)(9). A failure to

register as required under 42 Pa.C.S §9799.15 or 9799.25 or to provide accurate information when registering is a criminal offense. 18 Pa.C.S.A. §4915.1(a)(1),(3). Therefore, each time after September 15, 2014 when Defendant signed and verified a registration form that did not contain any employment information, he committed a separate criminal offense.

ORDER

AND NOW, this ___ day of August 2016, the court DENIES Defendant's petition for writ of habeas corpus.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
James Protasio, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file