

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1515-2017
:
vs. :
:
: Notice of Intent to Dismiss PCRA
AUSTIN YOUNG, : Without Holding An Evidentiary Hearing
Defendant : and Order Granting Counsel’s Motion to
: Withdraw

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Defendant Austin Young (hereinafter “Young”).

By way of background, on August 5, 2017, Young had sexual intercourse with a 12-year old girl with an IQ of 62 who was mentally disabled and incapable of consent. On September 25, 2017, Young entered a guilty plea to Count 2, Rape of a Mentally Disabled Person, a felony of the first degree.¹ On January 24, 2018, the court sentenced Young to 6 to 20 years’ incarceration in a state correctional institution and notified Young of his lifetime sexual offender registration requirements pursuant to Pennsylvania’s Sexual Offender Registration and Notification Act (SORNA).

Young filed a timely PCRA petition, in which he challenged the constitutionality of his sexual offender registration requirements. The court appointed counsel to represent Young and directed counsel to either file an amended PCRA petition or a no merit letter pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 379 Pa. super. 390, 550 A.2d 213 (Pa. Super. 1988)(en banc). Counsel filed a motion to withdraw which included a no merit letter.

After an independent review of the record and relevant case law, the court

finds that Young's PCRA claims lack merit and he is not entitled to relief as a matter of law.

Initially, the court finds that Young's claims are waived. To be eligible for relief, Young must plead and prove by a preponderance of the evidence that the allegation of error has not been previously litigated or waived. 42 Pa. C.S.A. §9543(a)(3). For PCRA purposes, "an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding." 42 Pa. C.S.A. §9544(b). Young's petition relies heavily on the Pennsylvania Supreme Court's decision in *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1189 (2017), *cert. denied*, ___ U.S. ___, 138 S.Ct. 925, 200 L.Ed.2d 213 (2018). The *Muniz* decision was issued on July 19, 2017. Young pled guilty on September 25, 2017, and he was sentenced on January 24, 2018. He could have asserted these claims prior to his guilty plea or prior to the imposition of his sentence. By failing to do so, Young waived these claims.

Additionally, Young's registration requirements were part of his plea agreement. Transcript, 9/25/2017, at 3; Written Guilty Plea Colloquy, p. 1. Therefore, the court cannot simply strike Young's registration requirements for to do so would deprive the Commonwealth of the benefit of its bargain.

The court also finds that Young's claims lack merit.

Young first asserts that his registration requirements are unconstitutional based on *Muniz*. In *Muniz*, the Court found that the **retroactive** application of SORNA to offenders who committed their crimes prior to SORNA's effective date (December 20, 2012) violated the *ex post facto* provisions of the United States Constitution and Pennsylvania Constitution. *Muniz* does not apply in this case because SORNA is not being applied

¹ 18 Pa. C.S.A. §3121(a)(5).

retroactively. Young committed his offense in 2017 nearly 5 years after SORNA became effective. He was on notice that this offense carried the registration requirements which the court imposed upon him. Furthermore, his registration requirements do not render his sentence illegal. *Commonwealth v. Martin*, 205 A.3d 1247 (Pa. Super. 2019).

Statutes are presumed constitutional and a challenger such as Young bears a heavy burden to prove otherwise.

Young received due process through his guilty plea and sentencing hearings. In order for the court to impose the registration requirements, Young had to be convicted of a sexually violent offense. A conviction requires proof beyond a reasonable doubt. Young knowingly, voluntarily, and intelligently entered a guilty plea to the offense, which waived his trial rights, including the right to have the Commonwealth prove his guilt beyond a reasonable doubt. The court advised Young of his requirement to register for life at his sentencing hearing, and he signed a four-page, detailed, written notification of his registration requirements a copy of which is in the court file. Young had notice and an opportunity to be heard at these hearings.

Young claims that his equal protection rights are violated because juvenile and adult offenders are not treated the same as a result of the Pennsylvania Supreme Court's decision in the case of *In the Interest of J.B.*, 630 Pa. 408, 107 A.3d 1 (Pa. 2014). The court cannot agree. Equal protection requires that similarly situated individuals be treated similarly. Juveniles and adults are not similarly situated. Juveniles routinely are not subject to the same punishments as adults. See 42 Pa. C.S.A. §6301, et seq. (Pennsylvania's Juvenile Act); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 2464, 183 L.Ed.2d 407 (2012)(children and adults are constitutionally different for purposes of sentencing);

Commonwealth v. Lee, 206 A.3d 1, 9-10 (Pa. Super. 2019)(*Miller* only applies to defendants who were under the age of 18 at the time of their crimes); *Commonwealth v. Lawson*, 90 A.3d 1, 7 (Pa. Super. 2014)(*Miller* does not apply to an adult offender who has committed third-degree murder as a juvenile and receives a mandatory sentence of life imprisonment pursuant to 42 Pa. C.S.A. §9715).

Young also relies on *J.B.* for his claims that SORNA violates his rights to privacy and reputation. Unlike the scenario in *J.B.*, however, Young was not a juvenile when he committed his offense, and SORNA is not being applied retroactively in Young's case.

Furthermore, the legislature has amended SORNA to provide a mechanism by which lifetime adult offenders can petition the court for removal from the registration requirements after 25 years. 42 Pa.C.S.A. §9799.15(a.2).

Finally, the court is not aware of any cases which have found unconstitutional the application of SORNA's general lifetime registration requirements to an adult individual who committed a Tier III offense after SORNA's effective date.

ORDER

AND NOW, this ____ day of December 2019, as no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the petition. Young may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition.

The court grants counsel's petition to withdraw. Young may represent himself or hire private counsel to represent him, but absent a new development in the case

law whereby prospective application of SORNA's lifetime registration requirements to an adult offender is found unconstitutional, the court will not appoint counsel to represent Young.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)
Donald Martino, Esquire
Austin Young, NG8164
SCI Forest PO Box 307, 286 Woodland Dr., Marienville PA 16239
Gary Weber, Esquire (Lycoming Reporter)
Work file