IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-680-2018**
	:	
JAMES IRVIN, SR.,	**:**	
Petitioner	**:**	

OPINION AND ORDER

This matter came before the Court on James Irvin's (Petitioner) Motion to Modify Sentence filed on March 13, 2020. Petitioner was arrested on April 19, 2018 on charges relating to the sexual assault of [redacted] occurring between June 1, 2011 and August 1, 2011. As a result, Petitioner pled guilty to one count of Incest and received a sentence of twelve months minus one day to twenty-four months minus one day with six years of consecutive probation on March 4, 2020. Petitioner then timely filed this Motion to Modify Sentence on March 13, 2020. A hearing on the Motion was held on June 19, 2020. In his Motion, Petitioner wishes to have this Court amend his sentence to delete his reporting requirement under 2018 Act 29 (SORNA II), specifically 42 Pa. C.S. §§ 9799.51-9799.75, subchapter I of Act 29, claiming application to him would violate the *ex post facto* clause of the Constitution.

Parties' Arguments

Petitioner contends that, pursuant to current case law, he is entitled to having his sentence modified to exclude any sex offender registration. This contention is based on Petitioner's offense occurring between June 1, 2011 and August 1, 2011, during Megan's Law III, which has since been deemed unconstitutional. *See Commonwealth v. Neiman*, 84 A.3d 603, 613 (Pa. 2013) (act was found unconstitutional after the enactment of the Sex Offender Registration and Notification Act, 42 Pa. C.S. §§ 9799.10–9799.41 (SORNA I), due to a violation of the Single Subject Rule of Article III, Section 3 of the Pennsylvania Constitution

not because of its punitive nature). Due to Megan's Law III being found unconstitutional and based on the Pennsylvania Supreme decision *Commonwealth v. McIntyre*, Petitioner argues that he should have no reporting requirement. In *McIntyre*, the Court found because Megan's Law III was found to be unconstitutional, the petitioner's conviction for failure to report under the legislation must be discharged. *Commonwealth v. McIntyre*, -- A.3d --, 2020 WL 3244339 at *9 (Pa. June 16, 2020). Additionally, Petitioner's cites *T.S. v. Pennsylvania State Police* to make the argument that similar to the petitioner in the case, he has no reporting requirement. *See T.S. v. Pennsylvania State Police*, -- A.3d --, 2020 WL 2312567 at *24 (Pa. Cmwlth May 11, 2020) (The petitioner was taken off the registry after the Pennsylvania Commonwealth Court found SORNA II violated the *ex post facto* clause, "as applied to [the p]etitioner, who committed his offense before there was any registration or notification requirement."). The Commonwealth argues that the Petitioner was subject to Megan's Law II, not Megan's Law III.

Discussion

At the outset, "there is a general presumption that all lawfully enacted statutes are constitutional." *Commonwealth v. Muniz*, 164 A.3d 1189, 1195 (Pa. 2017). For a violation of the *ex post facto* clause to occur, the current legislation being applied to the offender "must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it." *Weaver v. Graham*, 450 U.S. 24, 29 (1981). This includes "[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." *Calder v. Bull*, 3 U.S. 386, 390 (1798). When analyzing claims for *ex post facto* clause violations it is important to remember the purpose of the clause "is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed

when the crime was consummated." *Weaver*, 450 U.S. at 30. As a threshold issue a court must determine whether the legislative intent behind the present framework for reporting was punitive in nature. *Smith v. Doe*, 538 U.S. 84, 93 (2003). If the intention of the legislation was not punitive, then a court must examine whether the legislation is so punitive that it negates the legislative intent. *T.S.*, 2020 WL 2312567 at *10. This is accomplished by examining seven factors set forth in *Kennedy v. Mendoza-Martinez*. *Id.* Although the factors are not dispositive or exclusive, they are a helpful guidepost for a court's analysis. The seven factors are as follows:

> [1] [W]hether the sanction involves an affirmative disability or restraint, [2] whether it has historically been regarded as punishment, [3] whether it comes into play only on a finding of scienter, [4] whether its operation will promote the traditional aims of punishment – retribution and deterrence, [5] whether the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the alternative purpose assigned.
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> *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) (footnotes omitted).

"[O]nly the clearest proof may establish that a law is punitive in effect" by examining the entire statutory scheme of the legislation. *Muniz*, 164 A.3d at 1208. When analyzing the statutory scheme it is important to remember the purpose of the *ex post facto* clause, and analyze it compared to the statutory scheme at the time of the offense for which the defendant would be deemed to have notice. *T.S.*, 2020 WL 2312567 at *14.

This case raises an issue of first impression following the Pennsylvania General Assembly's passing of SORNA II on June 12, 2018. The construction and adoption of SORNA II by legislators was a direct reaction to the Pennsylvania Supreme Court's decision in *Commonwealth v. Muniz* and the Pennsylvania Superior Court's decision in *Commonwealth v. Butler*. *See* 42 Pa. C.S. § 9799.51(b)(4) ("It is hereby declared to be the intention of the General

Assembly to: Address the Pennsylvania Supreme Court's decision in Commonwealth v. Muniz, No. 47 MAP 2016 (Pa. 2016), and the Pennsylvania Superior Court's decision in Commonwealth v. Butler (2017 WL 4914155).") (footnote omitted). *Butler* was subsequently overturned by the Pennsylvania Supreme Court, but *Muniz* has left a lasting impression on Pennsylvania sex offender registry laws. *See Commonwealth v. Butler*, 226 A.3d 972, 976 (Pa. 2020) (upholding the constitutionality of 42 Pa. C.S. § 9799.24(e)(3), reversing the Pennsylvania Superior Court's decision). In *Muniz*, a plurality of the Pennsylvania Supreme Court held that the provisions of SORNA I, as applied to offenders who committed their underlying offense prior to SORNA I's effective date of December 20, 2012, violated the *ex post facto* clause of both the United States and Pennsylvania Constitutions. *Muniz*, 164 A.3d at 1223.

Since the enactment of SORNA II, only two precedential cases have directly addressed subchapter I at issue today. The first decided by the Pennsylvania Superior Court, *Commonwealth v. Moore*, held that one statutory provision, 42 Pa. C.S. § 9799.63, was unconstitutional, but severable from the remainder of SORNA II. *Commonwealth v. Moore*, 222 A.3d 16, 27 (Pa. Super. 2019). The second, which was decided by the Pennsylvania Commonwealth Court and raised by Petitioner, is *T.S.* In *T.S.*, the petitioner committed sexual offenses in 1990, and was subsequently released in 2002, at which time he started registering with the Pennsylvania State Police. *T.S.*, 2020 WL 2312567 at *8. Following the determination in *Muniz*, the petitioner filed to be discharged from his registration requirement because it violated the *ex post facto* clause. *Id.* The Pennsylvania Commonwealth Court reviewed the petitioner's claim and applied the same test as used in *Muniz*, determining General Assembly's intent and applying the *Mendoza-Martinez* factors. *Id.* at 11-24. The Court then took a unique

approach and instead of finding SORNA II unconstitutional as a whole, found that it was unconstitutional "as applied to [the p]etitioner." *Id.* at 24 (the Pennsylvania Commonwealth Court made very clear the determination was individual specific by using the phrase "as applied to Petitioner" or "as applied to him" thirty-six times throughout the opinion). This individualized approach was taken in reliance of *Weaver*, which stated the *ex post facto* clause is meant to grant relief based on a petitioner's "lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated." *Weaver*, 450 U.S. at 30.

Analysis

First, the Commonwealth's argument is wrong and similarly irrelevant. Whether Petitioner was subjected to Megan's Law II or III at the time of his offense, both of them were found to be unconstitutional, either in part or as a whole. For that reason, the Court partially agrees with Petitioner. The Court disagrees that *McIntyre* is material to the analysis of Petitioner as he was not convicted of failure to report under a statutory provision that has since been found unconstitutional. *See McIntyre*, 2020 WL 3244339. *McIntyre* is additionally irrelevant as to Megan's Law III applicability here as the legislation was stricken for other reasons. *See Neiman*, 84 A.3d at 616 (The Pennsylvania Supreme Court "declare[d] Act 152 unconstitutional in its entirety. [The Court] stress[ed], however, that this action should, in no way, be read as a repudiation of the merits of the various legislative components of Act 152 such as Megan's Law III, which serves a vital purpose in protecting our Commonwealth's citizens and children."). Where the Court does agree is that *T.S.* is the appropriate framework to use. Petitioner committed the offense at some point between June 1, 2011 and August 1, 2011. Therefore, the Court will analyze the restrictions imposed upon Petitioner at the time of his

offense, Megan's Law III, compared to his current restrictions under SORNA II and determine whether SORNA II's application to him violates the *ex post facto* clause. For the reasons outlined below, this Court grants in part and denies in part Petitioner's Motion.[1]

General Assembly's Intent

As for the threshold issue of the General Assembly's intent, this Court does not need to delve into a deep analysis. The Pennsylvania Commonwealth Court has already concluded that the "General Assembly had a nonpunitive intent in enacting subchapter I of Act 29," and therefore this Court is bound by that determination. *T.S.*, 2020 WL 2312567 at *11-12. Additionally, Pennsylvania courts have traditionally given deference to legislative intent unless there is clear evidence otherwise. *See Muniz*, 164 A.3d at 1209-10 (addressing similar declaration of policy in SORNA I, Subchapter H); *Commonwealth v. Williams*, 832 A.2d 962, 971-72 (Pa. 2003) (addressing similar declaration of policy in Megan's Law II); *Commonwealth v. Gaffney*, 733 A.2d 616, 619 (Pa. 1999) (addressing similar declaration of policy in Megan's Law I). Thus, the Court is free to delve directly into the *Mendoza-Martinez* factors, which is the next step.

Mendoza-Martinez *Factors*

It should be noted that there is no reason for this Court to analyze "Factor 3, regarding a finding of scienter, and Factor 5, addressing whether the behavior is a crime, [because they] provide little weight to the analysis of whether sexual offender registration and notification provisions are punitive." *Commonwealth v. Torsilieri*, -- A.3d --, 2020 WL 3241625 at *15 (Pa.

[1] The Court renders this Opinion and Order with the knowledge that pending Pennsylvania Supreme Court appeals will directly impact this issue. *See Commonwealth v. Lacombe*, 35 MAP 2018; *Commonwealth v. Witmayer*, 64 MAP 2018 (both of which were argued on November 20, 2019). This Opinion and Order is rendered to effectively and efficiently handle Petitioner's issue while pending clarification on the issue is uncertain.

June 16, 2020) (case addressed subchapter H of SORNA II, but its intent analysis is the same as used by this Court). "[P]ast criminal conduct is a necessary starting point" when analyzing the protection of the public against recidivism. *Id.* At the outset, it is also clear that the General Assembly's purpose in enacting subchapter I of SORNA II was to rectify the unconstitutional portions of SORNA I as outlined in *Muniz*. *See* 42 Pa. C.S. § 9799.51(b)(4) ("It is hereby declared to be the intention of the General Assembly to . . . [a]ddress the Pennsylvania Supreme Court's decision in Commonwealth v. Muniz").

Disability or Restraint

The first factor is whether the sanction involves an affirmative disability or restraint. In *Muniz*, the Pennsylvania Supreme Court determined that the reporting provisions of prior legislation, SORNA I, were a direct restraint upon the petitioner, and therefore the factor weighed in favor of SORNA I being punitive in nature. *Muniz*, 164 A.3d at 1211. The Court made this determination by comparing SORNA I's reporting provisions to those analyzed by the United States Supreme Court in *Smith v. Doe*. *Id.* at 1210-11. The main contention of the analysis rested on the provision in *Smith* not requiring in-person reporting, while the reporting statute in the petitioner's case would require the petitioner "to appear in-person at a registration site four times a year, a minimum of 100 times over the next twenty-five years, extending for the remainder of his life" not including the "times he must appear due to his free choices including moving to a new address or changing his appearance." *Id.* (internal citations omitted). At the time, SORNA I had required individuals to report in-person either annually, semi-annually, or quarter-annually, dependent on the underlying offense. *See* 42 Pa. C.S. § 9799.15(a), (e). Additionally, individuals had to report in-person every time they changed their residence, employment, education enrollment, or facial features. *See* 42 Pa. C.S. § 9799.15(g).

SORNA II, in an attempt to remedy the issues highlighted in *Muniz*, requires only annual in-person reporting for offenders, unless deemed a Sexual Violent Predator (SVP). *See* 42 Pa. C.S. § 9799.60(b). Also the General Assembly in SORNA II no longer requires in-person reporting for changes to an offender's residence, employment, education enrollment, or facial features. *See* 42 Pa. C.S. § 9799.56(a)(2). The Pennsylvania Commonwealth Court when determining whether SORNA II enacted a restraint on the petitioner in *T.S.* stated "it bears emphasis that there was no registration requirement at all when Petitioner committed his crimes." *T.S.*, 2020 WL 2312567 at *14. This was important because, "while annual in-person registration may be less onerous than quarterly in-person registration, the statutory scheme of subchapter I of Act 29 as a whole ***as applied to Petitioner*** is a restraint in comparison to that which existed at the time he committed his crimes." *Id.* (emphasis added).

This Court finds that the General Assembly rectified the issues that made SORNA I unconstitutional as a violation of the *ex post facto* clause in SORNA II as the statutory scheme applies to Petitioner. Petitioner as a lifetime registrant, who was not found to be a SVP, is only required to report in-person once a year. 42 Pa. C.S. § 9799.60(b). This is the exact same reporting requirement Petitioner would have been subject to at the time of his offense. *See* 42 Pa. C.S. § 9796(B) ("an offender shall appear within ten days before each annual anniversary date of the offender's initial registration"). Additionally as was a concern in *Muniz*, Petitioner is no longer required to appear in-person for changes to his residence, employment, education enrollment, or changed to his facial features. 42 Pa. C.S. § 9799.56(a)(2). These also are the same requirements Petitioner would have been subjected to under Megan's Law III. *See* 9795.2(a)(2). The changes in SORNA II align the legislation with that in *Smith*, which did not require in-person reporting and therefore was not a restraint. *Smith*, 538 U.S. at 100. As in

Smith, the act leaves offenders "free to change jobs or residences" and they are "not required to seek permission to do so." *Id.* at 100-01. While it is true that *Muniz* found SORNA I's in-person reporting provision to be a restraint, the determination rested heavily upon the number of times an individual was required to report in-person. *Muniz*, 164 A.3d at 1210-11. In that case, the petitioner's offense occurred during Megan's Law III, and as such he would have been required to report in-person twenty-five times in twenty-five years. *Id.* at 1193. As explained in *T.S.*, the drastic increase of in-person reporting led the Pennsylvania Supreme Court to find the petitioner did not have fair notice, which violated the *ex post facto* clause. *T.S.*, 2020 WL 2312567 at *14. Based on the analysis outlined in *T.S.*, Petitioner was on fair notice of an annual reporting requirement as it is the same requirement applicable to Petitioner at the time of his offense under Megan's Law III. Therefore, this Court finds SORNA II is not a disability or restraint and the factor weighs in favor of finding it nonpunitive.

Has Sanction Historically Been Considered a Punishment

The Court agrees with the Pennsylvania Superior Court in *Moore* that [42 Pa. C.S. §] 9799.63 is nearly identical to the internet dissemination provision in SORNA I. *Moore*, 222 A.3d at 22. Although *Muniz* relied on both the over-burdensome in-person reporting requirement and the internet dissemination provision, the internet dissemination of information was a large factor in the Pennsylvania Supreme Court's determination. *Muniz*, 164 A.3d at 1213. The Court determined that "SORNA's publication provisions—when viewed in the context of our current internet-based world—to be comparable to shaming punishments." *Id.* While this Court is aware that internet dissemination provisions were in place during Megan's Law III, it does not believe this fact is at odds with the rest of the Opinion and Order. In *Muniz*, this Court held that the internet dissemination provision in *Smith* differed greatly from the

petitioner in *Muniz*, because the internet had evolved so rapidly from 2003 to the then current internet based world. *Id.* at 1212. The same analysis is applicable to Petitioner's case. The internet and use of information gathering therefrom has drastically changed from the time of Petitioner's offense, 2011, to now. In compliance with *Muniz* and *Moore*, this Court finds that SORNA II with the inclusion of 42 Pa. C.S. § 9799.63 would be a sanction that has been historically regarded as a punishment. With that being said, the Pennsylvania Superior Court has held the internet dissemination provisions, although unconstitutional, are severable from the remainder of SORNA II and therefore can be excluded from this Court's analysis, as long as the provision is stricken from Petitioner's requirements. *Moore*, 222 A.3d at 27.

The only issue then is whether SORNA II has been altered to a degree that it is no longer akin to probation. In *Muniz*, the Pennsylvania Supreme Court found that SORNA I was akin to probation due to the number of in-person reporting requirements, the mandatory relaying of information, and the punishment that resulted from not following SORNA I's statutory provisions. *Muniz*, 164 A.3d at 1213. As stated above the volume of in-person reporting has significantly dropped to the extent this Court does not believe that it equates to a historical punishment. With that being said the other two factors the Pennsylvania Supreme Court relied upon in its analysis have not changed from SORNA I to SORNA II, and would still be akin to historical punishment. As such, although this factor weighs in favor of finding SORNA II punitive, it does not weigh as heavily as in *Muniz* due to the removal of the internet provisions and the lessened reporting requirement.

Whether Sanctions Promote Retribution and Deterrence

"To hold that the mere presence of a deterrent purpose renders such sanctions criminal would severely undermine the Government's ability to engage in effective regulation." *Smith*,

538 U.S. at 102. The Pennsylvania Supreme Court in *Muniz* found this factor weighed in favor of finding SORNA I punitive in nature because "SORNA [I] has increased the length of registration, contains mandatory in-person reporting requirements, and allows for more private information to be displayed online." *Muniz*, 164 A.3d at 1216. Additionally, the fact that SORNA I requirements were "applicable only upon a conviction for a predicate offense" and certain triggering offenses did not require sexual offenses be committed, largely factored into the Court's decision. *Id.* at 1215. First unlike the petitioner in *Muniz*, Petitioner's length of registration is not different than that which he would have had to register at the time of his offense under Megan's Law III. *Compare* 42 Pa. C.S. § 9799.55(B) *with* 42 Pa. C.S. § 9795.1(B). Next as discussed above, the in-person reporting requirement has been significantly modified and therefore does not weigh in favor of finding SORNA II punitive to the extent as seen in *Muniz*. Any concerns expressed in *Muniz* regarding the internet provisions, have already been realized through the Pennsylvania Superior Court's holding in *Moore* finding the provision unconstitutional and severing the provision from the remainder of SORNA II. *See Moore*, 222 A.3d at 27. Lastly as recognized in *T.S.*, the issue with triggering offenses as outlined in *Muniz* has been rectified in SORNA II. *T.S.*, 2020 WL 2312567 at *19. Although in *T.S.* the Pennsylvania Commonwealth Court determined the factor weighed in favor of finding SORNA II punitive, the Court was clear to distinguish that

> [b]ecause Petitioner did not have fair warning at the time of commission of the offenses that he would have multifaceted registration requirements for his lifetime, and his registration requirements derive from his conviction alone, we agree with Petitioner that this factor weighs in favor of finding subchapter I of Act 29 to be punitive as applied to him, regardless of any discernable differences between SORNA and subchapter I of Act 29 with regard to offenses requiring registration.
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> *Id.*

SORNA II has resolved a number of the issues with SORNA I, yet the issue still exists that the triggering for the application of SORNA II is solely the predicate offense. Therefore, although the finding does not weigh nearly as heavily as in *Muniz*, the factor still weighs in favor of finding SORNA II punitive in nature.

Is an Alternative Purpose Rationally Connected to the Sanctions

The Pennsylvania Supreme Court has held that "[t]he Act's rational connection to a nonpunitive purpose is a most significant factor in our determination that the statute's effects are not punitive." *Williams II*, 832 A.2d at 979; *see also Butler*, 226 A.3d at 991. In the present case, it is clear that there is an alternative purpose other than punishment that is rationally related to the provisions of SORNA II. Pennsylvania courts have long held that sex offender registration legislation has a rational nonpunitive purpose. *See Gaffney*, 733 A.2d at 619 (Megan's Law I's "intent was to provide a system of registration and notification so that relevant information would be available to state and local law enforcement officials in order to protect the safety and general welfare of the public. Thus, the legislature's actual purpose in enacting the registration provisions was not punishment."); *see also Williams*, 832 A.2d at 980 (Megan's Law II "serve[s] the legitimate governmental interest in providing persons who may be affected by the presence of a sexually violent predator with the information they need to protect themselves or those under their care against predation."). In *Muniz*, the Pennsylvania Supreme Court "defer[ed] to the General Assembly's findings on this issue . . . cognizant that the General Assembly legislated in response to a federal mandate based on the expressed purpose of protection from sex offenders." *Muniz*, 164 A.3d at 1217. From reviewing SORNA II, it is clear that it upholds the same principles of its legislative predecessors. SORNA II has put forth its policy as:

> (1) Protect the safety and general welfare of the people of this Commonwealth by providing for registration, community notification and access to information regarding sexually violent predators and offenders who are about to be released from custody and will live in or near their neighborhood.
>
> (2) Require the exchange of relevant information about sexually violent predators and offenders among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators and offenders to members of the general public, including information available through the publicly accessible Internet website of the Pennsylvania State Police, as a means of assuring public protection and shall not be construed as punitive.
>
> 42 Pa. C.S. § 9799.51(a).

Therefore, this factor weighs in favor of finding SORNA II nonpunitive. *See also T.S.*, 2020 WL 2312567 at *21 ("Because [SORNA II] clearly has a purpose beyond punishment, this factor weighs in favor of finding subchapter I of Act 29 to be nonpunitive as applied to Petitioner").

Whether the Sanction is Excessive in Comparison with Alternate Purpose

In *Muniz*, the Pennsylvania Supreme Court held that SORNA I was punitive because it was excessive and over inclusive. *Muniz*, 164 A.3d at 1218. The issue of over inclusiveness has been addressed by the General Assembly in SORNA and is no longer at issue. *See T.S.*, 2020 WL 2312567 at *22 (the Pennsylvania Commonwealth Court "recognize[d] that [SORNA II] [was] different from SORNA [I] in terms of triggering offenses"). As for the issue of excessiveness, this Court believes there are significant distinctions from the petitioner in *Muniz* and Petitioner, and there are significant distinctions from SORNA I and SORNA II, which make SORNA II not excessive as applied to Petitioner. First as addressed above, unlike the petitioner in *Muniz*, Petitioner would have still been required to register for his lifetime under Megan's Law III at the time of his offense. 42 Pa. C.S. § 9795.1(B). Therefore Petitioner had fair notice of his registration length at the time of his offense. *See Weaver*, 450 U.S. at 30. As

for the differences in the statutory provisions, as discussed at length above, the number of times an individual is required to report has been drastically decreased, to the extent it is the same as Petitioner would have had under Megan's Law III. *See* 42 Pa. C.S. § 9796(B). A provision which gave courts issue in addressing excessiveness, the internet dissemination provisions, have been found severable from Petitioner's registration requirements, and therefore no longer add to the excessiveness of his reporting requirements. Lastly, the General Assembly added a new provision to SORNA II, which allows an offender, who has not been convicted of a crime punishable by more than one year, to petition for an exemption from his reporting requirements after twenty-five years. 42 Pa. C.S. § 9799.59(a). When weighed against the purpose, discussed above, SORNA II as it applies to Petitioner is not excessive and therefore the factor weighs in favor of being nonpunitive.

Balancing the *Mendoza-Martinez* Factors

Of the five factors relevant to this Court's analysis, three weigh in favor of finding SORNA II nonpunitive as applied to Petitioner. Under SORNA II, Petitioner is subjected to almost identical reporting provisions as he would have been at the time of his offense. Therefore, Petitioner had fair notice of governmental restraint that would be applicable to him and the factors weigh in favor of finding SORNA II nonpunitive.

Conclusion

SORNA II addressed most of the issues, which were highlighted by the Pennsylvania Supreme Court in *Muniz*. Although SORNA II's application may violate the *ex post facto* clause when applied to some petitioners as Petitioner's counsel contends by relying on *T.S.*, it is clear from the Pennsylvania Commonwealth Court's opinion that an individual analysis must be done for each specific petitioner. When applied to this Petitioner the *ex post facto* clause is

not violated. Additionally as stated above, Petitioner's reliance on *McIntyre* and *Neiman* is misplaced and both are not applicable to Petitioner's current situation. After weighing the factors as applied Petitioner, SORNA II does not violate the *ex post facto* clause and Petitioner is required to report in conformance with SORNA II's requirements with the exception of 42 Pa. C.S. § 9799.63, which has previously been found unconstitutional by the Pennsylvania Superior Court. *Moore*, 222 A.3d at 18.

ORDER

AND NOW, this 13th day of July, 2020, based upon the foregoing Opinion, Petitioner's Motion to Modify Sentence is hereby **GRANTED** in part and **DENIED** in part. As for Petitioner's reporting requirements under 42 Pa. C.S. § 9799.63 (otherwise known as the internet dissemination provision) Petitioner's Motion is **GRANTED**, he shall not be required to conform with that provision, if such provision was still a requirement for Petitioner. As for the remainder of Petitioner's Motion, it is **DENIED**.

By The Court,

_____
Nancy L. Butts, President Judge

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