

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	<b>No. CR-1063-2002</b>
	:	
<b>vs.</b>	:	<b>CRIMINAL DIVISION</b>
	:	
	:	
<b>STEVEN SCOTT,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

This matter came before the court on Post Conviction Relief Act (PCRA) petitions filed by Defendant Steven Scott (hereinafter Petitioner).

By way of background, on January 16, 2003, Petitioner pleaded guilty to two counts of involuntary deviate sexual intercourse (IDSI), two counts of aggravated indecent assault, one count of indecent assault, one count of endangering the welfare of children, and one count of corruption of minors. On March 13, 2003, Petitioner was sentenced to five (5) to ten (10) years' incarceration in a state correctional institution followed by seventeen (17) years' probation. Petitioner's supervision conditions included the standard and optional special conditions for those convicted of sexual offenses. Petitioner's convictions also carried lifetime sexual offender registration requirements.

On January 19, 2018, Petitioner filed a PCRA petition challenging his registration requirements pursuant to *Butler*,<sup>1</sup> *Muniz*,<sup>2</sup> and *Rivera-Figueroa*.<sup>3</sup>

On March 14, 2018, the court held a probation violation hearing at which a public defender represented Petitioner and Nicole Ippolito represented the Commonwealth.

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<sup>1</sup> *Commonwealth v. Butler*, 173 A.3d 1212 (Pa. Super. 2017).

<sup>2</sup> *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017).

<sup>3</sup> *Commonwealth v. Rivera-Figueroa*, 174 A.3d 674 (Pa. Super. 2017).

The court found that Petitioner violated his probation and re-sentenced him to three to eight years' incarceration. Petitioner appealed.<sup>4</sup> The Pennsylvania Superior Court affirmed Petitioner's judgment of sentence.

On April 11, 2019, Petitioner filed a pro se PCRA petition challenging his probation violation proceedings. The court appointed counsel and directed counsel to file either an amended PCRA petition or a no merit letter.

Petitioner, through PCRA counsel, filed an amended petition in which Petitioner asserted that his probation violation proceedings were invalid because Ms. Ippolito had represented him previously in this case and then she represented the Commonwealth at the probation violation hearing.

On September 19, 2019, the court issued an order directing the court reporter to prepare a transcript of the hearing at which Ms. Ippolito represented Petitioner. The order also directed PCRA counsel to file an amended PCRA petition and a brief within 30 days of receipt of that transcript and the Commonwealth to file an answer and a brief within 30 days after the filing of Petitioner's amended PCRA petition and brief.

On November 13, 2019, PCRA counsel filed an amended PCRA petition and a brief on Petitioner's behalf. In these documents, Petitioner alleged that the prosecutor at his probation violation hearing had a conflict of interest. Specifically, Ms. Ippolito previously represented him at a hearing on October 1, 2012 on his petition to modify the conditions of his supervision. Due to this conflict, Petitioner claims he is entitled to a new

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<sup>4</sup>Due to Petitioner's probation violation appeal, the court was unable to review the record to decide his PCRA related to his registration requirements.

probation violation hearing.<sup>5</sup>

The Commonwealth's answer and brief were due on or about December 15, 2019, but the Commonwealth has filed neither.

With respect to the PCRA challenging Petitioner's registration requirements, the court intends to dismiss these claims as untimely. Petitioner's registration requirements were part of his original sentence, which became final on or about April 12, 2013.

A petitioner must file his PCRA petition within one year of the date his judgment of sentence becomes final or the petitioner must plead and prove one of the three statutory exceptions. 42 Pa. C.S.A. §9543(b). In this case, Petitioner had to file his challenge to his registration requirements on or before April 14, 2014 or plead and prove one of the exceptions. Petitioner attempted to assert the "new constitutional right" exception; however, no Pennsylvania Supreme Court decision or United States Supreme Court decision has held that the cases relied upon by Petitioner apply retroactively. Therefore, the petition challenging Petitioner's sexual offender registration requirements is untimely. See *Commonwealth v. Murphy*, 180 A.3d 402 (Pa. Super. 2018).

With respect to the petition regarding the prosecutor's conflict of interest, the court intends to grant the petition and hold a new probation violation hearing. The transcript of the October 1, 2012 hearing clearly establishes that Ms. Ippolito represented Petitioner at the hearing on his motion to modify the conditions of his supervision to permit him to have contact with his nephews and his fiancé's children. Due to Ms. Ippolito's prior

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<sup>5</sup> At the September conference, PCRA counsel originally argued that the probation violation had to be dismissed due to the conflict. As the court questioned whether that form of relief was appropriate since Ms. Ippolito had left the District Attorney's Office for a job in private practice, the court directed the parties to file briefs in support of their positions. In the brief, PCRA counsel asserted Petitioner was entitled to a new probation

representation of Petitioner, she had a conflict of interest representing the Commonwealth at the probation violation hearing. This conflict of interest warrants the award of a new probation violation hearing. *Commonwealth v. Townsend*, 850 A.2d 741 (Pa. Super. 2004)(defendant entitled to a new PCRA hearing where prosecutor at PCRA hearing had previously consulted with and agreed to represent defendant on the underlying case); *see also Commonwealth v. Ford*, 122 A.3d 414, 416-17 (Pa. Super. 2015); *Commonwealth v. Miller*, 422 A.2d 525, 529 (1980)(where a lawyer who has represented a criminal defendant joins a prosecutor's office, disqualification of the entire office is not necessarily appropriate; however, that lawyer is disqualified from participating in the case on behalf of the prosecution). As there is a new District Attorney and one or more new assistant district attorneys, who joined the office after Ms. Ippolito left for private practice, disqualification of the entire office is clearly not warranted.

It appears that the Commonwealth concedes that Ms. Ippolito had a conflict of interest and that Petitioner is entitled to a new probation violation hearing, as the Commonwealth has not filed an answer or a brief.

### **ORDER**

AND NOW, this \_\_\_ day of March 2020, the court notifies the parties of its intent to deny the PCRA petition related to Petitioner's sexual offender registration requirements but grant the PCRA petition related to the prosecutor's conflict of interest. The parties may respond to this notice within 20 days. If the court does not receive a response, the court will schedule a new probation violation hearing, but deny the challenges to

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violation hearing.

Petitioner's sexual offender registration requirements.

By The Court,

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Marc F. Lovecchio, Judge

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