

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH OF :
PENNSYLVANIA, : No. CR 1025-2017
 : No. CR 1436-2017
vs. :
 :
RONALD L. WEBB, JR., :
Defendant. :

ORDER

AND NOW, this 28th day of October, 2024, upon consideration of the Commonwealth's request for an SVP hearing¹ relating to the Defendant, and the briefs² and arguments³ of the parties, it is hereby ORDERED and DIRECTED that the Commonwealth's request is GRANTED, for reasons explained below.

I. BACKGROUND.

Defendant was charged, in case no. 1025-2017 ("case 1025"), with fifty-three counts of possessing child pornography⁴ and one count of criminal use of a

¹ "SVP" is a commonly used abbreviation for "sexually violent predator." Under Pennsylvania's Sex Offender Registration and Notification Act ("SORNA"), which is commonly referred to as *Megan's Law*, this is a designation that can be applied to certain sexual offenders who are guilty of designated offenses and who have been determined to meet applicable criteria set by SORNA. See 42 Pa. C.S. §§ 9799.12 (defining, *inter alia*, "sexually violent predator"); 9799.24 (setting forth the procedure for determining whether an individual is a sexually violent predator).

² Under the somewhat unique circumstances of these cases and one other case, the Court was concerned that it may lack jurisdiction to conduct an SVP hearing. Therefore, the Court established a briefing schedule and held argument on this question. Scheduling Order, dated and entered June 10, 2024 (docketed to both cases; docketed or entered in "both cases" in this Opinion means that the item was docketed to both of the above-captioned cases against the Defendant). The parties filed the following briefs (both briefs are docketed to both of the cases): (i) the Commonwealth's "Memorandum of Law," filed July 7, 2024 (the "Commonwealth's Brief"); and (ii) the Defendant's "Memorandum of Law," filed August 9, 2024 (the "Defendant's Brief").

³ The Court heard argument on the jurisdictional question on August 27, 2024. Scheduling Order, dated and entered June 10, 2024 (docketed to both cases). Deputy Attorney General Jacob M. Jividan, Esq. argued for the Commonwealth, and Lycoming County Public Defender Nicole J. Spring, Esq. argued for the Defendant.

⁴ 18 Pa. C.S. § 6312(d) ("Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense"). Due to the nature of the images depicted, fifteen counts were graded as felonies of the second degree, and the remaining counts were graded as felonies of the third degree. See 18 Pa. C.S. § 6312(d.1) (providing that offenses under subsection (d) are graded as

communication facility,⁵ and, in case no. 1436-2017 (“case 1436”), two counts of indecent assault⁶ and two counts of corruption of minors.⁷ On December 8, 2017, the Defendant pleaded guilty⁸ to eleven counts of possessing child pornography⁹ in case 1025 and one count each of indecent assault and corruption of minors in case 1436. Defendant was directed to undergo an assessment by the Sexual Offender Assessment Board (SOAB) to determine whether he should be designated an SVP, and sentencing was scheduled for March 19, 2018.¹⁰ On March 16, 2018, the Commonwealth filed a praecipe to schedule an SVP hearing,¹¹ and, on July 17, 2018, Defendant moved to vacate the Order for an SVP assessment.¹² In the interim, SOAB completed the assessment. Nonetheless, the Court scheduled argument for October 1, 2018,¹³ at which time it directed the parties to file briefs concerning whether the Court had authority to conduct an SVP hearing. Ultimately,

felonies of the third degree, except that subsequent offenses and images involving indecent contact with a child or images involving a child under the age of 10 years may be graded higher).

⁵ 18 Pa. C.S. § 7512(a) (“A person commits a felony of the third degree if that person uses a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title...”); 18 Pa. C.S. § 7512(c) (“As used in this section, the term “communication facility” means a public or private instrumentality used or useful in the transmission of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part, including, but not limited to, telephone, wire, radio, electromagnetic, photoelectronic or photo-optical systems or the mail”). This offense is graded as a felony of the third degree. See 18 Pa. C.S. § 7512(a).

⁶ 18 Pa. C.S. § 3126(a)(7) (“A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and ... the complainant is less than 13 years of age”). These offenses were graded as felonies of the third degree. See 18 Pa. C.S. § 7512(b)(3).

⁷ 18 Pa. C.S. § 6301(a)(1)(ii) (“Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.”). These offenses were graded as felonies of the third degree. *Id.*

⁸ Guilty Pleas, entered December 8, 2017 in both cases.

⁹ All counts to which Defendant pleaded guilty in case 1025 were graded as felonies of the second degree.

¹⁰ Orders, dated December 8, 2017 and entered December 19, 2017 in both cases.

¹¹ Praecipe to Schedule a Hearing to Determine Defendant’s Sexually Violent Predator Status, filed March 16, 2018 in both cases.

¹² Motion to Vacate Order for SVP Hearing, filed July 17, 2018 in both cases.

¹³ Scheduling Order, entered July 23, 2018 in both cases.

the Court entered an Order in which it concluded that it was bound by the Superior Court's decision in *Commonwealth v. Butler*¹⁴ and, therefore, that it could not hold an SVP hearing.¹⁵ Defendant was sentenced on October 1, 2018 to an aggregate term of six to twenty-four years of incarceration in a state correctional institution, which was later reduced to five and one-half to twenty-two years upon granting of Defendant's motion for reconsideration.¹⁶

On January 8, 2019, the Commonwealth appealed the Court's sentencing Order to the Supreme Court.¹⁷ While the case was on appeal, the Supreme Court reversed the Superior Court's decision in *Butler*.¹⁸ In its decision, the Supreme Court found that SORNA's lifetime registration, notification and counseling requirements (the "RNC requirements") were not applied to conduct, but, instead, were applied to an individual's status as suffering from a serious psychological defect, *i.e.*, from the individual's SVP status, such that the he was likely to engage in predatory sexually violent offenses. Thus, our Supreme Court held that the RNC requirements were nonpunitive and did not constitute criminal punishment for purposes of *Apprendi v. New Jersey*¹⁹ and *Alleyne v. United States*,²⁰ under which anything that increases the mandatory minimum sentence for a crime is an element and must be submitted to a jury and found beyond a reasonable doubt.²¹

On September 2, 2020, the trial judge held a conference with counsel, and counsel filed a joint application for remand of the case to this Court.²² Accordingly,

¹⁴ *Com. v. Butler*, 173 A.3d 1212 (Pa. Super. 2017).

¹⁵ Order, dated October 1, 2018 and entered October 5, 2018; Opinion entered November 20, 2018.

¹⁶ See the Court's Opinion in Support of Order in Compliance with Rule 1925(a) of the Rules of Appellate Procedure, entered April 15, 2019 in both cases, at 2-3.

¹⁷ Notice of Appeal, filed January 8, 2019 in both cases.

¹⁸ *Com. v. Butler*, 226 A.3d 972 (Pa. 2020).

¹⁹ *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000).

²⁰ *Alleyne v. United States*, 133 S. Ct. 2151 (2013).

²¹ *Butler, supra*, 226 A.3d at 972.

²² Order, dated June 20, 2023 and entered June 21, 2023 in both cases, at 1.

on September 25, 2020, the Supreme Court remanded the case for further proceedings.²³ On September 28, 2020, the Record Remittal in this case was filed here.²⁴ At that point, the case went into limbo.²⁵ Neither party requested that the matter be scheduled for an SVP hearing, and the Court did not schedule an SVP hearing *sua sponte*. The case came back to the Court's attention when the Pennsylvania State Police contacted the Court regarding case 1436, and the Court scheduled a conference for August 11, 2023.²⁶ As a result of the conference, the Court entered an Order scheduling an SVP hearing.²⁷

Prior to the hearing, however, the parties recognized issues that needed to be addressed first. Nearly six years had elapsed since sentencing, and the case had been remanded from the Supreme Court four years earlier with no further action taken. Due to the substantial delay in scheduling the SVP hearing, questions arise concerning whether the Defendant's constitutional protections are implicated by conducting an SVP hearing at this late date and whether the Court retains jurisdiction to conduct the hearing.

II. LAW AND ANALYSIS.

A. The Sex Offender Registration and Notification Act.

The General Assembly adopted the current version of SORNA²⁸ to comply with the Adam Walsh Child Protection and Safety Act of 2006,²⁹ which requires that states provide for the registration of sexual offenders, and to address the

²³ Order, *Com. v. Webb*, 75 MAP 2018, 76 MAP 2018, entered September 25, 2019 in both cases.

²⁴ Record Remittal, filed September 28, 2020 in both cases.

²⁵ Order, dated June 20, 2023 and entered June 21, 2023 in both cases, at 1-2. The case was remanded during the Covid-19 pandemic, at a time when Pa. R. Crim. P. 600 (requiring a prompt trial in criminal matters) was suspended. Further, the trial judge retired in early November, 2021. *Id.*

²⁶ *Id.*

²⁷ Order, dated and entered August 21, 2023 in both cases.

²⁸ See 42 Pa. C.S. §§ 9799.11(b)(1), (3), (4).

²⁹ 34 U.S.C. §§ 20901, *et seq.*

Pennsylvania Supreme Court's decisions in *Commonwealth v. Muniz*³⁰ and *Commonwealth v. Neiman*³¹ and the Superior Court's decision in *Commonwealth v. Butler*.³² The General Assembly specified that

[i]t is the policy of the Commonwealth to require the exchange of relevant information about sexual offenders among public agencies and officials and to authorize the release of necessary and relevant information about sexual offenders to members of the general public as a means of assuring public protection and shall not be construed as punitive.³³

When enacting SORNA, the General Assembly found, *inter alia*, that the laws of the Commonwealth regarding registration of sexual offenders need to be strengthened “in a manner which is nonpunitive but offers an increased measure of protection to the citizens of this Commonwealth;”³⁴ that sexual offenders pose a high risk of committing additional sexual offenses and that protecting the public from this type of offender is “a paramount governmental interest;”³⁵ that sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in effective operation of government;³⁶ that release of relevant information about sexual offenders to public agencies and the general public furthers the governmental interests of public safety and public scrutiny of the criminal and mental health systems;³⁷ that release of relevant information about sexual offenders will assist individuals in protecting themselves, their family members, and members of group or

³⁰ *Com. v. Muniz*, 164 A.3d 1189 (Pa. 2017) (holding that, because SORNA's RNC requirements were punitive in effect, retroactive application of the RNC requirements to the defendant violated the *ex post facto* clauses of the United States and Pennsylvania Constitutions).

³¹ *Com. v. Neiman*, 84 A.3d 603 (Pa. 2013) (holding that certain amendments to SORNA violated the single subject rule of the Pennsylvania Constitution and, therefore, were invalid).

³² *See, supra*, n. 14. The General Assembly passed the current version of SORNA before the Supreme Court overruled the Superior Court's decision in *Butler*.

³³ 42 Pa. C.S. § 9799.11(b)(2).

³⁴ 42 Pa. C.S. § 9799.11(a)(2).

³⁵ 42 Pa. C.S. § 9799.11(a)(4).

³⁶ 42 Pa. C.S. § 9799.11(a)(5).

³⁷ 42 Pa. C.S. § 9799.11(a)(6).

community organizations from recidivist acts by sexual offenders,³⁸ and that communities, if provided adequate notice of and information about sexual offenders, “can develop constructive plans to prepare for the presence of sexual offenders in the community,” such as “provid[ing] education and counseling to residents, particularly children.”³⁹

1. Purpose and interpretation of SORNA.

The General Assembly's purpose in enacting SORNA was not to punish sexual offenders but to promote public safety through a civil regulatory scheme.⁴⁰

It is clear ... that the legislature's intent in requiring offenders to register with the State Police regarding their whereabouts was not retribution; rather, the legislature's stated 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; rather its purpose was to effectuate, through remedial legislation, the non-punitive goal of public safety.⁴¹

Thus, the RNC requirements of SORNA do not constitute criminal punishment of an SVP.⁴² As such, SORNA's RNC requirements are to be liberally construed “to effect their objects and to promote justice.”⁴³ As our Supreme Court has explained,

In construing any statute, our goal is to “ascertain and effectuate the intention of the General Assembly.” In doing so, we must give effect to all the provisions. While we must not disregard the clear words of an unambiguous statute under the pretext of pursuing its spirit, we nevertheless must look beyond the language when the words of a

³⁸ 42 Pa. C.S. § 9799.11(a)(7).

³⁹ 42 Pa. C.S. § 9799.11(a)(3).

⁴⁰ *Muniz, supra*, 164 A.3d at 1209-10 (citing *Com. v. Williams*, 832 A.2d 962, 972 (Pa. 2005)), abrogated on other grounds by *Com. v. Santana*, 266 A.3d 528 (Pa. 2021).

⁴¹ *Com. v. Gaffney*, 733 A.2d 616, 619 (Pa. 1998).

⁴² See, e.g., 42 Pa. C.S. § 9799.11(b)(2) (The exchange of relevant information about sexual offenders among public agencies and officials and the release of necessary and relevant information about sexual offenders to the general public for public protection “shall not be construed as punitive”); *Butler, supra*, 226 A.3d at 993 (“[T]he RNC requirements applicable to SVPs do not constitute criminal punishment”).

⁴³ 1 Pa. C.S. § 1928(c) (providing that all provisions of a statute not specifically intended to be construed otherwise and not falling into certain categories inapplicable here are to be liberally construed to give effect to their purposes and to promote justice).

statute are not explicit and consider, *inter alia*, the occasion and necessity for the statute, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained. Moreover, we must construe statutes liberally to give effect to their purposes and promote justice.⁴⁴

Therefore, in determining whether to grant the Commonwealth's request for an SVP hearing in this case, the Court must construe SORNA liberally to effectuate its purposes of making relevant information available to state and local law enforcement officials and the general public in order to protect the safety and general welfare of the public, if the Defendant is determined to be an SVP, and to promote justice.

2. SORNA's classification and registration requirements.

Under SORNA, sexual offenses are classified in a three-tiered system based upon the offense committed.⁴⁵ SORNA's RNC requirements require an individual to whom SORNA applies to register with the Pennsylvania State Police⁴⁶ according to the tier of the offense and the status of the defendant.⁴⁷ Individuals convicted of less serious sexual offenses must register for a definite period of time according to the nature of the offense,⁴⁸ but an SVP must register for life.⁴⁹ Defendant was convicted of several Tier I sexual offenses⁵⁰ and a Tier III sexual offense⁵¹ so he is required to register for life,⁵² regardless of whether he is determined to be an SVP.

⁴⁴ *Craley v. State Farm Fire and Cas. Co.*, 895 A.2d 530, 539 (Pa. 2006) (footnotes and citations omitted) (quoting 1 Pa. C.S. § 1921(a) and citing 1 Pa. C.S. §§ 1921(b), (c), 1928(c)).

⁴⁵ See 42 Pa. C.S. § 9799.14 (establishing a three-tiered system for categorizing sexual offenses according to the nature of the offense and frequency of offending).

⁴⁶ See 42 Pa. C.S. § 9799.16 (establishing a statewide registry of sexual offenders in order to carry out the provisions of SORNA).

⁴⁷ 42 Pa. C.S. § 9799.15 (establishing the period of registration under SORNA).

⁴⁸ 42 Pa. C.S. §§ 9799.15(a)(1), (2) (providing shortened registration periods for individuals convicted of Tier I and Tier II sexual offenses), 9799.15(a)(3) (providing for lifetime registration of individuals convicted of a Tier III sexual offense).

⁴⁹ 42 Pa. C.S. § 9799.15(a)(6).

⁵⁰ 42 Pa. C.S. §§ 9799.14(b)(8), (9) (defining offenses under 18 Pa. C.S. §§ 6301(a)(1)(ii) and 6312(d) as Tier I).

⁵¹ 42 Pa. C.S. §§ 9799.14(d)(8) (defining offenses under 18 Pa. C.S. § 3126(a)(7) as Tier III).

⁵² 42 Pa. C.S. § 9799.15(a)(3).

An SVP designation subjects an individual to enhanced requirements in certain circumstances. For example, (i) an SVP is required to appear at least quarterly at an approved registration site to provide or verify information contained in the registry and to be photographed,⁵³ whereas certain other offenders are permitted to appear less often;⁵⁴ (ii) an SVP is subject to enhanced victim notification requirements;⁵⁵ and (iii) an SVP is subject to monthly counselling requirements, for which he is financially responsible and subject to monitoring.⁵⁶ Thus, if Defendant ultimately is determined to be an SVP, the RNC requirements applicable to him will not be enhanced in duration, as he is already a lifetime registrant, but they will be enhanced in character.

B. The Commonwealth's position.

In support of its request for an SVP hearing, the Commonwealth argues that a hearing would have been conducted here but for the Superior Court's decision in *Butler* finding SORNA unconstitutional.⁵⁷ The Commonwealth contends that the decision not to conduct a hearing was made despite the Commonwealth's objection and that its appeal resulted in the Supreme Court reversing the Superior Court's decision.⁵⁸ As such, the Commonwealth argues that a hearing should be conducted.

SVP assessments typically must be done prior to sentencing. SORNA provides that

After conviction but before sentencing, a court shall order an individual convicted of a sexually violent offense to be assessed by [SOAB]. The order for an assessment shall be sent to the executive director of

⁵³ 42 Pa. C.S. §§ 9799.15(e), (f), 9799.25(a).

⁵⁴ While Tier III sexual offenders are also required to appear quarterly, Tier II sexual offenders are only required to appear semiannually, and Tier I sexual offenders need only appear annually. 42 Pa. C.S. §§ 9799.15(e), 9799.25(a). As Defendant was convicted of one Tier III offense, he will be required to appear quarterly in any event.

⁵⁵ See 42 Pa. C.S. § 9799.26 (pertaining to victim notification).

⁵⁶ See 42 Pa. C.S. § 9799.36 (pertaining to counseling of SVP's).

⁵⁷ Commonwealth's Brief, at 1.

⁵⁸ *Id.*, at 1-2.

[SOAB] within ten days of the date of conviction for the sexually violent offense.⁵⁹

Here, the Court ordered an assessment of the Defendant within the time frame specified by SORNA.⁶⁰ SOAB conducted the assessment and provided its results in advance of sentencing,⁶¹ within ninety (90) days from the date of Defendant's conviction, as required by SORNA.⁶² Thereafter, SORNA requires that the court, upon praecipe of the Commonwealth, hold a hearing prior to sentencing, at which time the court must determine "whether the Commonwealth has proved by clear and convincing evidence that the individual is a sexually violent predator."⁶³ SORNA provides that SOAB's assessment shall be provided to the agency preparing the presentence investigation,⁶⁴ thereby contemplating that the SVP assessment will be taken into consideration by the sentencing court⁶⁵ and that the sentencing court would inform the defendant of his reporting obligations at the time of sentencing.⁶⁶

Even though the SVP hearing was not conducted prior to sentencing here, the Commonwealth maintains that it may happen now because a defendant's SVP status is not a punishment but, rather, a collateral consequence of conviction of a

⁵⁹ 42 Pa. C.S. § 9799.24(a). SORNA provides that SOAB must "establish standards for evaluations and for evaluators conducting the assessments" and sets forth a non-exclusive list of factors to be examined during the evaluation. 42 Pa. C.S. § 9799.24(b). SORNA further provides that agencies and officials must cooperate by providing copies of records and information requested by SOAB in order to conduct the evaluation. 42 Pa. C.S. § 9799.24(c).

⁶⁰ Order, dated December 8, 2017 and entered December 19, 2017 in both cases, at 1-2.

⁶¹ Order, dated March 19, 2018 and entered March 21, 2018 in both cases, at 1.

⁶² 42 Pa. C.S. § 9799.24(d) ("[SOAB] shall have 90 days from the date of conviction of the individual to submit a written report containing its assessment to the district attorney").

⁶³ 42 Pa. C.S. § 9799.24(e).

⁶⁴ 42 Pa. C.S. § 9799.24(f).

⁶⁵ See, e.g., *Com. v. Manzano*, 237 A.3d 1175 (Pa. Super. 2020).

⁶⁶ 42 Pa. C.S. § 9799.20; *Com v. Baird*, 856 A.2d 114 (Pa. Super. 2004). Notably, however, failure of a court to inform a defendant accurately, or at all, of his obligations under SORNA does not relieve the defendant from complying with SORNA's RNC requirements, and a court does not have authority to relieve a defendant of the RNC requirements, except as expressly set forth in SORNA. 42 Pa. C.S. § 9799.23(b).

sexual offense.⁶⁷ The Commonwealth cites *Commonwealth v. Whanger*⁶⁸ for the proposition that an SVP hearing may be held after sentencing, despite SORNA stating otherwise. The defendant in *Whanger* pleaded guilty to sexual offenses and proceeded to sentencing in May, 2009. He was later assessed by SOAB and, in February, 2010, the trial court imposed an SVP designation on the defendant.⁶⁹

The *Whanger* defendant initially claimed that, because SORNA requires an SVP assessment to be conducted after conviction but prior to sentencing, his designation is invalid. The Superior Court disagreed, finding that SORNA's requirement relating to timing of the assessment and hearing could be waived and that the defendant had done so there, depriving him of the right to seek relief on that basis thereafter.⁷⁰

He also argued that the trial court lost jurisdiction to modify its sentencing order because Section 5505 of the Judicial Code⁷¹ only permits a court to modify or rescind an order within thirty (30) days of its entry and more time than that had elapsed between his sentencing and the order designating him an SVP.⁷² The Superior Court again disagreed, since an SVP determination is a collateral consequence of conviction of a designated offense and is not a sentence.⁷³ In so holding, the Superior Court clarified that “[t]he sentencing order was one thing; the

⁶⁷ Commonwealth's Brief, at 2-3.

⁶⁸ *Com. v. Whanger*, 30 A.3d 1212 (Pa. Super. 2011). The Superior Court has noted that *Whanger* was impliedly overruled in light of its decision in *Butler, supra. Com. v. Campinelli*, 2018 WL 461515, *8 n.6 (Pa. Super. 2018). The Commonwealth argues, however, that the Supreme Court later overruled the Superior Court's decision in *Butler* and, in so doing, “arguably reaffirmed” the holding in *Whanger*. Commonwealth's Brief, at 3.

⁶⁹ *Whanger, supra*, 30 A.3d 1214.

⁷⁰ *Id.*

⁷¹ 42 Pa. C.S. § 5505 (“Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed”).

⁷² *Whanger, supra*, 30 A.3d at 1214-15.

⁷³ *Id.*, at 1215 (citing *Com. v. Leidig*, 956 A.2d 399, 404-05 (Pa. 2008)).

SVP order was another. Because the SVP order did not modify the sentence, Section 5505—which limits a court's ability to modify its orders—is not applicable.”⁷⁴

Accordingly, the Commonwealth contends here that

[a]n SVP assessment was ordered following the guilty plea and Defendant waived his right to immediate sentencing [upon demand of the Defendant]. Over the Commonwealth’s objection, an SVP hearing was never held and the case was appealed to the Supreme Court. Because an SVP determination is a collateral consequence rather than a sentence, this Court has jurisdiction to hold an SVP hearing regardless of the length of time since sentencing and to order [that] Defendant be classified an SVP if the Court so determines.⁷⁵

C. *The Defendant’s position in opposition.*

The Defendant contends that the Court does not have jurisdiction to hold an SVP hearing nearly six (6) years after sentencing “because such proceeding undermines the norms of the sentencing process, violates SORNA procedural rules, and thereby, the Defendant’s procedural due process rights.”⁷⁶

Defendant first complains that *Whanger* is distinguishable because the defendant there waived his right to have an SVP assessment done prior to sentencing, whereas he has made no such waiver here.⁷⁷ Instead, the Defendant objected to an SVP hearing on the basis that *Butler* found SORNA unconstitutional.⁷⁸ When the case returned to Lycoming County, it was remanded without vacating sentence. He points out that it is not his burden to insist that the Commonwealth praecipe for an SVP hearing in a timely manner and that the Commonwealth could have preserved its ability to seek an SVP hearing by asking for a continuance of Defendant’s sentencing pending disposition of the issue by the

⁷⁴ *Id.*

⁷⁵ Commonwealth’s Brief, at 3.

⁷⁶ Defendant’s Brief, at 2.

⁷⁷ *Id.*, at 3.

⁷⁸ *Id.*

appellate courts.⁷⁹ Fundamentally, he contends that it is his right to have all information presented at the time of sentencing and that he did not waive that right.⁸⁰

Ultimately, the Court is not persuaded by the Defendant's arguments. Defendant was aware of SORNA's RNC requirements at the time of sentencing. Indeed, the Court had issued an Order for an SVP assessment from SOAB prior to sentencing, and Defendant's sentencing had been delayed accordingly. Moreover, Defendant was aware of SORNA's applicability to him at the time of sentencing by virtue of his classification as a Tier III sexual offender under SORNA and the current lifetime registration requirement applicable to him. It is true that the Defendant did not explicitly waive SORNA's timing requirements here; however, Defendant effectively did so when he asked the Court not to conduct the SVP hearing prior to sentencing on the basis of the decision in *Butler*. Finally, when the Supreme Court, in overruling *Butler*, determined that SORNA's RNC requirements did not apply to conduct, but, instead, applied to an individual's status as suffering from a serious psychological defect, Defendant lost the ability to complain that he was unaware of the potential consequence of his conviction of a sexual offense.⁸¹

Next, Defendant claims that *Whanger* is also distinguishable because the SVP designation there was imposed in February, 2010, which is relatively soon after

⁷⁹ *Id.*

⁸⁰ *Id.*, at 3-4.

⁸¹ It is an ancient maxim that "ignorance of the law is no excuse," *i.e.*, that one is presumed to know the law applicable to him. *See, e.g., Com. v. Roberts*, 293 A.3d 1221, 1226 (Pa. Super. 2023) ("Essentially, the General Assembly, when enacting SORNA, codified the ancient maxim that 'ignorance of the law is no excuse.' Roberts may not excuse noncompliance with SORNA based on alleged ignorance of his lifetime-registration obligation. His second and last appellate issue warrants no relief") (citing *Com. v. Kratsas*, 764 A.2d 20, 30 (Pa. 2001)). Indeed, our Supreme Court has explicitly held that there is no requirement that a defendant know of a civil collateral consequence of his conviction at the time of his guilty plea. *Com. v. Duffey*, 639 A.2d 1174 (Pa. 1994) (holding that license suspension is a civil collateral consequence of conviction for underage drinking and, accordingly, that there is no requirement that a licensee know or be informed of that consequence at the time of his guilty plea).

his sentencing in May, 2009. Here, in contrast, Defendant was sentenced nearly six (6) years ago.⁸² Essentially, Defendant contends that, even if the RNC requirements are a collateral consequence, the Commonwealth has forfeited the opportunity to ask for an SVP hearing by virtue of unreasonable delay. Defendant asserts that an SVP hearing under these circumstances “undermines the primary principles of timeliness and procedural due process that are implicated in all aspects of the criminal justice system” and that “[t]he very essence of timeliness runs throughout all adjudicatory processes.”⁸³ He contends that, notwithstanding that SORNA’s RNC requirements are a collateral consequence of his criminal conviction, the Court cannot impose a collateral consequence after an indefinite period of time following his conviction because he did not waive his right to an SVP hearing before sentencing and because he has a right to procedural due process.⁸⁴

While the Court finds the Commonwealth’s delay in seeking an SVP hearing to be problematic, the Court is not persuaded that the delay is prejudicial to the Defendant. Unreasonable delay in seeking to impose a collateral consequence has been found to bar imposition of that consequence where the delay results in prejudice to the defendant and, thereby, deprives him of due process.⁸⁵ Moreover, courts are more reluctant to impose adverse consequences against the government for delay than when a private right is involved.⁸⁶ Here, the Court does not find

⁸² Defendant’s Brief, at 4.

⁸³ *Id.*

⁸⁴ *Id.*, at 4-5.

⁸⁵ See, e.g., *Com., Dep’t of Transp., Bureau of Driver Licensing v. Middaugh*, 244 A.3d 426 (Pa. 2021) (holding that a driver’s license suspension imposed as a collateral consequence of a conviction was precluded when the suspension was imposed after an unreasonable delay that results in prejudice to the driver and, thus, deprives him of due process).

⁸⁶ See, e.g., *Weinberg v. Com., State Bd. of Examiners of Public Accountants*, 501 A.2d 239, 243 (Pa. 1985) (“We have also recognized the availability of the defense [of laches] against the Commonwealth and other governmental units in numerous cases and in a variety of situations, although the courts will be generally reluctant to apply the doctrine against the government and will require a stronger showing by a defendant who attempts to apply the doctrine against the

prejudice. A showing of prejudice resulting from a potential SVP designation is not sufficient. Defendant must demonstrate that he suffered prejudice as a result of the delay.⁸⁷ In discussing prejudice concerning a due process claim arising out of pre-arrest delay, our Supreme Court has stated that:

The threshold question we must address whenever a defendant raises a due process claim due to pre-arrest delay is whether the defendant suffered actual prejudice from the delay. We have not elucidated the meaning of "actual prejudice"; however, numerous federal appellate courts have refined the concept. In order for a defendant to show actual prejudice, he or she must show that he or she was meaningfully impaired in his or her ability to defend against the state's charges to such an extent that the disposition of the criminal proceedings was likely affected. This kind of prejudice is commonly demonstrated by the loss of documentary evidence or the unavailability of an essential witness. It is not sufficient for a defendant to make speculative or conclusory claims of possible prejudice as a result of the passage of time. Where a defendant claims prejudice through the absence of witnesses, he or she must show in what specific manner missing witnesses would have aided the defense. Furthermore, it is the defendant's burden to show that the lost testimony or information is not available through other means.⁸⁸

Here, Defendant has not articulated any prejudice of this nature that arises out of the delay in holding an SVP hearing.⁸⁹

Commonwealth than by one who would apply it against an individual"); *Com., Dep't of Transp. v. Rockland Constr. Co.*, 448 A.2d 1047 (1982) (discussing the common law doctrine of *nullum tempus occurrit regi* ("time does not run against the king") and "reaffirm[ing] the well[-]established rule that statutes of limitations are not applicable to actions brought by the Commonwealth unless the statute expressly so provides").

⁸⁷ See, e.g., *Middaugh, supra*, 244 A.3d at 437-38 (noting that a driver facing license suspension imposed as a collateral consequence of a conviction who alleges prejudice as a result of unreasonable delay in imposing the collateral consequence must demonstrate actual prejudice from the delay to avoid suspension).

⁸⁸ *Com. v. Scher*, 803 A.2d 1204, 1222 (Pa. 2002) (citations omitted).

⁸⁹ In particular, the Court finds that the Defendant is not prejudiced as a result of the delay (i) because he is already under the disability of SORNA's registration requirement for life, see, *supra*, Part II.A.2.; (ii) because, should the Court find that Defendant is an SVP, he retains the right, after 25 years, to petition for an updated assessment and possible future exemption from registration, see 42 Pa. C.S. § 9799.15(a.2); and (iii) because the Court is under remit to construe SORNA's RNC requirements broadly to advance their object of protecting public safety and to promote justice, see, *supra*, Part II.A.1. Additionally, there is no prejudice to the Defendant as SORNA's registration requirement is a collateral consequence of his conviction and not a sentence and is based on the Defendant's status and not on his conduct.

Finally, the Defendant complains that an SVP hearing is unnecessary here because the Defendant's SVP assessment was completed more than six years ago and cannot be updated, absent waiver.⁹⁰

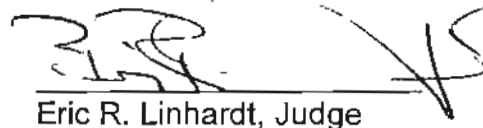
Again, this argument does not convince the Court that it lacks jurisdiction to conduct an SVP hearing. This issues goes to the weight of whether the Commonwealth can demonstrate by clear and convincing evidence that Defendant is an SVP rather than to the question of whether the Court has jurisdiction to hold an SVP hearing in the first instance.

III. CONCLUSION AND ORDER.

For the reasons explained above, the Court finds that Defendant's constitutional rights to due process are not implicated, and the Court retains jurisdiction to conduct an SVP hearing here. An SVP hearing will be scheduled by separate Order.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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⁹⁰ Defendant's Brief, at 5.