

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

J.B.,	:	
	:	
PETITIONER	:	No. _____
	:	
vs.	:	
	:	
PENNSYLVANIA STATE POLICE	:	
	:	
RESPONDENT	:	

PETITION FOR REVIEW

AND NOW COMES the Petitioner, J.B.; by his attorney, Lea T. Bickerton, who files the following Petition for Review requesting a Writ of Mandamus, Declaratory Judgment, Injunctive Relief, or any relief that may be proper:

INTRODUCTION

1. The Pennsylvania State Police, (“PSP”), is responsible for maintaining a registry of individuals who have been convicted of certain sex offenses. 42 Pa. C.S. § 9799.32.

PARTIES

2. Petitioner is an individual who is currently listed on the Pennsylvania sex offender registry.
3. Respondent is the Pennsylvania State Police.

JURISDICTION

4. This Court has original jurisdiction for this Petition for Review under Pa. R.A.P. 1513.

STATEMENT OF FACTS

5. Petitioner was charged with Involuntary Deviate Sexual Intercourse, 18 Pa. C.S. 3123(a)(1); Indecent Assault, 18 Pa. C.S. § 3126(a)(1); Statutory Rape, 18 Pa. C.S. § 3122.1; Corruption of Minors, 18 Pa. C.S. § 6301(a); and Terroristic Threats, 18 Pa. C.S. §2706.
6. The offense date for the relevant offenses was June 1, 1997. ***Exhibit A.***
7. Petitioner was sentenced to a term of one year less one day to two years less two days of incarceration plus a consecutive five-year term of probation on October 18, 2002.
8. Upon his release, Petitioner registered as a sexual offender on December 16, 2004. ***Exhibit B.***
9. At the time of the offense, Petitioner was only compelled to register for 10 years. 42 Pa. C.S. § 9793 (expired July 10, 2000).
10. In 2000, the Pennsylvania General Assembly amended the registration statutes and increased the registration term for Involuntary Deviate Sexual Intercourse from 10 years to life. 2000, May 10, P.L. 74, No. 18, § 3.
11. At the time of Petitioner's guilty plea and conviction, there was no internet registry or passive notification provision. 42 Pa. C.S. § 9795.1, et. seq.
12. In 2004, the General Assembly created a passive notification scheme and mandated that all registrants have their information published on an internet

site that was to be created and maintained by the Pennsylvania State Police.
2004, Nov. 24, P.L. 1243, No. 152, § 8.

13. Megan's Law II expired on December 19, 2012.
14. Megan's Law III was invalidated in *Commonwealth v. Neiman*, 84 A.3d 603 (Pa. 2013).
 - a. The *Neiman* court issued a 90-day stay of its decision.
15. During the 90-day *Neiman* stay, the General Assembly amended SORNA I instead of re-enacting Megan's Law I or II pursuant to 101 Pa Code § 15.5. See *Commonwealth v. Derhammer*, 173 A. 3d 723, 726-27 (Pa. 2017).
16. SORNA is an unconstitutional *ex post facto* law and inapplicable to individuals who were convicted before December 20, 2012. *Commonwealth v. Muniz*, 164 A.3d 1189, 1223 (Pa. 2017).
17. Under *Commonwealth v. Muniz*, certain registration obligations and types of community notification were deemed to be punitive and not retroactively applicable to pre-SORNA I offenders.
18. In Acts 10 and 29 of 2018, the Pennsylvania General Assembly passed measures to ostensibly cure the constitutional issues that SORNA I created for those whose offenses preceded December 20, 2012.
19. Acts 10 and 29 of 2018 did not remove the passive notification and increased information-gathering that were retroactively applied to Megan's Law I registrants.

20. Acts 10 and 29 of 2018 did not remedy the increase to registration length that was imposed on Megan's Law I registrants.

ALLEGATIONS

Allegation 1: Since the public shaming and intrusive information gathering that was deemed punitive under SORNA I was not eliminated in SORNA II, those surviving provisions are unconstitutional as applied to Megan's Law I registrants.

21. In *Commonwealth v. Muniz*, the Pennsylvania Supreme Court concluded that SORNA was punitive.
22. SORNA II's provisions are substantially similar to the elements the *Muniz* court deemed punitive.
- a. SORNA II maintains the in-person reporting requirements that were deemed to be an affirmative restraint under SORNA. 42 Pa. C.S. §§ 9799.56, 9799.60.
 - b. SORNA II maintains the Internet/passive notification provisions that were considered punitive in SORNA, 42 Pa. C.S. § 9799.63.
 - c. SORNA II maintains the level of retribution and deterrent intent that was found in SORNA.
 - d. SORNA II exclusively applies to behavior that was already considered a crime.

- e. SORNA II is over-inclusive and excessive because it does not provide an opportunity for an offender to demonstrate that he does not present the risk Acts 10 and 29 are purportedly designed to address.
 - f. Since SORNA II's provisions for requesting removal from the registry requires that registrants wait 25 years before being able to petition for removal and Petitioner is a senior citizen, he will be serving a *de facto* lifetime registration requirement without eligibility for removal.
23. SORNA II maintains the punitive features of SORNA I, retroactively applies those features to individuals who did not have reporting requirements or were subject to passive notification at the time of their convictions, and increases the registration term.
- a. Under Megan's Law I, Petitioner was only required to register for 10 years.
 - b. Megan's Law I did not include in-person reporting or passive notification for non-SVP registrants.

Allegation 2: Since no law was passed to re-enact Megan's Law II and Petitioner completed his sentence before SORNA II was enacted, there is no valid, non-punitive statute that can be used to compel Petitioner to register as a sexual offender.

24. Since he had no parole or probation violations, Petitioner completed his sentence no later than October 18, 2009.
25. Petitioner's sex offense registration period began on December 16, 2004.

26. The original, 10-year registration term that Megan's Law I imposed ended on December 16, 2014.
27. Since Megan's Law I was repealed by the enactment of Megan's Law II, Megan's Law II was repealed by the enactment of Megan's Law III, and Megan's Law III was found unconstitutional, no valid registration law applied to Petitioner when Acts 10 and 29 took effect.

Allegation 3: Since the sex offender registration statutes make irrebuttable presumptions of dangerousness about registrants and retroactively affect their right to reputation, the statutes are unconstitutional as-applied to individuals who had pre-Megan's Law II offense dates.

28. The registration statutes state that individuals convicted of sex offenses "pose a high risk of engaging in further offenses" and are persons from whom the public must be protected after they are released from supervision. 42 Pa. C.S. § 9799.51.
29. The registration statutes do not give offenders the opportunity to challenge this presumption before they are automatically subject to the registration provisions.
30. For individuals with offense dates under Megan's Law I, this statutory presumption of life-long dangerousness did not exist.

Allegation 4: Since the internet registry provision found at 42 Pa. C.S. § 9799.63 is punitive, it is unconstitutional to retroactively apply it to individuals with offense dates that preceded SORNA I.

31. In *Commonwealth v. Moore*, 2019 PA Super 320, __ A.3d __ (Pa. Super. 2019); a panel of the Pennsylvania Superior Court concluded that 42 Pa. C.S. § 9799.63 was a punitive, *ex post facto* provision and could not be retroactively applied to individuals with pre-SORNA I offense dates.
32. The public nature of the registry and the internet site maintained by the PSP harms a registrant's reputation.
33. The harm to a registrant's reputation did not exist under Megan's Law I because that law did not provide for passive notification or for an internet registry.

CONCLUSION

34. The publication of otherwise private information and inclusion on an internet registry harms registrants' right to reputation and is punitive.
35. Since Petitioner was convicted and completed his sentence before SORNA II took effect and no law was passed to revive Megan's Law I or II, he is currently not subject to any constitutionally valid sex offender registration statute.

WHEREFORE, Petitioner respectfully requests that this Honorable Court 1.) issue a Writ of Mandamus directing the PSP to remove all relevant records from the Sex Offender Registry and their inactive files; 2.) grant declaratory relief by issuing

an order confirming that SORNA II is unconstitutional as applied to Petitioner; 3.) grant an injunction to terminate Petitioner's registration; 4.) grant injunctive relief by relieving Petitioner of SORNA II's in-person reporting and passive notification provisions; 4.) grant declaratory relief by issuing an order confirming that the internet registry provision at 42 Pa. C.S. § 9799.63 is unconstitutional as applied to individuals with pre-2012 offense dates; 5.) grant injunctive relief by removing Petitioner from the internet registry; or 6.) grant any relief that may be just and proper.

Respectfully submitted,

/s/ Lea T. Bickerton

Lea T. Bickerton, Esq.
PA ID 200892

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Date: 4/28/2020

NOTICE TO PLEAD

To the Pennsylvania State Police, by the Office of General Counsel:

You are hereby notified to file a written response to the enclosed
Petition for Relief within twenty (20) days from service hereof or a
judgment may be entered against you.

/s/ Lea T. Bickerton

Lea T. Bickerton, Esq.

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Date: 5/11/2020