

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher L. Haigh,	:	
Petitioner	:	
	:	
v.	:	No. 518 M.D. 2010
	:	SUBMITTED: November 12, 2010
Commissioner of the Pennsylvania	:	
State Police,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: December 30, 2010

Before this court are the preliminary objections in the form of a demurrer of the Commissioner of the Pennsylvania State Police (Commissioner) to the petition for review filed, *pro se*, in our original jurisdiction by Christopher L. Haigh. Haigh seeks a declaratory judgment that he is not required to register with Pennsylvania’s Sex Offender Registry pursuant to 42 Pa. C.S. § 9791-9799, commonly referred to as Megan’s Law II. We sustain the preliminary objections and dismiss the petition for review.¹

¹ Haigh did not file a brief in opposition to the Commissioner’s preliminary objections within the time required.

For the purpose of considering the Commissioner's preliminary objections, we take as true all of Haigh's well-pleaded material facts and any inferences reasonably deduced therefrom and determine if he has stated a cause of action as a matter of law. *Danysh v. Dep't of Corr.*, 845 A.2d 260 (Pa. Cmwlth. 2004).

Haigh acknowledges that in 1995, he was convicted of involuntary deviate sexual intercourse in violation of 18 Pa. C.S. § 3123, an offence which requires lifetime registration with the Sex Offender Registry. *See* 42 Pa. C.S. § 9795.1(b). Haigh argues that this requirement does not apply to him for three reasons: his 1995 conviction was prior to the date of Megan's Law's initial enactment in 1996, and therefore applying the law to him would be a violation of the Due Process, Equal Protection and the Ex Post Facto clauses of the United States Constitution; he was never ordered by a court to register; and he was not informed of his obligation to register at his sentencing. We address each of these arguments in turn.

As an initial matter, it is clear that the registration requirement is properly imposed on Haigh. Haigh was convicted of involuntary deviate sexual intercourse in 1995 and paroled in 2007. Megan's Law was initially passed in 1996 and subsequently, in 2000, was extensively amended in what is referred to as Megan's Law II. Megan's Law II was to "apply to individuals incarcerated . . . on or after the effective date of this Act."² As Haigh was admittedly incarcerated for involuntary deviate sexual intercourse on the date Megan's Law II became effective, there is no question the registration requirement included in the amendments applies to him.

² Act of May 10, 2000, P.L. 74, § 5 (2).

In support of his claim that application of the registration requirement to him would be unconstitutional, Haigh attached to his petition a news article purporting to show that an Ohio trial-level court had found some provisions of that state's version of Megan's Law unconstitutional. Of course, the statutes of Ohio are not necessarily identical to the statutes of Pennsylvania, nor are decisions of that state's courts binding upon this court.

In Pennsylvania and federally, Haigh's constitutional claims have been soundly rejected. Following a comprehensive analysis, this court has found that the registration requirements of Megan's Law do not violate due process or equal protection. *Doe v. Miller*, 886 A.2d 310 (Pa. Cmwlth. 2005). Both our Supreme Court and the United States Supreme Court have found no violation of the *ex post facto* clause in sex offender registration requirements. *Commonwealth v. Gaffney*, 557 Pa. 327, 733 A.2d 616 (1999); *Smith v. Doe*, 538 U.S. 84 (2003). In *Gaffney*, our Supreme Court specifically considered the application of registration requirements to those who were convicted of sex offenses prior to the effective date of the registration provision, and concluded that "[b]ecause we do not view the registration requirements as punitive but, rather, remedial," there was no *ex post facto* violation. 557 Pa. at 339, 733 A.2d at 622.

Haigh's argument that he does not need to comply with the registration requirement because he was never ordered by a court to do so is similarly unfounded. The provisions of the statute are mandatory, and apply automatically those convicted of the enumerated offences. There is no indication in the statutory language that a court order is required for the registration requirement to apply to an individual. *See* 42 Pa. C.S. § 9795.1(b)

Finally, it is of no moment that Haigh was not informed of the registration requirement at his sentencing. While Megan's Law does include a requirement that sentencing courts inform convicted defendants of their obligations under it, 42 Pa. C.S. § 9795.3, the law does not state that failure to do so allows noncompliance with the registration requirement. In fact, the Superior Court has held that sex offenders are required to register even if they have not received notice from the sentencing court. *Commonwealth v. Benner*, 853 A.2d 1068 (Pa. Super. 2004); *Commonwealth v. Miller*, 787 A.2d 1036 (Pa. Super. 2001). In this case, Haigh, like the defendant in *Benner*, did not receive notice of the lifetime registration requirement at sentencing because the requirement was not in place at the time. We adopt the reasoning of the Superior Court in *Benner*, and hold that this lack of notice does not exempt Haigh from the registration requirement.

For all the foregoing reasons, we sustain the preliminary objections and dismiss the petition for review.³

BONNIE BRIGANCE LEADBETTER,
President Judge

³ Haigh's petition also references an Allegheny County ordinance which allegedly regulates where registered sex offenders may and may not reside. It is not entirely clear if Haigh intended to challenge this ordinance as well, but he could not properly do so in a suit against the Commissioner, who plays no role in the creation or enforcement of local ordinances.

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ORDER

AND NOW, this 30th day of December 2010, preliminary objections of the Commissioner of the Pennsylvania State Police in the above-captioned matter are hereby SUSTAINED, and the matter is hereby DISMISSED.

BONNIE BRIGANCE LEADBETTER,
President Judge