

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RAYMOND W. FARABAUGH,	:	
	:	
Appellant	:	No. 1198 WDA 2013

Appeal from the Order entered July 1, 2013,  
Court of Common Pleas, Cambria County,  
Criminal Division at No. CP-11-CR-0000362-2011

BEFORE: GANTMAN, P.J., DONOHUE and FITZGERALD\*, JJ.

MEMORANDUM BY DONOHUE, J.: FILED: June 17, 2014

Raymond W. Farabaugh (“Farabaugh”) appeals from the order of court denying his petition to enforce plea agreement or for a writ of habeas corpus. As discussed below, in filing this petition, Farabaugh sought to avoid having to register as a sex offender under the December 2011 amendments to Megan’s Law (“2011 Megan’s Law”).<sup>1</sup> In light of the amendments to Megan’s Law that occurred in March 2014, we conclude that Farabaugh is not subject to the Megan’s Law reporting requirements. Accordingly, we vacate the trial court’s order.

The trial court aptly set forth the relevant factual and procedural histories as follows:

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<sup>1</sup> 42 Pa.C.S.A. §§ 9799.10 – 9799.41 (as amended 2011, Dec. 20, P.L. 446, No. 111, § 12).

\*Former Justice specially assigned to the Superior Court.

The instant appeal involves, *inter alia*, the application of [the December 2011] amendments to Pennsylvania's Registration of Sexual Offenders statute, more commonly referred to as Megan's Law. The [December 2011] amendments establish a three-tiered system for classifying sexual offenses and the corresponding registration periods under Megan's Law, i.e., 15-year registration for a Tier I offense; 25-year registration for a Tier II offense; and lifetime registration for a Tier III offense. Additionally, the amendments increase the number of crimes that are considered to be sexual offenses. Notably, the amendments apply to individuals who were convicted of sexual offenses prior to the effective date of the [2011] amendments, i.e., December 20, 2012, and who are, as of the effective date (1) currently incarcerated; (2) serving state or county supervised probation or parole; (3) subject to a term of intermediate punishment; and/or (4) required to register under Megan's Law.

In the case at bar, [] Farabaugh pleaded guilty on April 26, 2011, to one count of [i]ndecent [a]ssault, a misdemeanor of the second degree pursuant to 18 P[a].C.S.A. §3126(a)(8), stemming from acts which occurred between January 1, 1994 and December 31, 1996. On June 28, 2011, [Farabaugh] was sentenced to, *inter alia*, two years [of] probation. At the time, [Farabaugh] was not required to register as a sex offender. On December 20, 2012 (the effective date of the [2011 Megan's Law amendments]), [Farabaugh] was serving a term of probation, thus subjecting him to the sexual registration requirements. Pursuant to the [December 2011] amendments, [Farabaugh] is [] considered to be a Tier II sex offender, which requires registration for [25] years.

On January 28, 2013, [Farabaugh] filed the instant [p]etition, arguing that retroactive application of the Megan's Law amendments violates [his] plea agreement and the Due Process and Contract Clauses of the United States and Pennsylvania Constitutions. [Farabaugh] sought specific

performance of the plea agreement 'as a matter of contract law and Due Process.' This [c]ourt conducted a [h]earing on March 27, 2013. On June 28, 2013, the [c]ourt issued an Opinion and Order denying the Petition. [Farabaugh] filed a Notice of Appeal on July 22, 2013.

Trial Court Opinion, 9/24/13, at 2-3 (citations and footnotes omitted).

Farabaugh raised the following five allegations of error on appeal:

1. That the sentencing court erred by refusing to honor the plea agreement between [Farabaugh] and [the Commonwealth] as a matter of due process.
2. That the sentencing court erred by not finding the sexual offender registration and notification act unconstitutional.
3. That the statute of limitations expired prior to the filing of charges causing any conviction to be time barred.
4. That the sentencing court erred in finding [Farabaugh's] plea was knowing, voluntary and intelligent[.]
5. That [Farabaugh's] guilty plea and sentencing counsel was ineffective.

Appellant's Brief at 20.

We begin by recognizing that Farabaugh did not raise his third, fourth or fifth issues in the trial court.<sup>2</sup> It is axiomatic that an appellant cannot

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<sup>2</sup> In its opinion, the trial court notes that Farabaugh raises his third and fifth errors for the first time on appeal, but does not state the same with regard to his fourth issue. Trial Court Opinion, 9/24/13, at 4-6. We have thoroughly reviewed the record and determined that Farabaugh did not raise a challenge the validity of his plea (the subject of his fourth issue) in the trial court.

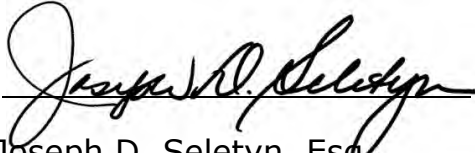
raise an issue for the first time on appeal. Pa.R.A.P. 302(a) (“Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.”); **see also Commonwealth v. Lewis**, 63 A.3d 1274, 1278 (Pa. Super. 2013). Thus, these issues have been waived.

We are left with the first and second issues raised by Farabaugh. We need not address the merits of these claims, though, as they both implicate the retroactive application of 2011 Megan’s Law registration requirements. On March 14, 2014, the General Assembly amended Megan’s Law to exclude persons convicted of indecent assault, graded as a misdemeanor of the second degree, from the statute’s registration requirements. 42 Pa.C.S.A. § 9799.13(3.1)(ii)(B). The General Assembly made this amendment effective immediately and retroactive to December 20, 2012 – the effective date of the registration requirements at issue in this appeal. **See** 42 Pa.C.S.A. § 9799.12. Giving this law retroactive effect, as the Legislature mandated, Farabaugh is not now, and effectively never was, subject to the Megan’s Law registration requirements. Accordingly, we vacate the trial court’s order.

Order vacated. Case remanded. Jurisdiction relinquished.

J-S20021-14

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line drawn through the middle of the name.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/17/2014