

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM M. MYERS,	:	No. 1209 MDA 2013
Appellant	:	

Appeal from the Order Entered June 6, 2013
In the Court of Common Pleas of Lancaster County
Criminal Division No(s).: CP-36-CR-0002039-1999

BEFORE: BOWES, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED APRIL 23, 2014

Appellant, William M. Myers, appeals from the order entered in the Lancaster County Court of Common Pleas, which denied his petition to enforce plea agreement or for a writ of *habeas corpus*. He suggests that after violating the terms of his probation, he should not be subject to lifetime registration as a sexual offender because his plea agreement required only registration for only ten years. We affirm.

We briefly state the procedural history as set forth by a prior panel of this Court:

Appellant pled guilty to statutory sexual assault, indecent assault, and corruption of minors in July 2000, and the court sentenced him[, pursuant to a plea agreement,] to

* Former Justice specially assigned to the Superior Court.

time served to 23 months' incarceration, plus 5 years' probation. [The plea agreement did not specifically state that Appellant would have to register as a sexual offender for ten years but noted that the indecent assault charge was a Megan's Law offense. Plea Agreement, 7/13/00, at 1]. In 2005, Appellant violated his probation and appeared before the court for a revocation hearing. After the hearing, the court sentenced Appellant to 1½ to 3 years' incarceration, followed by 5 years' probation. Appellant again violated his probation in 2008,^[1] and was resentenced on October 2, 2008, to 1 to 5 years' incarceration. Appellant timely appealed. On August 3, 2009, this Court affirmed the judgment of sentence, and Appellant did not seek further review. **See Commonwealth v. Myers**, 984 A.2d 1019 (Pa. Super. 2009) (unpublished memorandum). On December 23, 2010, Appellant filed a PCRA^[2] petition. The court appointed counsel, but permitted counsel to withdraw after counsel filed a **Turner/Finley** "no merit" letter. The court issued notice of its intent to dismiss pursuant to Pa.R.Crim.P. 907 and subsequently dismissed Appellant's petition on September 27, 2011.

Commonwealth v. Myers, 1893 MDA 2011, at 1-2 (Pa. Super. Mar. 30, 2012) ("**Myers II**") (unpublished memorandum) (footnote omitted). The **Myers II** Court affirmed the dismissal of Appellant's first PCRA petition. In the meantime, Appellant, *pro se*, filed his second and third PCRA petitions, both of which the PCRA court denied after issuing Pa.R.Crim.P. 907 notices. Order, 1/9/13.

¹ Appellant failed to report to his probation officer and admitted to drug and alcohol use.

² Post Conviction Relief Act. 42 Pa.C.S. §§ 9541-9545.

On February 15, 2013, Appellant filed a counseled petition to enforce plea agreement or for a writ of *habeas corpus*. After considering the Commonwealth's response, the court denied the petition on June 6, 2013. Appellant timely appealed on July 5, 2013, and timely filed a court-ordered Pa.R.A.P. 1925(b) statement.

Appellant raises the following issues:

Did the trial court err in denying [Appellant's] Petition to Enforce Plea Agreement without a hearing, in violation of the Due Process Clauses of the United States and Pennsylvania Constitutions?

Does the retroactive application of Pennsylvania's Sex Offender Registration and Notification Act to [Appellant] violate the United States and Pennsylvania Constitutions, because SORNA^[3] is an ex post facto law, and a law which impairs the obligation of contracts?

Appellant's Brief at 5.

We summarize Appellant's arguments for both of his issues. Appellant first contends that it was an "implicit term" of his plea agreement that he would only have to register as a sex offender for ten years under Megan's Law. *Id.* at 15, 16. Accordingly, he suggests that he should not be subject to a retroactive application of a subsequent statute and have his term of registration extended from ten years to his lifetime. Therefore, Appellant

³ "The Sex Offender Registration and Notification Act ('SORNA'), commonly referred to as the Adam Walsh Act, became effective on December 20, 2012. By its terms, any individual who was then being supervised by the board of probation or parole was subject to its provisions." ***Commonwealth v. Partee***, 86 A.3d 245, 246 (Pa. Super. 2014).

maintains he is entitled to specific performance of an implied term in his plea agreement. Appellant lastly contends that this Court should enforce the plea bargain because SORNA is an unconstitutional law impairing the obligation of contracts and unconstitutionally increases his punishment *ex post facto*.⁴ He acknowledges that his constitutional arguments rest upon the existence of a plea agreement. **See id.** at 30. Appellant is not entitled to relief.

As a prefatory matter, we note that Appellant's petition is not subject to the PCRA. **See Partee**, 86 A.3d at 247 (holding defendant's claim that ten-year registration requirement was essential term of plea bargain and should be enforced despite subsequent enactment of statute requiring longer period of registration was outside scope of PCRA); **see also Commonwealth v. Williams**, 977 A.2d 1174, 1176-77 (Pa. Super. 2009) (holding that because registration requirement of Megan's Law is collateral consequence of guilty plea conviction, defendant is not eligible for PCRA relief).⁵ We therefore state the standard of review as follows.

Although a plea agreement occurs in a criminal context, it remains contractual in nature and is to be analyzed under

⁴ We note that Appellant, in support, cites trial court opinions, which are not binding on this Court. **See Coleman v. Wyeth Pharm.**, 6 A.3d 502, 522 n.11 (Pa. Super. 2010) (holding trial court decisions are not binding on this Court).

⁵ A petition for specific performance of a plea agreement, however, may be construed as a PCRA petition. **See Commonwealth v. Kroh**, 654 A.2d 1168, 1171 n.1 (Pa. Super. 1995) (treating defendant's *pro se* petition for specific performance of plea bargain as PCRA petition because defendant was essentially arguing guilty plea was unlawfully induced).

contract-law standards. Furthermore, disputes over any particular term of a plea agreement must be resolved by objective standards. A determination of exactly what promises constitute the plea bargain must be based upon the totality of the surrounding circumstances and involves a case-by-case adjudication.

Any ambiguities in the terms of the plea agreement will be construed against the Government. Nevertheless, the agreement itself controls where its language sets out the terms of the bargain with specificity.

Kroh, 654 A.2d at 1172 (citations omitted). Thus, the standard of review is *de novo*. **See id.**

[W]here the original sentence evolved from a plea bargain, and a defendant later violates his parole or probation, the defendant has effectively abrogated the underlying plea bargain. At re-sentencing following revocation of parole/probation, the court is no longer bound by the terms of the original plea bargain; so breached, the sentencing aspect of the original plea bargain is no longer binding on the court, which then has the full panoply of sentencing options available upon re-sentencing following revocation.

Commonwealth v. Parsons, 969 A.2d 1259, 1270 n.6 (Pa. Super. 2009) (*en banc*) (discussing holdings of **Commonwealth v. Wallace**, 870 A.2d 838 (Pa. 2005), and **Commonwealth v. Raphael**, 879 A.2d 1264 (Pa. Super. 2005)); **accord Partee**, 86 A.3d at 249-50.

In **Partee**, the defendant alleged “that the ten-year registration requirement was an essential term of his plea agreement and that it should be specifically enforced.” **Partee**, 86 A.3d at 247. The Commonwealth, however, countered that the defendant had violated his probation and breached the plea agreement. **Id.** at 249. “Thus, the Commonwealth

maintains that [the defendant] cannot seek specific performance of the underlying plea agreement as there is no longer a plea bargain to enforce.” **Id.** (citing **Parsons**, 969 A.2d at 1270 n.6). The **Partee** Court agreed, holding that the defendant, “having failed to abide by the terms of the plea bargain, that agreement is no longer in effect, and hence, [the defendant] is not entitled to specific performance” of a ten-year registration requirement. **Id.** at 250. Accordingly, the **Partee** Court held that the defendant was subject to a twenty-five year registration requirement that was enacted under SORNA—a statute enacted after the defendant’s plea bargain. **Id.** at 246.

Instantly, Appellant raises an argument identical to the argument raised by the defendant in **Partee**. **Compare** Appellant’s Brief at 8, **with Partee**, 86 A.3d at 247. Appellant, just as the defendant did in **Partee**, violated his probation. **See Partee**, 86 A.3d at 246. Just as the **Partee** Court refused to enforce a plea bargain after the defendant violated its terms, we also hold that Appellant is not entitled to specific performance after violating his plea agreement. **See id.** at 250. Thus, identical to the Court in **Partee**, we hold the instant plea agreement is void and Appellant is subject to a lifetime registration requirement. **See id.** Because Appellant’s plea agreement is void, we do not address his constitutional arguments, as he acknowledges they require an existing agreement. **See** Appellant’s Brief at 30. In sum, having discerned no error of law, we affirm the order

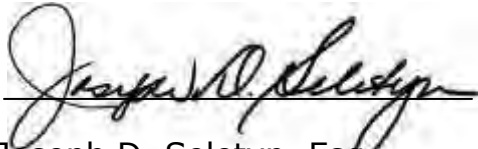
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denying Appellant's petition to enforce plea agreement or for writ of *habeas corpus*. **See Kroh**, 654 A.2d at 1172.

Order affirmed.

Olson, J. concurs in the result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014