

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

DONALD WALTER HLEBECHUK

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1282 WDA 2013

Appeal from the Order Entered July 30, 2013
In the Court of Common Pleas of Westmoreland County
Criminal Division at No(s): CP-65-CR-0004277-2011

BEFORE: BOWES, J., JENKINS, J., and FITZGERALD, J.*

MEMORANDUM BY JENKINS, J.:

FILED July 1, 2014

The Commonwealth of Pennsylvania appeals from an order entered in the Court of Common Pleas of Westmoreland County granting Appellee Donald Walter Hlebechuk's motion for extraordinary relief. Based on recent amendments in March 2014 to the Sexual Offender Registration and Notification Act ("SORNA"), 42 Pa.C.S. § 9799, *et seq.*, also known as "Megan's Law," we affirm.

On December 14, 2011, Hlebechuk was charged with two counts of indecent assault,¹ and with disorderly conduct,² harassment,³ and public

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 3126(a)(1) and (a)(8).

² 18 Pa.C.S. § 5503(A)(3).

drunkenness.⁴ On December 21, 2011, pursuant to a negotiated plea agreement, Hlebechuk pled guilty to two counts of indecent assault, graded as second-degree misdemeanors. **See** 18 Pa.C.S.A. § 3126(a)(1), (a)(8), (b)(1). The Commonwealth dismissed the remaining counts. The SORNA registration requirements did not apply to the crimes to which Hlebechuk pled guilty or to any crime with which he was charged.

The court sentenced Hlebechuk to 1 to 2 years of intensive probation with the first 12 months to be served on electronic home monitoring.⁵ The second count of indecent assault merged with the first for sentencing purposes. On January 13, 2012, the court clarified its order to provide that Hlebechuk was sentenced to intensive probation, not intermediate punishment.

On December 20, 2011, the legislature amended SORNA. The relevant amendments became effective December 20, 2012 and expanded the crimes that require a defendant to register as a sex offender. The Amendments listed indecent assault, 18 Pa.C.S. § 3126(a)(1), as a tier I crime, requiring

(Footnote Continued) _____

³ 18 Pa.C.S. § 2709(a)(1).

⁴ 18 Pa.C.S. § 5505.

⁵ The court further ordered that Hlebechuk was to: have no contact with the victim or any minor children; have a sex offender evaluation and complete recommended treatment; obtain an alcohol evaluation and complete recommended treatment; and pay costs and fees.

a defendant to register for a period of 15 years, and indecent assault, 18 Pa.C.S. § 3126(a)(8), as a tier II crime, requiring a defendant to register for a period of 25 years. 42 Pa.C.S. §§ 9799.14(c), 9799.15.

The SORNA amendments applied to:

An individual who, on or after the effective date of this section, is, as a result of a conviction for a sexually violent offense, . . . being supervised by the Pennsylvania Board of Probation and Parole or county probation or parole,

Id. at § 9799.13(2). Such individuals were required to “register with the Pennsylvania State Police as provided in sections 9799.15 (relating to period of registration), 9799.19 (relating to initial registration) and 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police) and otherwise comply with the provisions of this subchapter[.]” **Id.** at § 9799.13.

On or about February 5, 2013, Hlebechuk was notified he would be required to register as a sex offender pursuant to the SORNA amendments effective December 20, 2012. On May 16, 2013, Hlebechuk filed a motion for extraordinary relief, seeking exclusion from SORNA’s registration requirement. The court held a hearing and subsequently granted the motion. The court found the application of the registration requirement violated due process, fundamental fairness, and a provision of the negotiated plea agreement, and found the application would destroy the process of negotiated plea agreements in Westmoreland County.

The Commonwealth raises the following issue on appeal:

- I. Whether the lower court committed an error of law by determining that the defendant is not subject to the registration requirements under Act 111 of 2011, 42 Pa.C.S.A. § 9799, et seq., also known as Pennsylvania SORNA.

Appellant's Brief at 4.

While this appeal was pending, the General Assembly, on March 12, 2014, passed House Bill 1985, which became law on March 14, 2014. **See** 2014 P.L. ____, No. 19, § 3, 7(1) (enacted Mar. 14, 2014, effective Dec. 20, 2012) ("Act 19"). Act 19 again amended SORNA's applicability provisions and inserted 42 Pa.C.S. § 9799.13(3.1). As amended, the applicability provisions of SORNA state, in relevant part:

The following individuals shall register with the Pennsylvania State Police as provided in sections 9799.15 (relating to period of registration), 9799.19 (relating to initial registration) and 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police) and otherwise comply with the provisions of this subchapter:

* * *

(2) An individual who, on or after the effective date of this section, is, as a result of a conviction for a sexually violent offense, an inmate in a State or county correctional institution of this Commonwealth, including a community corrections center or a community contract facility, is being supervised by the Pennsylvania Board of Probation and Parole or county probation or parole, is subject to a sentence of intermediate punishment or has supervision transferred pursuant to the Interstate Compact for Adult Supervision in accordance with section 9799.19(g).

* * *

(3.1) The following:

(i) An individual **who between January 23, 2005, and December 19, 2012**, was:

(A) convicted of a sexually violent offense;

(B) released from a period of incarceration resulting from a conviction for a sexually violent offense; or

(C) under the supervision of the Pennsylvania Board of Probation and Parole or county probation or parole as a result of a conviction for a sexually violent offense.

(ii) For purposes of this paragraph, the term "sexually violent offense" shall have the meaning set forth in section 9799.12 (relating to definitions), **except that it shall not include:**

(A) Convictions:

(I) Under the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Section 2902(b) (relating to unlawful restraint).

Section 2903(b) (relating to false imprisonment).

Section 2904 (relating to interference with custody of children).

Section 3122.1 (relating to statutory sexual assault).

Section 6301 (relating to corruption of minors).

Section 7507.1 (relating to invasion of privacy).

(II) For a comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth prior to December 8, 2008.

(B) A conviction under 18 Pa.C.S. § 3126 (relating to indecent assault) where the crime is graded as a misdemeanor of the second degree or where the conviction occurred between January 22, 2006, and January 1, 2007, when the crime is graded as a felony of the third degree.

42 Pa.C.S. § 9799.13(2), (3.1) (enacted Mar. 14, 2014, effective Dec. 20, 2012) (emphases added). The March 2014 amendments were made retroactive to December 20, 2012.

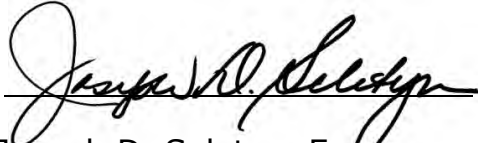
The law governing SORNA's registration requirement has changed since the trial court's initial ruling and the inception of this appeal.⁶ Under the March 2014 amendments, SORNA no longer includes a conviction between January 23, 2005 and December 19, 2012 for indecent assault, graded as a misdemeanor of the second degree, within the definition of "sexually violent offense" and, therefore, does not require registration for such conviction. Because the new, retroactive amendments no longer require registration for the crime to which Hlebechuk pled guilty, the order

⁶ Neither party has submitted a post-submission communication with this Court identifying the change in law. **See** Pa.R.A.P. 2501(b).

granting his petition for extraordinary relief is affirmed, and we need not address the Commonwealth's arguments.⁷

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/1/2014

⁷ This Court can "affirm the court's decision if there is any basis to support it, even if we rely on different grounds to affirm." ***Commonwealth v. McLaurin***, 45 A.3d 1131, 1138 n.2 (Pa.Super.2012) (quoting ***Commonwealth v. Williams***, 35 A.3d 44, 47 (Pa.Super.2011)).