

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
MATTHEW L. MILLER,	:	
	:	
Appellee	:	No. 2132 MDA 2013

Appeal from the Order entered on November 21, 2013
in the Court of Common Pleas of York County,
Criminal Division, No. CP-67-CR-0006906-2010

BEFORE: LAZARUS, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 07, 2014

The Commonwealth of Pennsylvania appeals from the Order granting Matthew L. Miller’s (“Miller”) Petition to Enforce Plea Agreement. We affirm.

On October 1, 2010, Miller was charged with one count of indecent assault of a person less than 13 years of age¹ and one count of indecent assault without consent.² On June 10, 2011, pursuant to a plea agreement, Miller pled *nolo contendere* to indecent assault without consent, and the remaining charge was *nol prossed* by the Commonwealth. The plea agreement specifically required that the Commonwealth withdraw the charge of indecent assault of a person less than 13 years of age, which would have

¹ **See** 18 Pa.C.S.A. § 3126(a)(7), graded as a misdemeanor of the first degree.

² **See** 18 Pa.C.S.A. § 3126(a)(1), graded as a misdemeanor of the second degree.

required Miller to register as a sex offender. The terms of the plea agreement were such that Miller would not have to register as a sex offender for the indecent assault without consent charge, and would serve two years of probation. The trial court accepted the plea and sentenced Miller to two years of probation. Miller did not register as a sex offender.

Pennsylvania's Sex Offender Registration and Notification Act ("SORNA") was enacted on December 20, 2011, and became effective December 20, 2012. **See** 42 Pa.C.S.A. § 9799.1 *et seq.* SORNA's registration requirements apply to persons still under supervision for relevant offenses as of December 20, 2012. **Id.** § 9799.13(2). SORNA reclassified the offenses requiring registration as a sex offender, and the length of the required registration. **Id.** During the period of registration, SORNA requires regular, in-person, reporting to the state police. **Id.** § 9799.15(e) (imposing quarterly, semiannual, or annual reporting requirements); **id.** § 9799.15(g) (imposing requirements to appear, in person, to update information, including employment, telephone numbers, vehicle information and email and Internet identifiers). SORNA also increases the depth and breadth of registry information collected. **Id.** § 9799.16(b). Additionally, SORNA prevents anonymous Internet use and may subject registrants to global positioning monitoring ("GPS"). **Id.** §§ 9799.16(b)(1)-(2), 9799.30.

Under SORNA, Miller's offense of indecent assault without consent was reclassified as a Tier I sexual offense, and requires him to be registered for 15 years. **Id.** §§ 9799.14, 9799.15(a)(1). Accordingly, since Miller was still serving his probationary sentence for indecent assault, he was notified that he must register with the Pennsylvania State Police as a sex offender. Miller complied (and continues to comply) with SORNA's requirements. However, Miller filed a Petition to Enforce Plea Agreement on August 20, 2013, claiming that, pursuant to the terms of his plea agreement, he should not have to register. The trial court granted Miller's Petition, finding that Miller was not required to register as a sex offender because doing so would violate the terms of his plea agreement. The Commonwealth filed a timely Notice of Appeal.

On appeal, the Commonwealth raises the following questions for our review:

- I. Whether the trial court erred in holding that the determination by the Pennsylvania State Police that [Miller] was now subject to registration under SORNA to be a violation of the contract clause [of the United States and Pennsylvania Constitutions?]
- II. Whether the trial court erred in determining that registration under SORNA is not a collateral consequence to a conviction and sentencing[?]
- III. Whether the trial court erred in determining that the registration under SORNA violates the *ex post facto* clause [of the United States and Pennsylvania Constitutions?]

- IV. Alternatively, whether [Miller] should have filed his request for relief as a *writ of mandamus* and included the Pennsylvania State Police as a party to the action[?]

Brief for Commonwealth at 4 (issues re-numbered for ease of disposition).

The Commonwealth contends that SORNA registration applies to Miller, despite the entry of his plea. Brief for Commonwealth at 7, 15, 23.

Our standard of review is as follows:

In determining whether a particular plea agreement has been breached, we look to “what the parties to this plea agreement reasonably understood to be the terms of the agreement.” Such a determination is made “based on the totality of the surrounding circumstances,” and “[a]ny ambiguities in the terms of the plea agreement will be construed against the [Commonwealth].”

Commonwealth v. Hainesworth, 82 A.3d 444, 447 (Pa. Super. 2013) (*en banc*) (internal citations omitted).

In the analogous ***Hainesworth*** case, the defendant pled guilty to statutory sexual assault, indecent assault, and criminal use of a communication facility. ***Id.*** at 445. None of the offenses to which Hainesworth pled guilty required registration as a sex offender. ***Id.*** at 446. The Commonwealth acknowledged this fact on the record in open court. ***Id.*** The trial court accepted the plea, and Hainesworth did not register as a sex offender. ***Id.*** However, after SORNA became effective, Hainesworth’s indecent assault offense was reclassified as a Tier II sexual offense, requiring him to register for 25 years. ***Id.*** Because Hainesworth was still on probation when SORNA became effective, he filed a Motion seeking

termination of his supervision to avoid SORNA's registration requirements.

Id. Although the trial court denied his Motion, it nevertheless issued an order stating that Hainesworth was not subject to the registration requirements of SORNA. **Id.**

This Court initially stated that the plea agreement must be analyzed under the principles of contract law. **Id.** at 447. This Court noted that Hainesworth's guilty plea was premised on the withdrawal of all charges requiring registration (evidenced both in the Plea Colloquy and the Notes of Testimony) and concluded that non-registration was a term of the plea agreement. **Id.** at 447-48; **see also id.** at 449 (stating that "[t]he terms of plea agreements are not limited to the withdrawal of charges, or the length of a sentence. Parties may agree to – and seek enforcement of – terms that fall outside these areas."). This Court recognized that "[r]egistration has serious and restrictive consequences for the offender, including prosecution if the requirement is violated...," and held that the plea agreement should be specifically enforced under principles of contract law, including fundamental fairness. **Id.** at 449; **see also id.** (stating that plea-bargaining is a crucial element of the criminal justice system, as nearly ninety-four percent of state convictions are the result of guilty pleas and that "it is critical that plea agreements are enforced, 'to avoid any possible perversion of the plea bargaining system.'") (internal citations omitted).

Miller's case is analogous to **Hainesworth** in that Miller explicitly conditioned his entry of the plea on the Commonwealth's withdrawal of the charge requiring sex offender registration. **See** Written Plea Colloquy, 6/10/11, at 7. Further, the Commonwealth expressly acknowledged that registration was not required:

[THE COURT:] Do I have to order a Megan's Law evaluation on this?

[The Commonwealth:] No, Your Honor. This doesn't attach a registration period.

[THE COURT:] All right. We will accept the plea to Count 2. We will sentence him to two years probation. Count 1 would be nol-prossed...

N.T., 6/10/11, at 3-4.

Here, the record reflects an unambiguous understanding between the Commonwealth, Miller, and the trial court that registration was not to be imposed as a term of Miller's plea agreement. The application of SORNA's registration requirements would abrogate this promise and breach the agreement. **See Hainesworth**, 82 A.3d at 449. Thus, recognizing the magnitude of SORNA registration, the essential role of plea agreements in the criminal justice system, and the need to preserve the Commonwealth's integrity in its dealings, Miller's knowing and voluntary plea agreement must be specifically enforced. **See Commonwealth v. Fruehan**, 557 A.2d 1093, 1094 (Pa. Super. 1998) (stating that "[i]f a trial court accepts a plea

bargain, the defendant who has given up his constitutional right to trial by jury must be afforded the benefit of all promises made by the district attorney.”); **see also Hainesworth**, 82 A.3d at 447-49.

While the Commonwealth acknowledges that **Hainesworth** controls the outcome of this case, it also contends that SORNA’s registration requirement is a non-punitive collateral consequence³ of Miller’s conviction. The Commonwealth thus argues Miller is subject to its registration requirements, even though they did not exist at the time of his plea. Brief for Commonwealth at 7-9. However, this Court previously determined that a collateral consequence consideration is irrelevant in such a case, because the “sole dispositive question is whether registration was a term of the bargain struck [in the plea agreement]....” **Hainesworth**, 82 A.3d at 449; **see also In re S.T.S., Jr.**, 76 A.3d 24, 44 (Pa. Super. 2013) (stating a panel of this Court cannot overrule an *en banc* decision). Thus, we need not further address the Commonwealth’s claim.

This Court also does not need to address whether SORNA’s requirements are purely punitive and violate the *ex post facto* clause of the United States and Pennsylvania Constitutions because adequate relief can be afforded on the basis of contract law. **See In re Farnese**, 17 A.3d 357, 373 (Pa. 2011) (stating that when considering claims raising constitutional and

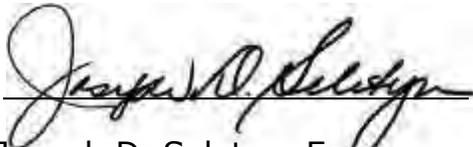
³ A collateral consequence has been defined as a civil requirement over which a sentencing judge has no control. **Commonwealth v. Abraham**, 62 A.3d 343, 350 (Pa. 2012).

non-constitutional bases for relief, courts will provide relief on non-constitutional grounds when possible).

We note that the Commonwealth alternatively asserts that Miller's request should have been filed as a *writ of mandamus*. Brief for Commonwealth at 24. However, we conclude that Miller's request was properly filed as a Petition for Enforcement of Plea Agreement. As noted above, the issue before us is properly framed as an analysis of contract law, and a court may order specific performance of the terms bargained for in the agreement. **See Commonwealth v. Kroh**, 654 A.2d 1168, 1172 (Pa. Super. 1995); **see also Hainesworth**, 82 A.3d at 448-49, 450. Thus, the trial court properly granted Miller's Petition for Enforcement of Plea Agreement.

Order affirmed.

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: 7/7/2014