

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ZACHARY ORION KICK,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2237 MDA 2013

Appeal from the Order Entered November 15, 2013
In the Court of Common Pleas of Centre County
Criminal Division at No(s): CP-14-CR-0001773-2010

BEFORE: BENDER, P.J.E., BOWES, and PANELLA, JJ.

JUDGMENT ORDER BY BOWES, J.:

FILED JULY 09, 2014

Zachary Orion Kick appeals from the order entered November 15, 2013, denying his petition to enforce his plea agreement or for a writ of *habeas corpus*. In light of our General Assembly's passage of 2014, March 14, P.L. ____, No. 19, § 3, the newest version of 42 Pa.C.S. § 9799.13, effective retroactive to December 20, 2012, Appellant is no longer subject to Megan's Law registration. Accordingly, we vacate the order insofar as it requires Appellant to register as a sex offender.

Appellant was initially charged with sexual assault, 18 Pa.C.S. § 4124.1, indecent assault, 18 Pa.C.S. § 3126(a)(1), simple assault, and harassment, arising from a September 18, 2010 incident involving a twenty-year-old Penn State student. Appellant entered a negotiated guilty plea to indecent assault, simple assault, and harassment, and was sentenced to

ninety days to twenty-three months for indecent assault in the Centre County Correctional Facility, and a consecutive two years of probation on the assault charge. At the time, Appellant's conviction did not require sex offender registration under what is commonly known as Megan's Law. Appellant was paroled on August 10, 2011.

The Pennsylvania Legislature enacted a newer version of Megan's Law to comply with the federal Sex Offender Registration & Notification Act ("SORNA"), which became effective on December 20, 2012.¹ As part of the new statute, an individual who, on or after the effective date of the law, was still serving a probation or parole sentence for a sexually violent offense, became subject to its provisions. The December 20, 2012 law included Appellant's indecent assault charge as a sexually violent offense requiring Megan's Law registration for a period of fifteen years.

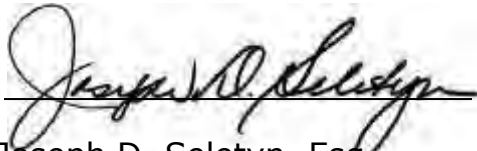
Appellant filed the petition to enforce his plea agreement or a writ of *habeas corpus*, which the trial court denied on November 15, 2013. Appellant appealed on December 13, 2013.

¹ Pennsylvania passed the statute in question in response to the federal government's passage of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16901 *et seq.* Title I of the Act is known as the Sex Offender Registration & Notification Act. Pursuant to the Adam Walsh law, failure of a state to modify its own sex offender registration and notification statutes to meet the standards of the federal provision would result in a loss of certain federal funds for state and local law enforcement. **See** 42 U.S.C. § 16925.

On March 14, 2014, during the pendency of this appeal, the General Assembly again amended the law in question. Under the newest law, those convicted of indecent assault, a second-degree misdemeanor, between January 23, 2005, and December 19, 2012, are not subject to registration, and the law is retroactive. 42 Pa.C.S. § 9799.13 (3.1)(ii)(B). Appellant falls within these parameters and, thus, he is not subject to Megan's Law registration.

Order vacated. Case remanded. Jurisdiction relinquished.

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: 7/9/2014