

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

RYAN JAMES SEESE

Appellant

No. 319 MDA 2013

Appeal from the Order January 16, 2013
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0002751-2010
CP-22-CR-0004884-2010

BEFORE: PANELLA, J., OLSON, J., and PLATT, J.*

MEMORANDUM BY PANELLA, J.:

FILED JULY 10, 2014

Appellant, Ryan James Seese, appeals from the order dated January 16, 2013 that denied Seese's Motion to Modify Sentence, which we treat as a *Habeas Corpus* petition. On appeal, Seese asserts that the trial court erred in holding that he was subject to mandatory registration under Pennsylvania's Megan's Law and the Sex Offender Registration and Notification Act. After careful review, we reverse.¹

* Retired Senior Judge assigned to the Superior Court.

¹ Seese has also filed an "*Ex parte* Motion to Request Declaratory Relief" with this Court. A review of this Motion indicates that it is merely a re-iteration of the arguments raised in Seese's appellate brief. We therefore deny the motion as moot, given the resolution of this appeal.

In 2010, Seese pled guilty to two counts of Invasion of Privacy, one count of criminal trespass, two counts of disorderly conduct, and pled *nolo contendere* to one count of invasion of privacy, all arising from allegations that Seese had entered female restrooms to watch adult women and minor girls using toilets. On December 28, 2010, the trial court sentenced Seese to an aggregate term of imprisonment of one month to twenty-three and one half months, to be followed by three years' probation. Seese did not file an appeal from his judgment of sentence. It is undisputed that as a result of these guilty pleas, Seese was not subject to the registration requirements set forth in 42 Pa.Cons.Stat. Ann. § 9791, *et seq.*, commonly referred to as "Megan's Law."

On December 19, 2012, in anticipation of the imposition of registration requirements of SORNA, Seese filed a motion to modify sentence with the trial court. In his motion, Seese asserted that application of the registration requirements under his circumstances constituted violations of his rights against *ex post facto* laws, right to due process, and right to equal protection. Seese requested discovery from the Commonwealth regarding similarly situated convicts and a hearing on his claims. On January 16, 2013, the trial court entered an order denying all of Seese's claims without a hearing. This timely appeal followed.

On appeal, Seese raises five issues for our review:

1. Did the trial court err not granting Appellant's petition for a hearing to make proper and complete record of issues and facts described therein?
2. Did the trial court err denying Appellant's petition violate the right to equal protection under the law?
3. Did the trial court err by not issuing an order compelling the District Attorney's Office to provide Appellant with discovery?
4. Did the trial court err by denying the appellant's petition or by failing to identify permissible departure to avoid application of law *ex post facto* that violates Appellant's right to due process?
5. Did trial court err by applying the wrong standard in review knowing new law was being applied retroactively to Appellant?

Appellant's Brief, at 4.

Initially, we address our jurisdiction to entertain this appeal. The trial court analyzed Seese's motion as a post-sentence motion under Pa.R.Crim.P. Rule 720. However, Rule 720 requires that all post-sentence motions be filed within 10 days of the imposition of sentence. **See** Pa.R.Crim.P., Rule 720(A)(1), 42 Pa.Cons.Stat. Ann. Seese did not file his motion to modify until nearly 2 years after the imposition of sentence, and as such, the trial court lacked jurisdiction to address Seese's motion as a post-sentence motion.

As a result, Seese's motion must be treated as a petition for collateral relief. In addressing collateral attacks, we first determine whether the petition falls under the ambit of the Post Conviction Relief Act ("PCRA"). **See Commonwealth v. West**, 868 A.2d 1267 (Pa. Super. 2005) ("[I]f Appellant's claims could have been brought under the PCRA, then *habeas corpus* relief would be unavailable because the PCRA subsumes the remedy

of *habeas corpus* with respect to remedies offered under the PCRA[.]”). The dispositive factor is whether the underlying claim is cognizable under the PCRA; if so, a petitioner is limited to seeking relief pursuant to the PCRA. **See Commonwealth v. Pagan**, 864 A.2d 1231, 1233 (Pa. Super. 2004).

While it is rare for a claim to fall outside the ambit of the PCRA, **see Commonwealth v. Burkett**, 5 A.3d 1260, 1274 (Pa. Super. 2010) (referring to such claims as “rare instances”), Pennsylvania Courts have “repeatedly held that the PCRA contemplates only challenges to the propriety of a conviction or a sentence.” **Commonwealth v. Masker**, 34 A.3d 841, 843 (Pa. Super. 2011). Challenges to the collateral consequences of convictions are not cognizable under the PCRA. **See id.**, at 844. Registration requirement for sexual offenders have repeatedly been found to be collateral consequences of a conviction. **See, e.g., Commonwealth v. Leidig**, 956 A.2d 399, 406 (Pa. 2008). Thus, Seese’s motion to modify sentence, which challenges the imposition of reporting requirements under SORNA, does not fall under the jurisdiction of the PCRA.

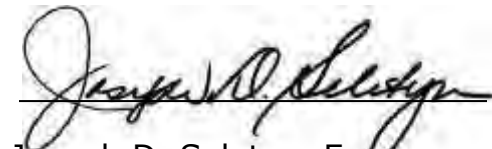
As Seese’s motion is not a post-sentence motion nor a PCRA petition, we shall treat it as a petition for *habeas corpus*. “Our standard of review of a trial court’s order denying a petition for writ of *habeas corpus* is limited to abuse of discretion.” **Rivera v. Pennsylvania Dept. of Corrections**, 837 A.2d 525, 528 (Pa. Super. 2003) (citation omitted). A trial court abuses its

discretion if it misapplied the law or exercised its discretion in a manner lacking reason. ***See id.***

We need not reach any of Seese's issues on appeal, as the legislature has amended SORNA retroactively to exclude Seese's convictions from registration requirements. ***See*** 42 Pa.Cons.Stat.Ann. § 9799.13(3.1)(ii)(A). As a result, Seese is not required to register.

Order reversed. *Ex parte* Motion to Request Declaratory Relief denied. 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: 7/10/2014