

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CODY LEE CAMPBELL

Appellant

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 96 MDA 2018

Appeal from the Judgment of Sentence Entered March 20, 2017
In the Court of Common Pleas of Lycoming County
Criminal Division at No.: CP-41-CR-0000382-2017

BEFORE: SHOGAN, J., STABILE, J., and STEVENS, P.J.E.*

MEMORANDUM BY STABILE, J.:

FILED NOVEMBER 30, 2018

Appellant Cody Lee Campbell appeals from the March 20, 2017 judgment of sentence entered in the Court of Common Pleas of Lycoming County ("trial court"), following his guilty plea to one count of failure to comply with registration requirements under the Sexual Offender Registration and Notification Act ("SORNA"), 18 Pa.C.S.A. § 4915.1(a)(1). Upon review, we vacate and remand.

The facts and procedural history of this case are undisputed. Briefly, on December 10, 2012, Appellant pleaded *nolo contendere* to indecent assault of a minor. At the time Appellant entered into the guilty plea, he was not subject to any reporting requirements. Nonetheless, ten days later, on December 20 2012, SORNA became effective. Applying SORNA, Appellant was subjected to

* Former Justice specially assigned to the Superior Court.

a fifteen-year registration requirement. On March 17, 2017, Appellant was charged with one count of failure to comply with registration requirements under SORNA. On March 20, 2017, Appellant pleaded guilty and the trial court sentenced him to fourteen to thirty-six months' imprisonment. Appellant did not file a direct appeal.

On September 15, 2017, Appellant filed a petition under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46, challenging his sentence in light of **Commonwealth v. Muniz**, 164 A.3d 1189 (Pa. 2017). The PCRA court appointed counsel, who filed an amended petition, seeking, *inter alia*, the reinstatement of Appellant's direct appeal rights *nunc pro tunc*. On November 6, 2017, the PCRA court reinstated Appellant's direct appeal rights. Appellant timely appealed to this Court. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

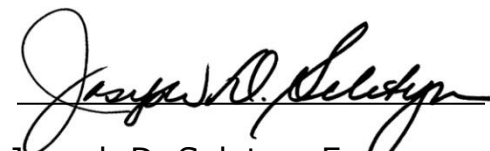
On appeal, Appellant argues, and the trial court agrees, that his sentence is illegal under **Muniz**, wherein our Supreme Court held that the reporting and registration requirements under SORNA are punitive and that their retroactive application to offenses committed **prior** to SORNA's enactment (December 20, 2011) and effective dates (December 20, 2012) violates the *ex post facto* clause of the United States Constitution. The **Muniz** Court considered whether SORNA was unconstitutional as applied to a defendant subjected to an increased registration period under SORNA. **Id.** at 1192-93. Muniz was convicted of indecent assault in 2007 and subject to a ten-year registration requirement pursuant to then-extant Megan's Law III

(42 Pa.C.S.A. § 9795.1 *et seq.* (expired)). **Id.** at 1193. Muniz absconded prior to sentencing. In 2014, he was apprehended, sentenced, and subjected to a lifetime reporting requirement under SONRA. **Id.** In summary, our Supreme Court concluded that SONRA's notification and registration requirements were punitive rather than civil, and that SONRA was unconstitutional as applied to Muniz because it increased the punishment for indecent assault after he committed the offense.

The instant case is similar to **Muniz**. When Appellant committed the underlying indecent assault offense in 2009, he was not subject to any reporting requirement and SONRA had not yet become enacted, much less become effective. Thus, as stated and consistent with **Muniz**, the retroactive application of SONRA to Appellant's underlying offense, which occurred prior to SONRA's enactment and effective dates, is unconstitutional. As a result, Appellant had no duty register under SONRA.

Judgment of sentence 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: 11/30/2018