

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

ROBERT K. BARGER

Appellant

No. 919 WDA 2013

Appeal from the Judgment of Sentence September 11, 2012  
In the Court of Common Pleas of Westmoreland County  
Criminal Division at No(s): CP-65-CR-0003703-2011

BEFORE: BOWES, J., ALLEN, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.

**FILED DECEMBER 4, 2013**

Robert K. Barger appeals from his judgment of sentence, entered in the Court of Common Pleas of Westmoreland County, after he was found guilty of failing to comply with Megan's Law<sup>1</sup> registration requirements<sup>2</sup> and failing to provide accurate information when registering under the Law.<sup>3</sup> The trial court sentenced Barger to an aggregate sentence of five to twenty years' incarceration.<sup>4</sup> We affirm.

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<sup>1</sup> 42 Pa.C.S. §§ 9791-9799.9.

<sup>2</sup> 18 Pa.C.S. § 4915(a)(1).

<sup>3</sup> 18 Pa.C.S. § 4915(a)(3).

<sup>4</sup> Specifically, the court sentenced Barger to 5-20 years' incarceration for failing to give accurate information and a concurrent sentence of 3-10 years' (Footnote Continued Next Page)

Barger is a designated "sexually violent predator"<sup>5</sup> under the Law; as a result, he has been ordered to comply with the Law's registration requirements. **See** 42 Pa.C.S. § 9795.1(b)(3) (requiring lifetime registration for sexually violent predators). Barger reported and updated<sup>6</sup> his residence to the Pennsylvania State Police Megan's Law Unit four times in 2011 (January, April, May and July).<sup>7</sup> Each time he listed his physical address/residence as "transient/homeless," giving a general description of the streets, bridges and/or stores in the vicinity where he could be found residing. Barger also listed a maroon two-door Chevrolet Cavalier bearing Pennsylvania registration HTP0006 in his April and May reports. In January and May, Barger listed an address, purportedly his mother's residence, as

*(Footnote Continued)* \_\_\_\_\_

incarceration for failing to comply with registration requirements under the Law.

<sup>5</sup> On September 25, 2006, Barger was convicted of unlawful contact/communication with a minor.

<sup>6</sup> Under the Law, sex offenders must also notify Pennsylvania State Police within 48 hours of any change in residence and or establishment of an additional residence or residences. 42 Pa.C.S. § 9795.2(a)(2)(i). Effective February 2012, but not applicable to the instant case, section 9795.2 was amended to include language related to registration requirements for individuals who have a temporary dwelling, including a homeless shelter or park.

<sup>7</sup> **See** 42 Pa.C.S. § 9796 (sexually violent predator shall appear quarterly between January 5 and January 15, April 5 and April 15, July 5 and July 15 and October 5 and October 15 of each calendar year at approved registration site to complete verification form and be photographed).

his mailing address. In July he listed his mother's address as an "alternate residence."

On appeal, Barger presents the following issues for our consideration:

- (1) Whether the verdict/finding of Failing to Comply with Registration of Sexual Offenders Requirements 18 Pa.C.S.A. [§] 4915(A)(1) and Failing to Provide Accurate Information [p]ursuant to 18 Pa.C.S.A. [§]4915(A)(3) was supported by sufficient evidence.
- (2) Whether the verdict of guilty of Failing to Comply with Registration of Sexual Offenders Requirements 18 Pa.C.S.A. [§] 4915(A)(1) and Failing to Provide Accurate Information [p]ursuant to 18 Pa.C.S.A. [§]4915(A)(3) was against the weight of the evidence.
- (3) Whether the application and enforcement of Statutes 18 Pa.C.S.A. [§] 4915(A)(3) are unconstitutional as applied to Defendant/Appellant [a] "homeless" person and should be struck down as violating Appellant's substantial and procedural due process rights.

Under section 9795.2 of Megan's Law, Berger was required to register as follows:

(a) Registration.

(1) Offenders and sexually violent predators shall be required to register with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the commencement of a sentence of intermediate punishment or probation. For purposes of registration, offenders and sexually violent predators shall provide the Pennsylvania State Police with **all current or intended residences**, all information concerning current or intended employment and all information concerning current or intended enrollment as a student.

42 Pa.C.S. § 9795.2(a)(1) (emphasis added). Megan's Law defines residence as the location where an offender "resides or is domiciled or

intends to be domiciled for 30 consecutive days or more during a calendar year.” 42 Pa.C.S. § 9792. Moreover, in **Commonwealth v. Wilgus**, 40 A.3d 1201, 1208 (Pa. 2012) (**Wilgus II**), our Supreme Court recognized the fact that by including the word “intends” in section 9792, the Legislature “anticipated a fixed residence might be uncertain for some offenders, and this language includes those who do not have a permanent residence.” Simply stated, homelessness is not a defense to failing to satisfy Megan’s Law registration requirements. **Commonwealth v. Demitt**, 45 A.3d 429 (Pa. Super. 2012).

Barger was aware of the Law’s registration requirements, but was never found in the vicinities or areas he reported as his primary residence<sup>8</sup> to the Megan’s Law Unit. He repeatedly ignored instructions by Pennsylvania State Troopers that he should list his mother’s address as his residence, although Barger was present at his mother’s residence on an almost daily basis<sup>9</sup> from January 2011 to June 2011. Accordingly, he violated section 4915 by failing to list<sup>10</sup> his mother’s address as his residence in compliance

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<sup>8</sup> Barger testified that he only stayed at these locations “a couple of times in a row and then [he] would move on.” N.T. Non-Jury Trial, 6/19/2012, at 139.

<sup>9</sup> Barger testified that he would stay there from “nine [AM] and leave . . . [at] 12:00, 1:00 in the morning” and that three or four days a week he would stay all night. **Id.** at 141-42.

<sup>10</sup> Although Barger ultimately listed his mother’s residence as a secondary residence in June 2011, his repeated refusal (even at the urging of *(Footnote Continued Next Page)*

with Megan's Law. **See Commonwealth v. Moreno**, 14 A.3d 133 (Pa. Super. 2011) (defendant found in violation of Megan's Law registration provision where he slept on porches and in alleyways near registered address, owners of registered address were not aware of defendant's presence and defendant never lived at registered address any time after release from prison).

Moreover, we find Barger's due process/constitutional challenge to the Law's registration provisions, as it applies to homeless registrants, unpersuasive. As our Supreme Court has noted:

Pennsylvania's Megan's Law clearly requires sexually violent predators to notify Pennsylvania State Police of all current and intended residences, and to notify police of a change of residence. Unlike some other states that have ruled on this issue, Pennsylvania clearly defines "residence" for registration purposes. There is no exception for homeless offenders[.]

**Wilgus**, 40 A.3d at 1208; **see also Commonwealth v. Leidig**, 850 A.2d 743 (Pa. Super. 2004), *aff'd*, 956 A.2d 399 (Pa. 2008) (Megan's Law registration, notification and counseling requirements do not constitute criminal punishment for constitutional purposes).

We rely upon the Honorable Rita D. Hathaway's Pa.R.A.P. 1925(a) opinion in affirming Barger's sentence on appeal. We instruct the parties to

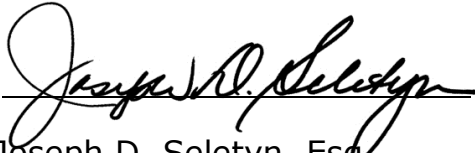
(Footnote Continued) \_\_\_\_\_

authorities) to list this as a primary residence since his release from prison is a clear violation of Megan's Law registration requirements.

attach a copy of that decision in the event of further proceedings in the matter.

Judgment of sentence affirmed.<sup>11</sup>

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/4/2013

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<sup>11</sup> Although we sympathize with the fact that Barger was concerned his mother would be evicted if her landlord discovered a convicted sex offender were living in his building, this concern does not trump our Commonwealth's statutory registration requirements under the Law.

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,  
PENNSYLVANIA – CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

VS.

ROBERT K. BARGER,

DEFENDANT

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No. 3703 C 2011

**OPINION OF THE COURT ISSUED PURSUANT TO PA.R.A.P. RULE 1925**

The Defendant, Robert K. Barger, Jr., was found guilty of failing to comply with the Megan’s Law registration requirements and of failing to provide accurate information when registering in violation of 18 Pa.C.S. §4915(a)(1) and (3). He was sentenced on September 11, 2012 to an aggregate period of five to ten years incarceration. This timely appeal followed the denial of Barger’s Post-Sentence Motions.

**FACTUAL HISTORY:**

The Defendant, Robert K. Barger, Jr., (hereinafter “Barger”) was determined to be a sexually violent predator on September 25, 2006 (TT 26-27).<sup>1</sup> As such, he was required to comply with certain registration requirements as set forth in Megan’s Law. On January 14, 2011, Barger reported to the Pennsylvania State Police Megan’s Law unit and completed a sexual offender address worksheet, listing his address as “transient/homeless” and “under bridge

<sup>1</sup> Numerals in parenthesis preceded by the letters “TT” refer to specific pages of the transcript of the trial testimony presented in this case, held on June 19, 2012, and made a part of the record herein.

near Monastery Drive and SR 981, City of Latrobe, Pennsylvania, Unity Township, Westmoreland County.” (TT 30). He listed his mailing address as 2224 Blaney Lane, Latrobe, Pennsylvania, 15650, the address that purportedly belonged to Barger’s mother.

Barger again reported to the Pennsylvania State Police Megan’s Law unit in April of 2011, listing his physical address as “transient/homeless, pull off at Saint Vincent/Monastery Drive south of the high bridge, Unity Township, Westmoreland County, Latrobe, Pennsylvania 15650.” (TT 36-37). No mailing address was provided at that time, but Barger apparently listed a vehicle, a maroon two-door Chevrolet Cavalier bearing Pennsylvania registration HTP0006. (TT 37-38). Barger again reported to the Pennsylvania State Police on May 18, 2011, listing his mailing address and his physical address as “transient/homeless, vicinity of Sheetz store in Latrobe, Unity Township, Westmoreland County, Latrobe, Pennsylvania 15650,” and again reporting the maroon Chevrolet Cavalier. Barger’s June 30, 2011 registration with the Pennsylvania State Police lists as residence one, “transient/homeless, area of Sheetz store, Unity Township, Westmoreland County, Latrobe, Pennsylvania, 15650” and as residence two, 2224 Blaney Drive, Derry Township, Westmoreland County, Latrobe, Pennsylvania 15650.” (TT 39-40).

Tpr. John Zalich testified that he was assigned to investigate the accuracy of Barger’s reported residences in 2011. Tpr. Zalich attempted to locate Barger several times at the addresses that he had provided, but was either unable to find the locations that had been reported, or was unable to find Barger at any of those locations, either because they were uninhabitable, or because he simply was not there and there was no sign of anyone having lived there. (TT 61-69). Tpr. Zalich testified that he initiated a “patrol check” on the areas reported by Barger in an attempt to locate him or verify his presence at any of those locations. This patrol check, which



checked the applicable areas once per shift, ran from mid-March, 2011 through the end of April, 2011, but yielded no evidence that Barger was staying at any of the locations that he had reported. (TT 69-71). Tpr. Zalich did indicate that he was aware that Barger had been sleeping on St. Vincent property during that time, and had been asked to leave. (TT 71-72). Indeed, Robert J. Fago, a public safety officer at St. Vincent College, testified that Barger and a female were discovered sleeping in the maroon Chevrolet Cavalier near St. Vincent Lake at 11:07 in the morning of April 23, 2011. He asked them to leave and they did so. (TT 49-52).

On April 26, 2011, in an effort to locate Barger, Tpr. Zalich visited the alternate address that Barger had provided, 2224 Blaney Drive, Latrobe, PA 15650, which was Barger's mother's residence. (TT 72). He observed that the Chevrolet Cavalier bearing Pennsylvania registration HTP0006 was parked in the driveway of the residence, however, he was unable to locate Barger. Tpr. Zalich returned to that address several times over the next several weeks. On May 11, 2011, he located a blonde female in the car, and subsequently spoke with Barger, who was inside the residence. Barger stated that he had stayed at the bridge near SR 981 and Monastery Drive one or two times, had stayed under the St. Vincent High Bridge three times, and otherwise had stayed "here and there." (TT 74-75). Tpr. Zalich reminded Barger of the requirement that he report a change of address to the State Police within 48 hours of making a change. (TT 76).

On May 18, 2011, Barger changed his residence to "the vicinity of Sheetz in Latrobe," (TT 76). Tpr. Zalich located Barger at his mother's residence on June 8, 2011, and Barger admitted that he "had no place to go." (TT 77). Tpr. Zalich advised Barger that he should register his mother's address as a secondary residence. Tpr. Zalich again found Barger at his mother's address on June 15, 2011, and again advised him that he needed to register that address as a secondary address. Tpr. Zalich again found Barger at his mother's residence on June 22,

2011, and had the same conversation with Barger that he had had on the two previous occasions. (TT 78-79). Tpr. Zalich's last trip to 2224 Blaney Drive, Latrobe, PA 15650 occurred on June 29, 2011. Barger advised Tpr. Zalich that he had no where to go, and that his mother would get evicted from her apartment if he used that address to register under Megan's Law. (TT 79). Barger did finally register his mother's address as a secondary address on June 30, 2011.

Lisa Dawn Yasurek testified that her apartment was in the same house as the apartment occupied by Mrs. Barger at 2224 Blaney Drive in the City of Latrobe. She further testified that her sister resided in another apartment in that building with Yasurek's minor niece and nephew. Because she was aware of Barger's prior criminal conviction, she was especially vigilant around her niece and nephew. She testified that between January 2011 and June 2011, she saw Barger at his mother's residence on a daily basis, and remembered odd behavior and considerable "night activity" with him coming and going at night-time. (TT 109-112, 115-116).

Barger testified at trial that he had registered as required, and repeatedly reported that he had no place to live. (TT 125-126). He testified that he used his mother's address as mailing address, but that he was not permitted to live there. (TT 127-128).<sup>2</sup> He admitted reporting the various locations and addresses as noted by Tpr. Burford, but acknowledged that he did not stay at any of those places regularly. (TT 129-133). He testified that he only stayed at his mother's residence for a few days at a time, then he would go away for a day or two. (TT 136). He also testified that he would sleep in his car frequently. (TT 136). He maintained that he properly registered as required, but because he was transient and homeless, and had no place to permanently reside, he consistently reported that he was homeless on his registration. (TT 144-148).

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<sup>2</sup> Margaret Barger, the defendant's mother, testified that she was informed by her landlord that her son, being subject to registration under Megan's Law, was not permitted to reside in her apartment. (TT154-155)

**ISSUES PRESENTED ON APPEAL:**

**I. WHETHER THE VERDICT RENDERED BY THE COURT WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE PRESENTED AT TRIAL?**

Although the Defendant presents his appellate challenges to the weight of the evidence as two-fold argument, his dual challenges to the weight of the evidence presented at trial can be addressed as a single issue. "A true weight of the evidence challenge concedes that sufficient evidence exists to sustain the verdict but questions which evidence is to be believed." *Commonwealth v. Galindes*, 786 A.2d 1004, 1013 (Pa.Super.2001) (citation omitted). In determining whether a verdict is against the weight of the evidence, the court is guided by the standards set forth in *Commonwealth v. Champney*, 574 Pa. 435, 832 A.2d 403 (2003), *cert denied*, *Champney v. Pennsylvania*, 542 U.S. 939, 124 S.Ct. 2906, 159 L.Ed.2d 816, 72 USLW 3768 (2004): "The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice." *Champney*, 574 Pa. at 444, 832 A.2d at 408 (2003) (internal citations omitted).

In this case, the trial court acted as the fact-finder, and found the testimony of the Pennsylvania State Troopers and of Lisa Dawn Yasurek to be credible. As fact-finder, this court found that the evidence presented at trial, discussed *supra*, established the following: The defendant was aware of his obligation to register pursuant to Megan's Law (42 Pa.C.S. §9795.2); he was reluctant to register his mother's address as his residence for fear that she would be

evicted because they knew that the landlord would not permit him to reside there; he reported that he was “transient/homeless,” listing several area locations where he could be found; and routine checks indicated that Barger was not, in fact, living, staying or even sleeping regularly at any of those physical locations, but rather, that he was staying at his mother’s residence on a near-daily basis.

While this court certainly understood Barger’s dilemma, and his desire not to compromise his mother’s continued ability to maintain her residence, the registration requirements of a sexual offender are clear. Under the version of Megan’s Law in effect at the time of Barger’s offense, Barger was required to register any change of address or establishment of an additional residence or residences within 48 hours of that change. *42 Pa.C.S. §9795.2* (effective January 1, 2007 – February 20, 2012). Barger correctly noted that “residence” as defined under that version of Megan’s Law is: “A location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year.” *42 Pa.C.S.A. § 9792*. Citing *Commonwealth v. Wilgus*, 975 A.2d 1183 (Pa.Super. 2009), Barger argued that the Superior Court accepted the legislature’s definition of “residence,” and held that a person’s homelessness precluded the possibility of having a permanent “residence” to report. In so ruling, the Superior Court noted that

The Commonwealth faces an insurmountable barrier because Megan's Law, as enacted by the Pennsylvania Legislature, simply does not cover the situation presented by a homeless person without a fixed place of habitation of some degree of permanence. “Residence” is defined in the statute as “[a] location where an individual resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year.” *42 Pa.C.S.A. § 9792*.

*Commonwealth v. Wilgus*, 975 A.2d 1183, 1186 (Pa.Super.2009) (“*Wilgus I*”). Barger failed to note, however, that the Pennsylvania Supreme Court reversed the Superior Court’s decision in

*Wilgus*, rejecting *Wilgus*' argument that his homelessness (he claimed that he never spent more than twenty hours in any given place) rendered his ability to comply with the 48-hour notice requirement an impossibility, and that he could never meet the statutory definition of "residence."

Neither of these arguments provides any exception to registration requirements for homeless offenders. The statute clearly defines residence as the "location" where an offender "resides or is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year." 42 Pa.C.S. § 9792. The inclusion of the word "intends" indicates the Legislature anticipated a fixed residence might be uncertain for some offenders, and this language includes those who do not have a permanent residence.

*Commonwealth v. Wilgus*, 40 A.3d 1201, 1208 (Pa. 2012) ("*Wilgus 2*").

Like *Wilgus*, Barger reported an "intended address" – indeed, several of them – but he never could be found in any of the locations that he reported. According to the State Police, one of the addresses, or locations, did not even exist. The one address that Barger reported, listing it as a "mailing address" only, was the only address where he ever was located by the State Police, and was the address that he was seen daily by a neighbor. Barger's delayed reporting of his mother's address at 2224 Blaney Drive on June 30, 2011 was only done after he was directly instructed to do so by Tpr. Zalich on no less than three occasions, and did not excuse his failure to register as required.<sup>3</sup>

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<sup>3</sup> This court is mindful that the most recent revision of Megan's Law, now referred-to as Pennsylvania SORNA, which became effective on December 20, 2012, was enacted in part to bring the Commonwealth into Compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248, 120 Stat. 587). This new legislation includes in its definitions the term "Transient" as "an individual required to register under this subchapter who does not have a residence but nevertheless resides in this Commonwealth in a temporary habitat or other temporary place of abode or dwelling, including, but not limited to, a homeless shelter or park." 42 Pa.C.S.A. §9799.12, and provides for a method of registration for those individuals who are or may become homeless. 42 Pa.C.S.A. §9799.15(h). However, the law in effect at the time of Barger's offenses, read in conjunction with *Commonwealth v. Wilgus*, 40 A.3d 1201(Pa. 2012), supports the decision of this court.

II. WHETHER THE APPLICATION OF 18 PA.C.S. §4915 TO A HOMELESS PERSON IS UNCONSTITUTIONAL?

The Defendant's final issue presented on appeal challenges the constitutionality of 18 Pa.C.S. §4915, specifically, subsections (a)(1) and (a)(3), suggesting that the statute, as applied to homeless persons, violates due process.

Due process demands that a statute not be vague. A statute is vague if it fails to give people of ordinary intelligence fair notice as to what conduct is forbidden, or if they cannot gauge their future, contemplated conduct, or if it encourages arbitrary or discriminatory enforcement. A vague law is one whose terms necessarily require people to guess at its meaning. If a law is deficient—vague—in any of these ways, then it violates due process and is constitutionally void.

By contrast, to be valid, a penal statute must set forth a crime with sufficient definiteness that an ordinary person can understand and predict what conduct is prohibited. The law must provide reasonable standards which people can use to gauge the legality of their contemplated, future behavior.

At the same time, however, the void for vagueness doctrine does not mean that statutes must detail criminal conduct with utter precision. Condemned to the use of words, we can never expect mathematical certainty from our language. Indeed, due process and the void for vagueness doctrine are not intended to elevate the practical difficulties of drafting legislation into a constitutional dilemma. Rather, these doctrines are rooted in a rough idea of fairness. As such, statutes may be general enough to embrace a range of human conduct as long as they speak fair warning about what behavior is unlawful. Such statutes do not run afoul of due process of law.

*Commonwealth v. Crawford*, 24 A.3d 396, 400 (Pa.Super. 2011), citing *Commonwealth v. Habay*, 934 A.2d 732, 737 (Pa.Super.2007) (citations, brackets, emphasis, and ellipses omitted), *appeal denied*, 598 Pa. 746, 954 A.2d 575 (2008).

Our appellate courts have previously determined that the registration requirements set forth in 42 Pa.C.S.A. § 9792 are not punitive measures, and therefore the statute does not violate due process, double jeopardy or the prohibition against the imposition of ex post facto laws. *Commonwealth v. Lee*, 594 Pa. 266, 935 A.2d 865 (2007); *Commonwealth v. Williams*, 832 A.2d 962, 574 Pa. 487, (2003); *Commonwealth v. Leidig*, 850 A.2d 743 (Pa.Super.2004), *appeal granted* 918 A.2d 743, 591 Pa. 697, *affirmed* 956 A.2d 399, 598 Pa. 211. Additionally, the penalty for failing to comply with the registration requirements is clearly set forth in the statute that pertains to this case:

**(d) Penalty.**--An individual subject to registration under section 9795.1(a) or (b) who fails to register with the Pennsylvania State Police as required by this section may be subject to prosecution under 18 Pa.C.S. § 4915 (relating to failure to comply with registration of sexual offenders requirements).

42 Pa.C.S.A. § 9795.2(d).<sup>4</sup>

The offense with which Barger has been charged was set forth at 18 Pa.C.S. §4015:

**§ 4915. Failure to comply with registration of sexual offenders requirements**

**(a) Offense defined.**--An individual who is subject to registration under 42 Pa.C.S. § 9795.1(a) (relating to registration) or an individual who is subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) commits an offense if he knowingly fails to:

(1) register with the Pennsylvania State Police as required under 42 Pa.C.S. § 9795.2 (relating to registration procedures and applicability);

(2) verify his address or be photographed as required under 42 Pa.C.S. § 9796 (relating to verification of residence); or

(3) provide accurate information when registering under 42 Pa.C.S. § 9795.2 or verifying an address under 42 Pa.C.S. § 9796.

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<sup>4</sup> The penalty provisions for failure to register as required are now set forth at 42 Pa.C.S. §9799.21.

**(b) Grading for offenders who must register for ten years.--**

(1) Deleted by 2006, Nov. 29, P.L. 1567, No. 178, § 3, effective Jan. 1, 2007.

(2) Except as set forth in paragraph (3), an individual subject to registration under 42 Pa.C.S. § 9795.1(a) who commits a violation of subsection (a)(1) or (2) commits a felony of the third degree.

(3) An individual subject to registration under 42 Pa.C.S. § 9795.1(a) who commits a violation of subsection (a)(1) or (2) and who has previously been convicted of an offense under subsection (a) (1) or (2) or a similar offense commits a felony of the second degree.

(4) An individual subject to registration under 42 Pa.C.S. § 9795.1(a) who violates subsection (a)(3) commits a felony of the second degree.

**(c) Grading for sexually violent predators and others with lifetime registration.--**

(1) Deleted by 2006, Nov. 29, P.L. 1567, No. 178, § 3, effective Jan. 1, 2007.

(2) Except as set forth in paragraph (3), an individual subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) who commits a violation of subsection (a)(1) or (2) commits a felony of the second degree.

(3) An individual subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) who commits a violation of subsection (a)(1) or (2) and who has previously been convicted of an offense under subsection (a)(1) or (2) or a similar offense commits a felony of the first degree.

(4) An individual subject to registration under 42 Pa.C.S. § 9795.1(b)(1), (2) or (3) who violates subsection (a)(3) commits a felony of the first degree.

**(d) Effect of notice.--**Neither failure on the part of the Pennsylvania State Police to send nor failure of a sexually violent predator or offender to receive any notice or information pursuant to 42 Pa.C.S. § 9796(a.1) or (b.1) shall be a defense to a prosecution commenced against an individual arising from a



violation of this section. The provisions of 42 Pa.C.S. § 9796(a.1) and (b.1) are not an element of an offense under this section.

**(e) Arrests for violation.--**

(1) A police officer shall have the same right of arrest without a warrant as in a felony whenever the police officer has probable cause to believe an individual has committed a violation of this section regardless of whether the violation occurred in the presence of the police officer.

(2) An individual arrested for a violation of this section shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. In no case may the individual be released from custody without first having appeared before the issuing authority.

(3) Prior to admitting an individual arrested for a violation of this section to bail, the issuing authority shall require all of the following:

(i) The individual must be fingerprinted and photographed in the manner required by 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

(ii) The individual must provide the Pennsylvania State Police with all current or intended residences, all information concerning current or intended employment, including all employment locations, and all information concerning current or intended enrollment as a student.

(iii) Law enforcement must make reasonable attempts to verify the information provided by the individual.

**(f) Definition.--**As used in this section, the term "a similar offense" means an offense similar to an offense under either subsection (a)(1) or (2) under the laws of this Commonwealth, the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

*18 Pa.C.S. § 4915* (now 18 Pa.C.S. §4915.1). A review of this criminal statute in light of the standards set forth in *Commonwealth v. Crawford*, 24 A.3d 396, 400 (Pa.Super. 2011) and its predecessors clearly establishes that 19 Pa.C.S. §4915 is not vague, nor does it fail to provide

ordinary individuals with reasonable notice of the conduct that is prohibited. For this reason, Barger's constitutional challenge to the statute is without merit.

**CONCLUSION:**

For the foregoing reasons, the issues raised by the Defendant on appeal are meritless.

**BY THE COURT:**

*July 5, 2013*  
Date

*Rita Donovan Hathaway, J.*  
Rita Donovan Hathaway, Judge

**ATTEST:**

\_\_\_\_\_  
Clerk of Courts

cc. File  
James Lazar, Esq. – District Attorney's Office  
Joseph Massaro, Esq. – Counsel for the Defendant