[J-185-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MICHAEL S. LEHMAN,	:	60 MAP 2002
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered 8-17-2001
	:	at No. 2446 CD 2000, which affirmed the
v.	:	Order of the Office of the Attorney General
	:	dated 10-2-2000
	:	
PENNSYLVANIA STATE POLICE,	:	
	:	
Appellee	:	ARGUED: December 4, 2002
	:	
	:	
	:	
	:	

CONCURRING OPINION

MR. JUSTICE NIGRO **DECIDED: DECEMBER 30, 2003**

As Appellant's only constitutional challenge to 18 U.S.C. § 922(g)(1) that is currently before this Court is whether the statute violates constitutional ex post facto prohibitions and I agree with the majority's ultimate conclusion that the statute does not violate those prohibitions, I am constrained to also agree with the majority that this Court cannot currently afford Appellant any constitutional relief. However, I feel compelled to note that, as an equitable matter, I do not believe that Appellant should be prohibited from possessing a hunting rifle when his only criminal offense of record was that of stealing a $3.38 case of beer over forty years ago and any such crime, if committed today, would not constitute a felony that would give rise to a state or federal disability. See 18 Pa.C.S. §§ 3903(b)(2), 106(b)(8) (together classifying theft of less than $50 as a third degree misdemeanor with potential imprisonment of one year or less.) It simply strikes me as unfair that an individual

who stole a case of beer anytime after the enactment of the 1972 Crimes Code is free to possess a hunting rifle today, whereas Appellant, who committed the very same crime, but did so in the even more remote past and has lived a completely crime-free life since, is statutorily prohibited from doing so.