

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA**  
**CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA,

**Appellee**

**vs.**

JUSTIN LEE GREENE,

**Appellant**

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**No. CR-286-2011**

Cynthia Ann Dyrda Hatton, Esquire  
Michael P. Gough, Esquire

Counsel for Plaintiff  
Counsel for Defendant

**MEMORANDUM OPINION**

Matika, J. - April , 2013

Before the Court is a "Petition to Preclude Megan's Law Registration by Defendant" filed by the Defendant, Justin Lee Greene. In the petition the Defendant requests that he not be required to register under the latest version of Megan's Law which went into effect on December 20, 2012. For the reasons stated herein, the Court **DENIES** Defendant's petition.

**FACTUAL AND PROCEDURAL BACKGROUND**

On March 28, 2011, a criminal complaint was filed against the Defendant accusing him of violating numerous criminal statutes resulting from an alleged sexual assault that the victim claimed occurred on March 26, 2011. On August 3, 2011, the Defendant entered into a negotiated guilty plea to a single

count of indecent assault, identified as count four of the information.<sup>1</sup> At that time the Megan's Law<sup>2</sup> that was in effect did not require a defendant who was either convicted of the crime of indecent assault or plead guilty to such offense, to register with the Pennsylvania State Police as a sex offender as the crime of indecent assault was not an enumerated offense that required such registration.<sup>3</sup>

On October 17, 2011, the Defendant was sentenced to a period of incarceration of not less than seven (7) months nor more than twenty-four (24) months less one day, with a credit of two hundred and four (204) days for time already served. The result of such sentence placed Defendant's maximum expiration date of sentence at March 27, 2013.<sup>4</sup>

The Federal Government, in enacting the Adam Walsh Child Protection and Safety Act in 2006 (hereinafter "Adam Walsh Act"), required individual states to adopt local statutes in order to substantially comply with the provisions of the Adam Walsh Act and effectuate the Act's provisions at the state level. See, ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006,

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<sup>1</sup> 18 Pa.C.S.A. § 3126(a)(2)

<sup>2</sup> 42 Pa.C.S.A § 9799 et seq. (repealed Dec. 19, 2012).

<sup>3</sup> 42 Pa.C.S.A § 9799.14

<sup>4</sup> It should be noted that a petition to revoke parole was filed on February 22, 2013. After a revocation hearing where Defendant was found to have violated the terms of his parole, he was resentenced with a new maximum date in May of 2013.

PL 109-248, July 27, 2006. As such, the Pennsylvania Legislature passed Act 111 in December of 2011. After several amendments to the Act, Pennsylvania Governor Corbett signed Act 111 into law in July 2012 with an effective date of December 20, 2012.<sup>5</sup>

On or about December 28, 2012, Defendant received a letter from the Lehigh County Department of Adult Probation and Parole stating:

Section 9799.33 of Title 42, Registration of Sexual Offenders (commonly known as Megan's Law) (as amended by Act 111 of 2011 and Act 75 of 2012) has been changed. As a result of these changes, you have been identified as an offender whose supervised offense either currently requires, or will require, registration on December 20, 2012. (*Exhibit "A" of Defendant's Petition.*)

In essence, notwithstanding the fact that the Defendant was not required to register under the prior version of Megan's Law, he must now register under the latest version according to this letter. It is this letter that has prompted the Defendant to file this petition.

#### **DISCUSSION**

In 1995, the original "Megan's Law" was enacted.<sup>6</sup> The enactment of this law was in response to, and intended as,

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<sup>5</sup> Said Act is codified at 42 Pa.C.S.A. § 9799.10 et seq.

<sup>6</sup> 42 Pa.C.S.A § 9791 et seq. (repealed Dec. 19, 2012).

compliance with legislation enacted by the Federal Government know as the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act."<sup>7</sup> The purpose of this act was to require states to provide for the registration of sexual offenders.

In 2006, the Federal Government enacted the "Adam Walsh Child Protection and Safety Act of 2006."<sup>8</sup> This Act effectively superseded the former statute, that being Megan's Law. The Adam Walsh Act, commonly referred to as "SORNA" (Sex Offender Registration and Notification Act) now "provides a mechanism for the Commonwealth to increase its regulation of sexual offenders in a manner which is nonpunitive but offers an increased measure of protection to the citizens of this Commonwealth." 42 Pa.C.S.A § 9799.11(a)(2).

Pursuant to this statute and specifically 42 Pa.C.S.A. § 9799.13, the law sets forth the various classifications of individuals who must register with the Pennsylvania State Police.<sup>9</sup> As relating to the Defendant, section 9799.13(2) is the applicable section referenced in the letter from the Lehigh

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<sup>7</sup> 42 U.S.C § 14071 et seq.

<sup>8</sup> 42 U.S.C § 16901 et seq.

<sup>9</sup> Other relevant sections, as it relates to this petition are: section 9799.15 (relating to periods of registration), section 9799.19 (relating to initial registration), and section 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police).

County Department of Probation and Parole informing Defendant he must register as an "initial registrant." Section 9799.13(2) reads as follows:

- 2) **An individual who, on or after the effective date of this section, is, as a result of a conviction for a sexually violent offense,** an inmate in a State or county correctional institution of this Commonwealth, including a community corrections center or a community contract facility, **is being supervised by** the Pennsylvania Board of Probation and Parole or **county probation or parole,** is subject to a sentence of intermediate punishment or has supervision transferred pursuant to the Interstate Compact for Adult Supervision in accordance with Section 9799.19(g). (emphasis ours).

As defined in 42 Pa.C.S.A. § 9799.12, "sexually violent offense" means an offense specified in section 9799.14, relating to sexual offenses and tier system, as a tier I, tier II, or tier III sexual offense. Under 42 Pa.C.S.A § 9799.14(c)(1.2), the crime of indecent assault, 18 Pa.C.S. § 3126(a)(2) is classified as a tier II offense. An individual convicted of or who plead guilty to a tier II offense must register as a sexual offender with the Pennsylvania State Police for a period of twenty-five (25) years. 42 Pa.C.S.A. § 9799.15(a)(2).

It is this systematic interpretation of these relevant sections of the statute and the specific facts of the Defendant's case that caused the Lehigh County Department of Probation and Parole to issue the "registration letter" to the Defendant.

Defendant, in his Memorandum of Law, raises several challenges to the application of this statute to his situation. First, Defendant argues that this law constitutes an *ex post facto* law that violates Article I, Section IX, Clause III of the United States Constitution. Second, Defendant argues that prior to, and at the time he entered his guilty plea, he was advised that he would not be required to register under the "old" Megan's Law, and had he known he would have to register he would not have pled guilty but rather gone to trial. Third, Defendant claims that even if legally permissible, the retroactive application of this statute does not apply to him.

Fourth, Defendant argues that the requirement of registration results in "potential" new penalties should he not comply with the requirements of the Adam Walsh Act. Lastly, the Defendant argues that he should not be required to register since the victim was an adult and not a child. The Court will address each claim separately, however, in doing so, it will first address whether the Defendant is one of the individuals the statute was designed to require to register.

Defendant argues that section 9799.13(a)(2) does not apply to him even though he was under county parole supervision on December 20, 2012. He theorizes that the Adam Walsh Act applies to those individuals already under supervision as of December

20, 2012, and such individuals whose conviction for a sexually violent offense also occurred after December 20, 2012. Defendant further argues that statutory construction, as mandated by 1 Pa.C.S.A. § 1921(a) and (c) require this Court to find that registration under the Adam Walsh Act is not applicable to him. The Court disagrees.

In statutory construction, the Court is guided by certain principles in its duty to determine the meaning and applicability of a statute. The Court first notes that pursuant to 1 Pa.C.S.A. § 1903, "words and phrases shall be construed according to rules of grammar and according to their common and approved usage[.]" *Id.* at 1903(a). Further, while interpreting such words and phrases, the Court must do so with a clear objective towards construing the statute in such a way as to be able to ascertain and effectuate the intent of the General Assembly. 1 Pa.C.S.A § 1921(a). In the event words in a statute are not explicit, subsections 1 through 8 of 1 Pa.C.S.A. § 1921(c) may be taken into account, among other considerations, to ascertain the intent of the General Assembly. However, "when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A § 1921(b). Lastly, in ascertaining the intention of the General Assembly, the Court

must presume that the General Assembly did not intend a result that is "absurd, impossible of execution or unreasonable." 1 Pa.C.S.A. § 1922(1).

Defendant argues that in applying the various rules of statutory construction to section 9799.13 and more specifically subsection two, the logical conclusion the Court must reach is that this subsection does not apply to him as he was convicted before the effective date of the statute, that being December 20, 2012. Further, Defendant asserts that the new law, Adam Walsh Act, was not intended to have retroactive application to anyone ever convicted of a present enumerated sexual offense at any time prior to December 20, 2012. In support of this argument, Defendant points to the legislative history of other sections of the statute and the former version of section 9799.13 under Megan's Law where the phrase "has been" was used in describing the status of an individual's conviction vis-à-vis registration, as oppose to the current version that uses the present tense verb "is." See, 42 Pa.C.S.A. 9795.2 (repealed Dec, 19, 2012).

Additionally in support of the argument that Adam Walsh Act is not intended to have retroactive application, Defendant notes that the original version of section 9799.13(2) included the phrase "has been convicted of a sexually violent offense," to



which the current version does not. See, 2011 PA H.B. 75 (NS), 2011 Pennsylvania House Bill No. 75, Pennsylvania One Hundred Ninety-Sixth General Assembly - 2011-2012.

The Court however finds Defendant's argument contrary to the plain meaning and legislative history of the Act. Interpreted in its simplest of terms, the original version of section 9979.13 would suggest that in order to be required to register, an individual must be, on or after the effective date of this section (December 20, 2012):

- 1) an inmate;
- 2) under supervision;
- 3) serving a sentence of intermediate punishment and has been convicted of a sexually violent offense.

There is no proper use of the word "or" to signify distinct scenarios from a sentence standpoint under which a person must register.

Conversely, the current version of section 9979.13(2) reads:

An individual who, on or after the effective date of this section, is, as a result of a conviction for a sexually violent offense, an inmate in a State or county correctional institution of this Commonwealth, including a community corrections center or a community contract facility, is being supervised by the Pennsylvania Board of Probation and Parole or county probation or parole, is subject to a sentence

of intermediate punishment **or** has supervision transferred pursuant to the Interstate Compact for Adult Supervision in accordance with section 9799.19(g). 42 Pa.C.S.A. § 9799.13(2). (emphasis ours).

Besides enumerating for distinct scenarios under which a person must register, the current version of section 9799.13(2) removes the ambiguity that Defendant refers to in the old version. In its simplest interpretation and the plain meaning of the statute, it is clear that section 9799.13(2) applies to the Defendant.

In breaking down this section to its bear elements, section 9799.13(2) would read as follows as it applies to the Defendant: an individual who, on or after the effective date of this section, **is**, as a result of a conviction for a sexually violent offense, an inmate in a county correctional institution of this Commonwealth, or is being supervised by county probation or parole. (emphasis ours). Thus, the use of the word "is" denotes present tense, that being December 20, 2012. The Defendant is a person convicted of a sexually violent offense as defined by sections 9799.12 and 9799.14, and he is under supervision at the time of the effective date of the statute. As such, it is clear that the Defendant is the type of person the Adam Walsh Act was intended to register as a sexual offender with the state police.

This interpretation is clear and unambiguous and qualifies Defendant for registration with the Pennsylvania State Police under section 9799.15.

Defendant next argues that this statute violates Article I, Section IX, Clause III of the United States Constitution as its retroactive application to Defendant's conviction, is tantamount to an *ex post facto* law. Defendant, in support of this argument points to the fact that his conviction occurred prior to the effective date of the statute and therefore the statute's applicability to him violates his constitutional rights. Additionally, Defendant argues that this law violates 1 Pa.C.S.A. § 1926 which reads, "no statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly." Defendant contends that the plain language of section 9799.13(2) does not explicitly make this statute retroactive and therefore to apply said statute retroactively is illegal.

The Court disagrees with Defendant. Clearly, section 9799.13(2) requires a person under "current" supervision for a sexually violent offense to register. This plain language suggests no qualifiers on the period of time when such a conviction occurred, just that an individual was under supervision on or after December 20, 2012. As previously stated

this Court finds the phrase "on or after the effective date of this section" to qualify the supervision aspect of this statute, as it applies to the Defendant, and not when the conviction occurred. Therefore, "retroactivity" is inapplicable.

However, even assuming, arguendo, that the statute has a retroactive effect, the Court still finds that it is not violative of the United States Constitution. "A state law violates the *ex post facto* clause if it was adopted after the complaining party committed the criminal acts and 'inflicts a greater punishment than the law annexed to the crime, when committed.'" *Coady v. Vaughn*, 770 A.2d 287, 295 n.2 (Pa. 2001) (quoting *California Department of Corrections v. Morales*, 514 U.S. 499, 504-06, 509 (1995)).

In the case of *Commonwealth vs. Fleming*, 801 A.2d 1234 (Pa. Super. Ct. 2002), the Court held that Megan's Law II did not constitute a violation of the *ex post facto* laws since the purpose of the legislation was not to punish but to promote public safety. *Id.* at 1241. *Fleming* dealt with a situation where the Defendant committed acts of a sexual nature which at the time of their occurrence, would result in a ten (10) year resignation requirement under the original Megan's Law. Megan's Law II was enacted and subsequent thereto, the Defendant pled guilty. Under Megan's Law II, the Defendant was now required to

register for life. The *Fleming* Court, following the dictates of *Commonwealth v. Gaffney*, 733 A.2d 616 (Pa. 1999), found "no violation of any *ex post facto* provision in requiring registration when the acts underlying an individual's conviction occurred prior to the effective date of the registration requirements." *Fleming*, 801 A.2d at 1238 (citing *Gaffney*, 733 A.2d at 617). The Pennsylvania Supreme Court in *Fleming and Gaffney* reasoned that the purpose of requiring an individual to register as a sexual offender under Megan's Law was not punitive but rather to promote public safety.

SORNA, similar to Megan's Law II, was enacted because of the public's interest in the safety and protection of the citizens of Pennsylvania not as a means of punishing anyone. 42 Pa.C.S.A. § 9799.11

The Court reiterates that it finds that the relevant sections of SORNA are similar to those in Megan's Law II, and find such sections non-punitive as the Court found for Megan's Law II and the *Gaffney* Court found for Megan's Law I. Therefore, the purpose and reason Defendant needs to register are non-punitive in nature and not considered punishment and thus do not violate the United States Constitution as an *ex post facto* law.

Defendant also argues that at the time he entered his guilty plea, he was advised that he would not be required to register. Thus Defendant asserts that had he known he would be required to register he would never had pled guilty. Even assuming this is true, it does not affect the ancillary public safety requirements of SORNA, nor does it affect the voluntariness of his plea, an issue not necessarily raised by Defendant. No one knew if or when SORNA may be adopted and enacted and quite contrarily when the Defendant was sentenced the act had yet to be passed.<sup>10</sup> Therefore it could not be said that the enactment of SORNA affected Defendant's guilty plea.

Next, the Defendant argues that if he were required to register he could potentially run the risk of being arrested for failure to comply with the requirements of the act. While commonly true, the enactment of SORNA is no different than any other law that may be enacted to criminalize behavior; as the old adage goes: "violate it and you will get arrested." This argument is meritless.

Lastly, Defendant moves that the statute should not be applicable to him as the victim was an adult. This argument is likewise without merit. Offenses subject to registration under

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<sup>10</sup> Act 111 of 2011 was passed in December 2011, yet several amendments were made to it before its final passage on October 30, 2012 and effective date of December 20, 2012.

SORNA are divided into three tiers based upon a variety of factors including severity of the charges and taking into consideration the age of the victim. This Defendant's conviction is a tier II offense. The tier structure established by the Pennsylvania Legislature in 42 Pa.C.S.A. § 9799.14 clearly sets forth the classifications of the enumerated offenses and has reasonably placed an indecent assault conviction of an adult in a class with other similar situated offenses. Based on the Court's rationale set forth in this opinion, it enters the following:

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**No. CR-286-2011**

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Counsel for Plaintiff  
Counsel for Defendant

**ORDER OF COURT**

**AND NOW**, this        day of April, 2013, upon consideration of Defendant's "Petition to Preclude Megan's Law Registration," oral argument held thereon, and the legal memorandums submitted, it is hereby **ORDERED** and **DECREED** that the said petition is **DENIED** and **DISMISSED**.

Defendant, Justin Lee Greene, is required to register, pursuant to 42 Pa.C.S.A. § 9799.33 in accordance with the directives provided by the Lehigh County Department of Adult Probation and Parole or other agency authorized to so register the Defendant.

**BY THE COURT:**

Joseph J. Matika,        J.