

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0002044-2014
:
vs. :
:
:
BEELEY MEAD, :
Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order entered on August 12, 2024, which denied, based on *Commonwealth v. Torsilieri*, 316 A.3d 77 (Pa. 2024)(*Torsilieri II*), Beeley Mead’s challenge to his registration requirements.

By way of background, on July 17, 2017, Mead pleaded guilty to Count 1, Criminal Solicitation to Commit Aggravated Indecent Assault of a Child under 13 years of age in exchange for a negotiated sentence with a minimum of five (5) years and a maximum of twenty (20) years’ incarceration in a state correctional institution. There was no agreement regarding sexual offender registration. This offense occurred on December 13, 2013. Sentence was originally scheduled for September 13, 2017, but was continued at the Commonwealth’s request because the Sexual Offender Assessment Board (SOAB) assessment was not completed yet.

On October 5, 2017, the Commonwealth filed a praecipe for a hearing to determine whether Mead was a Sexually Violent Predator (SVP). On October 31, 2017, the defense requested a continuance of the SVP and sentencing hearing to allow time to seek an expert to

contest the SOAB assessment, which the court granted and the hearing was re-scheduled to January 5, 2018.

Between Mead's guilty plea and the January 5, 2018 hearing, there were several legal developments regarding sexual offender registration requirements. On July 19, 2017, the Pennsylvania Supreme Court declared Pennsylvania's Sexual Offender Registration and Notification Act (SORNA I) unconstitutional as its then-provisions were punitive and retroactive application violated the ex post facto clause. *Commonwealth v. Muniz*, 164 A.3d 1139 (Pa. 2017), *cert. denied sub. nom. Pennsylvania v. Muniz*, 138 S.Ct. 925 (2018). On October 31, 2017, the Pennsylvania Superior Court found that the procedure for determining whether an individual was an SVP was unconstitutional as it violated the individual's right to a jury trial. *See Commonwealth v. Butler*, 173 A.3d 1212 (Pa. Super. 2017), *reversed* 226 A.3d 972 (Pa. 2020).

On January 5, 2018, at the time scheduled for the SVP and sentencing hearing, the court found that it could neither designate Mead as an SVP nor impose registration requirements on Mead at that time due to the Superior Court's decision in *Butler* and the Pennsylvania Supreme Court's decision in *Muniz*. The court sentenced Mead to incarceration in a state correctional institution for a minimum of five (5) years and a maximum of twenty (20) years in accordance with the plea agreement. In the sentencing order the court stated, "Given the

In February and June of 2018, the Pennsylvania General Assembly amended the Sexual Offender Registration and Notification Act (SORNA II). One of the expressed intentions of the General Assembly was to address *Muniz* and *Butler*. *See* 42 Pa. C.S.

§9799.11(b)(4).

On September 28, 2022, Mead filed his Motion Requesting Order to Confirm Non-Registration of SORNA. In his Motion, Mead asserted that SORNA II was enacted after the date he was sentenced and could not be applied to him based on the ex post facto clause. He cited *Muniz*, as well as *Commonwealth v. McIntyre*, 232 A.3d 609 (2020) and *Commonwealth v. (Daniel) Wood*, which was decided on April 15, 2019.¹ The court appointed Nicole Spring, Esquire to represent Mead, but noted that the constitutionality of SORNA II was pending before the Pennsylvania Supreme Court in *Torsilieri II*. At the joint request of counsel for both parties, the court deferred holding any hearing or argument on Mead's Motion until *Torsilieri II* was decided. After *Torsilieri II* held that SORNA II was constitutional, the court denied Mead's Motion.

Mead filed a timely pro se notice of appeal. Mead asserts the following issues on appeal:

1. By order dated January 5, 2018, "Given the state of the law, there are no SORNA registration requirements in Effect".
2. According to Notification of Sentence, dated October 2, 2017, was not applicable for registration, (SORNA).
3. Plea deal changed at Sentencing (NO SORNA).
4. IAC (Counsel, Nicole J. Spring, Esq.) abandoned me and didn't send a Finley letter with no communication nor representation.
5. IAC, never told me about the Status Hearing and the Ruling.
6. Abuse of discretion by President Judge Nancy L. Butts who cited *Commonwealth v. Torsilieri* MAP 2022 case that the Supreme Court has found that SORNA Subchapter H is

¹The citation for *Wood* is 208 A.3d 131 (Pa. Super. 2019)(en banc).

constitutional. 316 A.2d 77 (Pa. 2024) when He's challenging (SORNA) and recidivism. However, I'm challenging Ex Post Facto, Com. v. Muniz where (SORNA) violations both PA & U.S. Constitutions, & Apprendi v. U.S.

7. In Apprendi the U.S. Supreme Court held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

Mead's first three issues focus on the fact that no registration requirements were imposed or applicable at the time of his sentencing. It appears that he is arguing that the undersigned is bound by Judge Lovecchio's sentencing order and Notification of Sentence to the Executive Director of the SOAB. Typically, a judge would be bound by a prior judge's rulings in a case under the coordinate jurisdiction rule. The coordinate jurisdiction rule provides that judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions. *Commonwealth v. Starr*, 664 A.2d 1326, 1331 (Pa. 1995), citing *Okkerse v. Howe*, 556 A.2d 827, 831 (Pa. 1989). There are, however, several exceptions to the coordinate jurisdiction rule such as when there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the previous ruling was clearly erroneous and would create a manifest injustice if followed. *Starr*, 664 A.2d at 1332. The court was not bound by Judge Lovecchio's January 5, 2018 order or the Notification of Sentence in this case due to an intervening change in the law. The General Assembly passed SORNA II and the Pennsylvania Supreme Court found that SORNA II was nonpunitive in *Torsilieri II*.

The court also notes that there no change in the plea deal. The only plea deal was with respect to the offense to which Mead would plead guilty and the sentence of

incarceration that he would receive. There was no deal regarding sexual offender registration requirements. Registration requirements were not imposed in this case due to the status of the law on January 5, 2018. The law changed later in 2018 with the enactment of SORNA II.

SORNA II applies to Mead. Section 9799.13 regarding applicability states:

The following individuals shall register with the Pennsylvania State Police as provided in sections 9799.15 (relating to period of registration), 9799.19 (relating to initial registration) and 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police) and otherwise comply with the provisions of this subchapter:

- ...
- (2) A sexual offender who is 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 Department of Corrections or county probation or parole, is subject to a sentence of intermediate punishment or restrictive conditions of probation or has supervision transferred pursuant to the Interstate Compact for Adult Supervision in accordance with section 9799.19(g)....

42 Pa.C.S. §9799.13. A “sexual offender” is an individual who has committed a sexually violent offense, and includes a sexually violent predator. 42 Pa. C.S. §9799.12. A “sexually violent offense” is an offense specified in §9799.14 (relating to sexual offenses and tier system) as a Tier I, Tier II or Tier III sexual offense committed on or after December 20, 2012, for which the individual was convicted.

Mead pleaded guilty to Criminal Solicitation to Commit Aggravated Indecent Assault of a Child under 13 Years of Age. He committed this offense on December 13, 2013, which is after December 20, 2012. This offense is a Tier III sexual offense. *See* 42 Pa. C.S. 9799.14(d)(7).² Mead is currently incarcerated in SCI-Benner Township. Therefore, he is a

² Currently, section 9799.14(d)(7) states: the following offenses, or an attempt, conspiracy or solicitation to commit any of the following offenses, shall be classified as Tier III sexual offenses: ... (7) 18 Pa. C.S. §3125 (related to aggravated indecent assault.” This section was amended effective May 8, 2024. This offense was

sexual offender who is an inmate in a State Correctional Institution, and SORNA II applies to him pursuant to section 9799.13(2). As a Tier III sexual offender, Mead must register for life. 42 Pa. C.S. §9799.15(a)(3)(“An individual convicted of a Tier III sexual offense shall register for the life of the individual.”).

Mead also asserts that SORNA II cannot apply to him because it was passed after he was sentenced; therefore, applying SORNA II to him violates the Ex Post Facto Clause and *Apprendi*³ because his punishment was increased without being submitted to a jury a proven beyond a reasonable doubt. He contends that the court erred in relying on *Torsilieri II* because that case was focused on recidivism, not the Ex Post Facto Clause as in *Muniz* or the right to a jury determination as in *Apprendi*. The court cannot agree.

Both the Ex Post Facto Clause and *Apprendi* require an increase in punishment. There is a three-part framework for determining whether a law is *ex post facto*: (1) determine when the offense was committed; (2) determine whether the challenged law was enacted after the occurrence of the triggering event and applied retroactively; and (3) determine **whether the law is punitive or increases the penalty for the existing crime**. See *Commonwealth v. Santana*, 266 A.3d 528, 537 (Pa. 2021)(emphasis added). *Apprendi* held that, other than a fact of a prior conviction, **any fact which increase the punishment** imposed on the underlying crime must be found by the jury beyond a reasonable doubt. 120 S.Ct. at 2362-2363 (emphasis added). The problem with Mead’s argument is that in *Torsilieri II* the Pennsylvania Supreme Court found that SORNA II was nonpunitive. 316

also covered by the previous statutory language which listed inchoate offenses in paragraph (18). The amendment removed paragraph (18) and moved attempt, conspiracy or solicitation to commit any of the listed offenses to the introductory language of paragraph (d). See Act 16 of 2024, §2 (May 8, 2024), imd. effective.
³ *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (2000).

A.3d at 110. In other words, the sexual offender registration requirements of Subchapter H did not constitute punishment; therefore, those requirements can be retroactively applied to Mead without violating the Ex Post Facto clauses of the United States or Pennsylvania Constitutions and without violating *Apprendi*.

Furthermore, contrary to Mead's arguments, *Torsilieri II* not only addressed a due process argument regarding recidivism, but also rejected constitutional arguments that SORNA II violated the separation of powers, the United States Constitution's prohibition against cruel and unusual punishment and the right to a trial by jury. 316 A.3d at 110. As *Torsilieri II* found that SORNA II was nonpunitive and rejected a claim that it violated the right to a trial by jury, the court did not abuse its discretion in relying on *Torsilieri II* as Mead claims in his fifth and sixth issues.

With regard to Mead's claims of ineffective assistance of counsel (IAC), this is not a Post Conviction Relief Act (PCRA) proceeding. If it were, the court would not have appointed counsel at all and would have denied Mead's petition as an untimely second or subsequent PCRA. In *Commonwealth v. Lacombe*, 234 A.3d 602 (Pa. 2021), however, the Pennsylvania Supreme Court held that the PCRA was not the sole avenue for challenging sexual offender registration requirements. Specifically, the Court stated: "we decline to find the PCRA, or any other procedural mechanism, is the exclusive method for challenging sexual offender registration statutes...." *Id.* at 617. Unfortunately, there are no set procedures for the other avenues as there are for a PCRA. If Mead had filed his Motion after *Torsilieri II* was decided on May 31, 2024, the court would not have appointed counsel to represent Mead and would have simply denied his Motion. However, Mead filed his Motion

in August of 2022, which was between the Pennsylvania Supreme Court's decisions in the *Torsilieri* case.

In 2020, the Pennsylvania Supreme Court remanded the case to the trial court for an evidentiary hearing. *See Commonwealth v. Torsilieri*, 232 A.3d 567 (Pa. 2020)(hereinafter *Torsilieri I*). On remand, the trial court held three days of hearings, and it declared Subchapter H of SORNA II unconstitutional on August 22, 2022. The prosecutor appealed that decision to the Pennsylvania Supreme Court on September 12, 2022. Mead filed his Motion on September 28, 2022, but his case file had not been returned from his PCRA appeal yet. Although the court expected that Mead's Motion would ultimately be decided based on the second *Torsilieri* appeal to the Pennsylvania Supreme Court, the court appointed counsel in case an evidentiary hearing would be required as in *Torsilieri I*. At the conference on Mead's Motion, counsel for both parties agreed to await until the Pennsylvania Supreme Court issued a decision in *Torsilieri II* before seeking experts for an evidentiary hearing as the decision may render the need for expert testimony moot. Once *Torsilieri II* was decided, there was no longer a need for an evidentiary hearing and really no need for counsel for Mead as he was not entitled to relief as a matter of law. Unfortunately, Mead's counsel never filed a motion to withdraw. If she had done so, the court would have granted it similar to a PCRA and then informed Mead that he could represent himself or hire private counsel but the court would not appoint counsel to represent Mead for a meritless appeal. Technically, since Mead's counsel never obtained leave of court to withdraw, she still represents Mead on appeal. Pa. R. Crim. P. 120.⁴ At this point the court lacks jurisdiction to

⁴Counsel who has been appointed shall continue such representation through direct appeal or until granted leave of court to withdraw. Pa. R. Crim. P. 120(A)(4). Counsel may not withdraw except by leave of court. Pa.

address Mead’s motion for appointment of appeal counsel or to permit Mead’s counsel to withdraw. At this point, if counsel wishes to withdraw, she must file such a motion with the Superior Court. If she includes a *Turner/Finley* no merit letter, it will likely render Mead’s fourth issue moot.

Mead did not assert any of his IAC claims in the trial court. “Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.” Pa.R.A.P. 302(a).

The court recognizes that in the PCRA context the Pennsylvania Supreme Court has created an exception to permit the assertion of IAC claims of PCRA counsel for the first time on direct appeal due to the one-year time limit contained in the PCRA. *See Commonwealth v. Bradley*, 261 A.3d 381, 401 (Pa. 2021)(“we hold that a PCRA petitioner may, after a PCRA court denies relief, and after obtaining new counsel or acting pro se, raise claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if on appeal.”). Since this is not a PCRA petition but rather a motion challenging Mead’s sexual offender registration requirements, the court finds *Bradley* inapplicable to this situation.⁵

Even if Mead could assert an IAC claim on appeal under the circumstances of this case, he has not satisfied the elements to prevail on an IAC claim. There are three prongs to an IAC claim: (1) whether the underlying claim has arguable merit; (2) whether counsel had a reasonable or strategic basis for his or her action or inaction; and (3) prejudice, i.e. but for counsel’s unprofessional errors there is a reasonable probability that the results of the

R. Crim. P. 120(B)(1). A motion to withdraw must either be filed of record or made orally in open court in the presence of the defendant. Pa. R. Crim. P. 120(B)(2).

⁵For this reason, as well as the limited number of conflict counsel currently available for appointments, the court is not inclined to appoint new counsel to represent Mead. The court would rather have Mead’s counsel file a motion to withdraw with a *Turner/Finley* letter in the appellate court. Mead can then respond to the *Turner/Finley* letter. If the Superior Court agrees that this is a meritless appeal, the court will not be needlessly appointing counsel for what this court finds is a frivolous appeal in light of *Torsilieri II*.

proceeding would be different. *See Commonwealth v. Rizor*, 304 A.3d 1034, 1051 (Pa. 2023). If any prong is not satisfied, the IAC claim fails. *Id.* Counsel's actions did not prejudice Mead. Counsel did not abandon Mead. She could no longer advocate his position in light of *Torsilieri II*. While counsel has an obligation to zealously advocate for her client, she cannot make an argument or assert a position that lacks a basis in law or fact and she has a duty of candor toward the tribunal (as do all attorneys). *See* Pa. R. Prof. Resp. 3.1 (regarding meritorious claims and contentions), 3.3 (regarding candor toward the tribunal). Once *Torsilieri* was decided, Mead's contentions became meritless and lacking a basis in the law. There was nothing that counsel could do or say that would have resulted in the court agreeing with Mead's arguments. Any attorney will end up in the same situation. The court will not find an appeal attorney who will be able to do what Mead wants.

With respect to the lack of notice of the status conference and ruling, Mead obviously was aware of the court's ruling as he filed a timely notice of appeal. Therefore, he was not prejudiced by counsel's alleged failure to notify him.

For the foregoing reasons, Mead's claims should be rejected and he should be required to comply with the sexual offender registration requirements of SORNA II.

DATE: November 21, 2024

By the Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)
Beeley Mead, #NF-7650
Nicole Spring, Esquire