

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

NO. 1 MAP 2017

**COMMONWEALTH OF PENNSYLVANIA,
Appellant**

vs.

**JOHNATHAN R. GROVE,
Appellee**

BRIEF OF APELLANT

**Appeal from Order Requiring No SORNA Registration
Court of Common Pleas of Schuylkill County
Rendered November 29, 2016
Docketed to CP-54-CR-1683-2015**

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STATEMENT OF JURISDICTION

Pursuant to 42 Pa.C.S.A. § 722(7), the Pennsylvania Supreme Court has exclusive jurisdiction over this appeal since the Court of Common Pleas has held a statute of this Commonwealth to be unconstitutional as applied to defendant.

ORDER OR OTHER DETERMINATION IN QUESTION

The Commonwealth herein challenges the sentencing court's determination
that :

No Registration Requirements under SORNA are being imposed per the
Opinion of Court dated November 29, 2016.

Order of Court, 11/29/2016. A true and correct copy of that Order and Opinion are
attached hereto as Exhibits "A" and "B" respectively.

STATEMENT OF SCOPE AND STANDARD OF REVIEW

A challenge to the constitutionality of a statute “raises pure questions of law; thus, our standard of review is de novo and our scope of review in plenary.”

Commonwealth v. Hopkins, 632 Pa. 36, 49 (2015).

STATEMENT OF QUESTIONS INVOLVED

1. Does his Honorable Court have exclusive jurisdiction over this appeal, pursuant to 42 Pa.C.S.A. § 722(7), where the Court of Common Pleas has held a statute of this Commonwealth to be unconstitutional as applied to defendant?

Suggested Answer: Yes.

2. Did the lower court err when it held that Defendant – who was charged, convicted, and sentenced as an adult – was not obligated to register as a sex offender under SORNA because SORNA was unconstitutional as applied to Defendant under the reasoning of In re J.B., 630 Pa. 408 (2014)?

Suggested Answer: Yes.

STATEMENT OF THE CASE

Johnathan Grove (hereinafter “Defendant”) was charged with one count of Involuntary Deviate Sexual Intercourse – Forcible Compulsion (18 Pa.C.S.A. § 3123(a)(1)), Involuntary Deviate Sexual Intercourse with a Child (18 Pa.C.S.A. § 3123(b)), Rape of a Child (18 Pa.C.S.A. § 3121(c)), Indecent Assault – Less than 13 Years of Age (18 Pa.C.S.A. § 3126(a)(7)), and Indecent Assault – Without the Consent of the Other (18 Pa.C.S.A. § 3126(a)(1)). These charges stemmed from an incident that occurred in February of 2003. It is undisputed by the parties that at the time of the incident Defendant was 15 years old. However, because of a delay in reporting by the victim, the Defendant was not charged until July of 2015.

By July of 2015, Defendant had become 28 years of age. Accordingly, Defendant was no longer considered to be a “child” for the purposes of the Juvenile Justice Act, 42 Pa.C.S.A. § 6301, et seq. *See*, 42 Pa.C.S.A. § 6302(defining child, in part, to be under the age of 21 years); Commonwealth v. Martz, 118 A.3d 1175, 1177 n.2 (Pa. Super. 2015), *appeal dismissed as improvidently granted*, 150 A.3d 15 (2016)(A person who has reached the age of twenty-one is subject to adult criminal court jurisdiction even though the conduct alleged occurred before the person turned 18 years old.). Thus, Defendant was charged in the adult criminal court of the Schuylkill County Court of Common Pleas.

Defendant entered a plea of guilty to one count of Indecent Assault – Complainant less than 13 years of age (18 Pa.C.S. § 3126(a)(7)) and a plea of *nolo contendere* to one count of Indecent Assault – without Complainant consent (18 Pa.C.S. § 3126(a)(1)). Defendant contested the application of SORNA’s registration requirements to his case and the lower court Ordered that Defendant not be required to register under SORNA after finding that the registration requirements were unconstitutional as applied to Defendant, pursuant to In re J.B., 630 Pa. 408 (2014), since he was a juvenile at the time he committed the offense. The sentencing court ultimately agreed in a written Opinion and Order filed November 29, 2016. This appeal followed.

SUMMARY OF THE ARGUMENT

This Honorable Court has exclusive jurisdiction over this appeal as the common pleas court held that the Sex Offender Registration and Notification Act (SORNA), 42 Pa.C.S.A. § 9799.10, et seq., was unconstitutional as applied to Defendant. 42 Pa.C.S. § 722(7) grants this Honorable Court exclusive jurisdiction from final orders of the courts of common pleas when the order held that a statute of the Commonwealth invalid as repugnant to the Constitution of this Commonwealth. Accordingly, the Pennsylvania Superior Court does not have jurisdiction over this matter and appeal had to be taken directly to this Court.

SORNA is not unconstitutional, as applied, to Defendant in this matter. In re J.B., 630 Pa. 408 (2014), held SORNA unconstitutional, as applied, to the juveniles adjudicated delinquent in juvenile court. There, the juvenile's adjudications would not otherwise be disseminated to public knowledge and registration as a sex offender would have labeled him as a sex offender, with the assumption that he is of an increased likelihood to reoffend with no opportunity for him to show that he is unlikely to be a recidivist. Here, however, where Defendant was convicted in adult court, his conviction for sex offenses and label as a sex offender are already of public knowledge and disseminated through a publicly available website.

Accordingly, Defendant here does not possess the same reputation interest as a person adjudicated delinquent in juvenile court. Defendant's reputation in this matter was impugned at the conclusion of the criminal process in which he entered a plea. Here, Defendant received all due process considerations before he was labeled as a sex offender. Defendant's reputation is not sullied by the registration process any more than it is damaged by the dissemination of conviction data on the publicly available dockets. Thus, In re J.B., *supra*, does not apply and SORNA is not unconstitutional as applied to Defendant.

LEGAL ARGUMENT

1. Does his Honorable Court have exclusive jurisdiction over this appeal, pursuant to 42 Pa.C.S. § 722(7), where the Court of Common Pleas has held a statute of this Commonwealth to be unconstitutional as applied to defendant?

42 Pa.C.S. § 722(7) states that:

The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following cases:

...

(7) Matters where the court of common pleas has held invalid as repugnant to the Constitution, treaties or laws of the United States, or to the Constitution of this Commonwealth, any treaty or law of the United States or any provision of the Constitution of, or of any statute of, this Commonwealth, or any provision of any home rule charter.

42 Pa.C.S. § 722(7).

The sentencing court in this matter concluded that the SORNA registration requirements “violate the due process rights of one who is prosecuted as an adult for a sexual offense committed while a juvenile.” Opinion of Court, 11/29/2016, p.5. It was the square holding of the sentencing court that SORNA violates the Constitution of this Commonwealth as applied to Defendant who was prosecuted as an adult but had committed his offenses as a juvenile.

Thus, this Honorable Court not only has jurisdiction to hear this appeal directly, it has *exclusive* jurisdiction to hear this appeal. While the sentencing court did not strike down SORNA in its entirety, it did hold SORNA unconstitutional as applied to Defendant’s particular situation. An “as applied”

challenge to a statute does not make § 722(7) any less applicable. This Honorable Court has cited to § 722(7) to exercise jurisdiction over “as applied” constitutional rulings with no hesitancy in the past. *See Commonwealth v. Bricker*, 542 Pa. 234 (1995)(“sole issue presented in this appeal is whether 18 Pa.C.S. § 2102 defining the criminal offense of desecration of the flag is an unconstitutional restraint on the First Amendment right to freedom of speech as written or as applied in this case.”). Indeed, this case lies in the same procedural posture as the decision in *In re J.B.*, *supra*, in which this Honorable Court exercised jurisdiction over the direct appeal pursuant to § 722(7). *In re J.B.*, at 411.

Accordingly, the Commonwealth believes that § 722(7) confers jurisdiction upon this Honorable Court to hear this instant appeal. The lower court declared that SORNA was unconstitutional as applied to Defendant. Both statute and case law state that it is this forum to bring an appeal from such an order.

2. Did the lower court err when it held that Defendant – who was charged, convicted, and sentenced as an adult – was not obligated to register as a sex offender under SORNA because SORNA was unconstitutional as applied to Defendant under the reasoning of *In re J.B.*, 630 Pa. 408 (2014)?

We begin by noting that “acts passed by the general assembly are strongly presumed to be constitutional... Accordingly, a statute will not be declared unconstitutional unless it clearly, palpably, and plainly violates the Constitution.” *Commonwealth v. Eisenberg*, 626 Pa. 512, 538 (2014). “If there is any doubt as to whether a challenger has met this high burden, then we will resolve that doubt in

favor of the statute's constitutionality." Commonwealth v. Neiman, 624 Pa. 53, 67 (2013). With these principles in mind, we address the constitutionality of SORNA as applied to Defendant's case.

Defendant ultimately entered a plea to the charges of Indecent Assault – Less than 13 Years of Age (18 Pa.C.S.A. § 3126(a)(7)) and Indecent Assault – Without the Consent of the Other (18 Pa.C.S.A. § 3126(a)(1)) with the Commonwealth agreeing to *nol pros* the remaining counts. Indecent Assault under 18 Pa.C.S.A. § 3126(a)(1) is considered to be a "Tier I sexual offense". 42 Pa.C.S.A. § 9799.14(b). Indecent Assault under 18 Pa.C.S.A. § 3126(a)(7) is considered to be a "Tier III sexual offense". 42 Pa.C.S.A. § 9799.14(d). A "Tier I sexual offense" requires a person convicted of such an offenses to register with the Pennsylvania State Police for a period of 15 years. 42 Pa.C.S.A. § 9799.15(a)(1). A "Tier III sexual offense requires a person convicted of such an offense to register with the Pennsylvania State Police for that persons' lifetime. 42 Pa.C.S.A. § 9799.15(a)(3).

Defendant was thus subject to the initial reporting requirements of 42 Pa.C.S.A. § 9799.19(relating to initial reporting requirements) and was required to appear at an approved registration site quarterly, 42 Pa.C.S.A. § 9799.15(e), and provide the updated information required by 42 Pa.C.S.A. § 9799.16(b). This information is to be collected by the Pennsylvania State Police and maintained in a

registry, shared with various agencies and official pursuant to 42 Pa.C.S.A. § 9799.18, and disseminated through a public website pursuant to 42 Pa.C.S.A. § 9799.28.

Defendant, however, raised an objection to the reporting requirements and requested the sentencing court not impose them. Citing to In re J.B., 630 Pa. 408 (2014), Defendant argued that the Sex Offender Registration and Notification Act (SORNA), 42 Pa.C.S.A. § 9799.10, et seq., was unconstitutional as applied to him because he was a juvenile at the time he committed his offenses. N.T., 9/23/2016, pp.22-27.

This Honorable Court held, in In re J.B., that

SORNA's registration requirements violate juvenile offender's due process rights by utilizing the irrebuttable presumption that all juvenile offenders 'pose a high risk of committing additional sexual offenses' because that presumption is not universally true and a reasonable alternative means currently exists for determining which juvenile offenders are likely to reoffend.

In re J.B., at 429 (citations omitted). This Court found that the juvenile offenders in that case had a constitutionally protected interest in their reputation as recognized by Article I, Section I, of the Pennsylvania Constitution. This Court further found that sex offenders are declared to 'pose a high risk of committing additional sexual offenses'. In re J.B., at 433 (quoting 42 Pa.C.S.A. § 9799.11(a)(4)). Even without this language, this Court found, "the common view of registered sexual offenders is that they are particularly dangerous and more

likely to reoffend than other criminals.” Id. Thus, due process was violated where the juvenile offenders were marked as sex offenders based upon an irrebuttable presumption – that all juvenile sex offenders are dangerous recidivists – which is not universally true and offers no opportunity to show otherwise. Id., at 437.

The sentencing court, in this matter, agreed with Defendant and ordered that he was not subject to SORNA’s reporting requirements under the holding of In re J.B., *supra*. In doing so, the sentencing court did not give proper consideration to the fundamental differences between a person adjudicated delinquent of a sexual offense in the juvenile court system and a person who is convicted of a sexual offense in the adult justice system. The distinction is crucial as a person convicted of a sexual offense in adult court does not have the same reputation interest as a person adjudicated delinquent in the juvenile justice system.

The sentencing court relied on this Honorable Court’s holding in In re J.B., *supra*, holding that SORNA’s registration requirement unconstitutionally infringes on a juvenile offender’s right to reputation. While the sentencing court compared Defendant’s position to the juvenile’s at issue in In re J.B. with regards to his likelihood to reoffend and the irrebuttable presumption employed by SORNA, it did not properly assess whether Defendant was similarly situated in regards to his reputation interests. However, it is clear that Defendant’s protected reputation interest was defeated when he entered his plea to the aforementioned crimes. His

reputation was soiled and he became a sex offender upon the entrance of his plea in this case to the sex crimes of Indecent Assault – Less than 13 Years of Age (18 Pa.C.S.A. § 3126(a)(7)) and Indecent Assault – Without the Consent of the Other (18 Pa.C.S.A. § 3126(a)(1)).

Conversely, person adjudicated delinquent in the juvenile system has his records of adjudication protected by a statutory scheme that dramatically limits who has access to those records. 42 Pa.C.S.A. §§ 6307–6309. Our legislature has created a juvenile justice system in which “protection of a minor child’s privacy rights is a key aspect”. In re M.B., 869 A.2d 542, 546 (Pa. Super. 2005). This system specifically delineates what people and officials may have access to juvenile records and requires that any other person seeking access to those records demonstrate a “legitimate interest” and seek court approval. 42 Pa.C.S.A. § 6307(7). When a juvenile is adjudicated delinquent in juvenile court, there is no publicly available display of that adjudication data.

By contrast, when a person is found guilty in the adult system the conviction data becomes public record. Commonwealth v. Aponte, 579 Pa. 246, 264 (2004), *cert. denied sub nomine*, Aponte v. Pennsylvania, 543 U.S. 1063 (2005)(“prior conviction is an objective fact that initially was cloaked in all the constitutional safeguards, and is now a matter of public record.”). Any member of the public can openly see that Defendant entered a plea to the aforementioned crimes on June 2,

2016 and sentenced on November 29, 2016 by searching the publicly available docket sheets found at <https://ujportal.pacourts.us>.¹ Thus, unlike the juvenile offenders at issue in In re J.B., Defendant reputation was impinged upon his entering a plea to sexual offense on the public record.

A person whose registration was required because of juvenile adjudication had their status as a sex offender announced to the general public when the public would otherwise have no knowledge of the adjudication. A person whose registration is required because of a conviction in the adult system is merely having the publicly available fact of their conviction announced via an alternate forum. When a person's registration is required because of a conviction in the adult justice system, there is no concern that "[w]ith no other offense is the juvenile's wrongdoing announced to the world." In re J.B., at 433 n.27 (quoting In re C.P., 131 Ohio St. 3d 513 (2013)). The additional information of residence, employment, and transportation that is collected and disseminated by the Pennsylvania State Police "do not significantly restrain registrants, who remain free to live where they choose, come and go as they please, and seek whatever employment they desire." Commonwealth v. Maldonado, 576 Pa. 101, 112 (2003).

¹ The specific docket sheet for this case is openly found at <https://ujportal.pacourts.us/DocketSheets/CPReport.aspx?docketNumber=CP-54-CR-0001683-2015>. This publicly available docket sheet further shows the full gamut of charges Defendant initially faced while the website maintained by the Pennsylvania State Police pursuant to SORNA only displays the charges for which an offender was convicted. See 42 Pa.C.S.A. § 9799.28(b)(9).

For this reason, a person who has been convicted in the adult justice system, like Defendant, and has his conviction for sexual offenses already in the public record no longer has a protected interest in his reputation. His reputation interests were impinged upon conviction for sexual offenses during a process in which he enjoyed the full panoply of due process and constitutional protections of the criminal justice system. This is all that due process requires. Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1, 7 (2003) (“the law's requirements turn on an offender's conviction alone—a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest.”). Where the criminal justice system offered Defendant full due process protections before he was branded as a sex offender, there is simply no concern that a person convicted in the adult courts has had his reputation diminished without due process.

This is not a case in which an individual was named in an official report as being connected with organized crime without any notice of the investigation or opportunity to present evidence to rebut the accusation. Simon v. Commonwealth, 659 A.2d 631 (Pa. Cmwlth. 1995). This is not a case in which an individual was branded with the stigma of a mental health commitment despite that commitment having been declared unlawful. Wolfe v. Beal, 477 Pa. 477 (1978). This is not a case in which a juvenile’s conviction of sex offenses – which would not otherwise have been made known to the public – was disseminated under an erroneous

presumption of dangerousness. In re J.B., *supra*. This is a case in which a public record of a conviction for sex offenses was created after all of the protections the criminal justice system has to offer. That conviction alone triggered a registration requirement without any requirement that the future dangerousness be assessed and, thus, it does not matter whether he was not given an opportunity to contest his future dangerousness. This case is squarely governed by Connecticut Dept. of Public Safety v. Doe, *supra*, as a conviction obtained with all the safeguards that the criminal process has to offer triggers a reporting requirement.

As the publicly disseminated registration information does not brand Defendant with anything more than the already publicly available fact of his conviction for a sex offense, the registration requirement does not impinge upon his right to reputation. Defendant's reputation was diminished upon his entrance of a plea to sexual offenses – which occurred at the end of a process that guaranteed Defendant's full due process protections.

This conclusion is consistent with that reached by the Ohio Courts. This Honorable Court, in In re J.B., relied, in part, on the Ohio Supreme Court decision in In re C.P., 131 Ohio St. 3d 513 (2012), which declared their registration laws unconstitutional as applied to individuals adjudicated delinquent in juvenile courts. Subsequently, the Ohio courts have refused to extend that holding to individuals that were convicted in adult court for crimes committed while they were juveniles.

See State v. Martin, 61 N.E. 3d 537 (Ohio App. 8th, 2016), *appeal denied*, 146 Ohio St. 3d 1471 (2016).

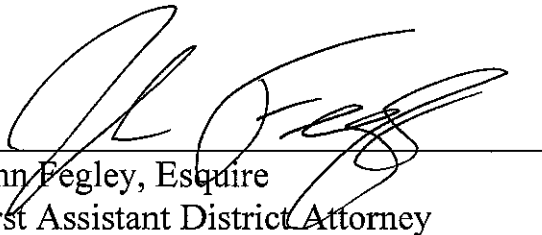
Defendant's reputation was harmed upon his entering a plea to two counts of Indecent Assault. Defendant became a sex offender at the time of this plea. The registration requirements of SORNA merely offer a different medium to disperse the public record of his convictions as a sex offender – as opposed to a person adjudicated delinquent of sexual offenses in which it is the registration itself that disperses the record of the adjudication which would otherwise be unavailable to the general public.

Defendant had all the protections of due process afforded to him at the time his reputation was actually at stake. Accordingly, Defendant was not denied due process as the juveniles in *In re J.B.* were and that decision does not operate to make SORNA unconstitutional as applied to him. In short, Defendant did not meet the “high bar”, *Neiman, supra*, to show that he was denied due process before being labeled as a sex offender and SORNA should not be declared unconstitutional as applied to him and the lower court erred in holding that he did.

CONCLUSION

WHEREFORE, based upon the foregoing, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court REVERSE the judgement of the sentencing court and REMAND the case back to the Schuylkill County Court of Common Pleas for entry of an ORDER requiring the Defendant to submit to the lifetime registration requirements of SORNA.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'John Pegley', is written over a horizontal line.

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**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

NO. 1 MAP 2017

COMMONWEALTH OF PENNSYLVANIA,
Appellee
VS.
JOHNATHAN GROVE,
Appellant

CERTIFICATION OF SERVICE

I hereby certify that I am this day serving a copy of the Commonwealth's Brief upon the person and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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