NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. DANIEL LEE MYERS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1295 MDA 2014

Appeal from the Judgment of Sentence of May 16, 2014
In the Court of Common Pleas of Centre County
Criminal Division at No.: CP-14-CR-0001336-2012

BEFORE: LAZARUS, J., WECHT, J., and JENKINS, J.

MEMORANDUM BY WECHT, J.: **FILED JULY 31, 2015**

Daniel Myers appeals his judgment of sentence, which was imposed after he was convicted of two counts of failure to comply with registration of sexual offender requirements pursuant to 18 Pa.C.S. § 4915(a)(1). Myers challenges those convictions because that statute was declared unconstitutional by the Pennsylvania Supreme Court after he was convicted but before he was sentenced. For the reasons that follow, we vacate the judgment of sentence, and discharge Myers.

I. The History of Megan's Law and SORNA

In order to appreciate the procedural events that preceded this appeal, as well as the unique problem that was created by those events, we must first set forth a brief history of the applicable provisions of Megan's Law in Pennsylvania.

In 1995, the General Assembly supplemented Pennsylvania's Sentencing Code with Subchapter H, which it titled "Registration of Sexual Offenders," effectively giving birth to Megan's Law in Pennsylvania. ***See Commonwealth v. Williams***, 832 A.2d 962, 965 (Pa. 2003) ("***Williams II***"). In the newly minted Megan's Law, set forth at 42 Pa.C.S. §§ 9791-99.6 (hereinafter "Megan's Law I"), the General Assembly set forth the policy underlying the act as follows:

> It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. It is further declared to be the policy of this Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and shall not be construed as punitive.

42 Pa.C.S. § 9791(b) (expired).

Megan's Law I was divided into two parts, one part that applied to offenders who were designated as a sexually violent predator ("SVP") and one part for offenders who were not deemed SVPs. The statute set forth various offenses that were classified as "predicate offenses," such as kidnapping, rape, involuntary deviate sexual intercourse, etc. When a person was convicted of one of the predicate offenses, that person was

presumed by the statute to be an SVP.[1] The statute also delineated various offenses that, upon being convicted, classified the person as a non-SVP offender. ***Commonwealth v. Williams***, 733 A.2d 593, 595 (Pa. 1999) ("***Williams I***").

Persons that were designated to be an SVP were subjected to broad lifetime registration and notification requirements, while non-SVP offenders was required to comply with less strict requirements, and only for a period of ten years. Failure to abide by the notification requirements resulted in a separate conviction and a mandatory life sentence for SVPs. Failure to comply for non-SVP offenders resulted only in a third-degree felony, with a maximum penalty of seven years. ***Id.*** at 595-56.

In ***Williams I***, the Pennsylvania Supreme Court held that the presumption that a person who committed one of the enumerated offenses was a SVP was unconstitutional. ***Id***. at 603. Following that decision, the General Assembly enacted Megan's Law II, in which the legislature, *inter alia*, altered the manner by which a person was designated to be an SVP. Rather than being presumed to be a SVP based upon the conviction itself,

---

[1] A sexually violent predator was defined as "a person who has been convicted of a sexually violent offense [*i.e.*, a predicate offense] . . . and who is determined to be a sexually violent predator . . . due to an abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses." 42 Pa.C.S. § 9792.

Megan's Law II required the Commonwealth to prove by clear and convincing evidence that an offender was an SVP. Additionally:

> Megan's Law II classified offenders into three separate categories. Depending upon the category into which an offender fits, [Megan's Law II] designated the length of time he must comply with the [] reporting requirements, as well as the sanction for non-compliance. An offender is classified according to his adjudication as an SVP or the nature of the predicate crime for which he was convicted. The classifications are: (1) an offender adjudicated an SVP; (2) a non-SVP convicted of one of the more severe crimes enumerated in 42 Pa.C.S. § 9795.1(b)(2) (non-SVP lifetime reporter); and (3) a non-SVP convicted of one of the less severe crimes enumerated in 42 Pa.C.S. § 9795.1(b)(3) (non-SVP, ten-year reporter). Once adjudicated an SVP, the offender must register [] for his lifetime. Non-SVPs convicted of one of the more serious offenses are also required to report for their lifetimes. A non-SVP convicted of one of the less severe predicate offenses must comply with the reporting provisions for a period of ten years following release. Failure to comply with the applicable reporting requirements results in a separate criminal offense. For those subject to the ten-year reporting requirement, failure to comply constitutes a felony of the third degree, for which the maximum penalty is seven years of incarceration. However, for those subject to the lifetime reporting requirements, either an SVP or non-SVP lifetime reporter, failure to comply constitutes a felony of the first degree.

Commonwealth v. Wilson, 910 A.2d 10, 13 (Pa. 2006) (some statutory citations omitted).[2] Megan's Law II's relevant offense and penalty provision

---

[2] As noted earlier, the initial punishment for SVPs who failed to comply with the reporting and notification requirements of Megan's Law I were subjected either to a mandatory life sentence or a mandatory lifetime sentence of probation. However, in ***Williams II***, the Pennsylvania Supreme Court struck down that provision as unconstitutional based upon the United States Supreme Court's decision in ***Apprendi v. New Jersey***, 530 U.S. 466
(Footnote Continued Next Page)

for failing to comply with the statute as ordered provides as follows: "an individual subject to registration . . . who fails to register with the Pennsylvania State Police . . . commits a felony of the first degree. . . ." ***See*** former 42 Pa.C.S. § 9975.2(d)(2).

In 2004, the General Assembly enacted Megan's Law III, which went into effect on January 24, 2005. Among a multitude of changes, the General Assembly removed the penalty provision from Title 42 (codified at 42 Pa.C.S. § 9975.2(d)(2)), and enacted a new provision governing the failure to comply with Megan's Law's requirements in the Crimes Code at 18 Pa.C.S. § 4915. Section 4915 provided, in pertinent part, as follows:

> (a) Offense defined.—An individual who is subject to registration under 42 Pa.C.S. § 9795(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);
>
> * * *

18 Pa.C.S.A. § 4915. Additionally, in subsection 4915(c), the General Assembly graded violations of the substantive offense for lifetime reporters

(Footnote Continued) ———————————

(2000), and severed those provisions from the statute. ***Williams II***, 832 A.2d at 985-86.

as a second-degree misdemeanor for first and second offenses, and a third-degree felony for any subsequent offenses. ***See*** 18 Pa.C.S. § 4915(c)(1-4).

On December 20, 2012, Megan's Law III and 18 Pa.C.S. § 4915 expired, and gave way to the Sexual Offender Registration and Notification Act ("SORNA"), which took effect on that same date. SORNA was enacted to strengthen registration requirements for sex offenders and to bring Pennsylvania into compliance with the Adam Walsh Child Protection and Safety Act, 42 U.S.C. § 16901, *et seq*. ***See Commonwealth v. Sampolski***, 89 A.3d 1287, 1288 (Pa. Super. 2014). Section 9799.14 of SORNA establishes a three-tiered system of enumerated offenses that require a person convicted of those offense to register for differing lengths of time. ***Id.*** Pursuant to section 9799.15(a)(1), a person convicted of a Tier I offense must register for fifteen years. A Tier II offender must register for twenty-five years. Finally, a Tier III offender must register for the remainder of his or her life. 42 Pa.C.S. § 9799.15(a)(2), (a)(3). Additionally, the General Assembly enacted 18 Pa.C.S. § 4915.1, which establishes the offenses and the grading of those offenses for failing to comply with SORNA's requirements.

Notably, after SORNA was enacted, the Pennsylvania Supreme Court decided ***Commonwealth v. Nieman***, 84 A.3d 603 (Pa. 2013), in which the Court held that Act 152, which contained Megan's Law III and 18 Pa.C.S. §

4915, was unconstitutional because it was passed in violation of the Pennsylvania Constitution's "single subject" rule.[3] ***Id.*** at 616. Thus, both of those provisions were declared null and void, having no legal effect in Pennsylvania.

II. Procedural Background

On July 15, 1999, Myers was charged by criminal information with six hundred and seventy-two charges related to the rape and sexual abuse of a child. On February 14, 2000, Myers pleaded *nolo contendere* to eighteen counts of involuntary deviate sexual intercourse (18 Pa.C.S. § 3123(a)(6)), and to four counts of aggravated indecent assault (18 Pa.C.S. § 3125(7)). On March 6, 2000, Myers was sentenced to ten to twenty years in prison. Additionally, due to the specific charges to which he pleaded *nolo contendere*, Myers was designated to be a non-SVP lifetime registrant.

On August 29, 2012, Myers was charged with two counts of failure to comply with registration of sexual offender requirements pursuant to 18 Pa.C.S. § 4915. The charges arose from the fact that Myers had registered

---

[3] Article III, Section 3 of the Pennsylvania Constitution provides:

> **§ 3. Form of Bills**
>
> No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

Pa. Const. art. III, § 3.

two addresses with the Pennsylvania State Police, but was living at a third address for a period of approximately four months.

On March 11, 2013, Myers filed a motion to dismiss the prosecution because Megan's Law III and 18 Pa.C.S. § 4915 had expired without a savings clause. The trial court denied the motion, noting that "it cannot be seriously contended that the legislature intended failure to register to no longer be a crime after December 20, 2012." Trial Court Opinion and Order, 6/3/2013, at 4. The court also noted that the General Assembly passed 18 Pa.C.S. § 4915.1, which re-enacted all of the relevant provisions of 18 Pa.C.S. § 4915.

Following a non-jury trial, Myers was convicted of both offenses. However, shortly thereafter and before sentencing, the Pennsylvania Supreme Court struck down Megan's Law III and 18 Pa.C.S. § 4915 in ***Nieman***. On Mary 17, 2014, Myers filed a petition for a writ of *habeas corpus*, in which Myers contended that his conviction was invalid because he was convicted for violating 18 Pa.C.S. § 4915, an unconstitutional statute pursuant to ***Nieman***. Following a hearing and briefing from both parties, the trial court denied the motion, holding that Myers' conviction "remains valid as his conduct is a violation of Megan's Law II, which continued in effect as if it had never been repealed after the Pennsylvania Supreme Court's holding in ***Nieman*** determined [that] Megan's Law III was unconstitutional." Trial Court Opinion and Order, 5/8/2014, at 5.

On May 16, 2014, Myers was sentenced to an aggregate of two years of probation. On May 27, 2014, Myers filed a post-sentence motion, which was denied by the trial court on July 29, 2014. On July 31, 2014, Myers filed a timely notice of appeal. In response, the trial court directed Myers to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Myers timely complied on August 14, 2014. Finally, on August 20, 2014, the trial court issued a statement pursuant to Pa.R.A.P. 1925(a), in which the trial court directed this Court to its various opinions that it issued throughout the proceedings where the court addressed Myers' issues.

Myers presents the following issue for our consideration:

> Was the sentence imposed illegal and otherwise violative of [Myers'] due process and other constitutional protections, as the court lacked authority to punish [Myers] for his conviction under a statute found to be unconstitutional, the lower court could not merely substitute another criminal offense for that specified in the Criminal Information underlying [Myers'] convictions, and Megan's Law II did not retain its viability as a punitive statute at the passage of Megan's Law III as it was the clear intent of the [G]eneral [A]ssembly to extinguish the punitive elements of Megan's Law II to permit its civil remedial registration provisions to withstand constitutional challenge?

Brief for Myers at 7. For the reasons set forth below, we hold that Myers is entitled to the relief he seeks.

III. Discussion

To describe the problem presented in this case succinctly, Myers was convicted of a crime that, before he was sentenced, was stricken from the

law as unconstitutionally passed. Regardless of the fact that the crime was voided, the trial court upheld the conviction because, *inter alia*, the crime existed before and after Myers' sentencing, albeit in different forms and locations. The trial court's reasoning is unavailing.

Approximately one and one-half centuries ago, the United States Supreme Court noted that, when a statute is held to be unconstitutional, "it affects the foundation of the whole proceedings." ***Ex Parte Siebold***, 100 U.S. 371, 376 (1879). The Court also characterized the effect that an unconstitutional crime has upon a conviction and sentence, declaring that "[a]n unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment." ***Id.*** at 376-77. That this deep-rooted principle has not been abandoned or modified speaks directly to its continuing application, and to its fundamental nature in our criminal justice system. In this instance, the age of the case speaks not to its antiquatedness, but instead to the fact that the axiom is an essential restraint on the government within our criminal justice system.

Thus, there can be no question that, in this case, Myers's convictions cannot stand. Megan's Law III and Section 4915 have been declared unconstitutional. Per ***Siebold***, it necessarily follows that the offenses created by those statutes are not crimes, and Myers' convictions are illegal and void. This is true not just under federal law, but under similarly deep-rooted principles in Pennsylvania as well. Albeit in the context of a statute

that has been repealed, instead of one that has been ruled as unconstitutional, this Court stated one hundred years ago that:

> [t]here is no vested right in the Commonwealth, existing after the repeal of a criminal statute, to prosecute an offense in existence prior to the repeal of such statute. It is unnecessary to cite authority as to the effect of the repeal of a criminal statute on pending proceedings. It is well settled that all proceedings which have not been determined by final judgment, are wiped out by a repeal of the act under which the offense took place.

Scranton City v. Rose, 60 Pa. Super. 458, 462 (1915). Myers' convictions were not final when ***Nieman*** issued. He had not been sentenced yet. Functionally, this scenario is the same as if the statute had been repealed during that time, and his convictions should have been "wiped out." They were not. Rather, the trial court proceeded to sentence Myers on his convictions, even though, for all practical purposes, the crimes for which he was convicted no longer existed in the law.

Both the trial court and the Commonwealth maintain that Myers' convictions should stand essentially because the invalidation of Megan's Law III and Section 4915 effectively reinstituted Megan's Law II, which, as noted earlier, also had within its terms a criminal provision for failing to report. In other words, the trial court and the Commonwealth believe that we can just substitute Megan's Law II for the crimes with which Myers was convicted and sentenced.

To this end, the Commonwealth cites both the rules of statutory construction and ***Mazurek v. Farmers' Mut. Fire Ins. Co. of Jamestown***,

181 A. 570, 572 (Pa. 1935). Pursuant to 1 Pa.C.S. § 1971 of our rules of construction:

> whenever a statute purports to be a revision of all statutes upon a particular subject, or sets up a general or exclusive system covering the entire subject matter of a former statute and is intended as a substitute for such former statute, such statute shall be construed to supply and therefore to repeal all former statutes upon the same subject.

Id. The Commonwealth contends that, in light of this principle, Megan's Law III functioned as a repeal of Megan's Law II. However, when Megan's Law III was declared unconstitutional, that repeal also must be ineffective. Hence, according to the Commonwealth, when ***Nieman*** was decided, Megan's Law II necessarily became effective again.

In support, the Commonwealth relies upon the Pennsylvania Supreme Court's statement in ***Mazurek***:

> Where a subsequent statute which would, if valid, act as a repeal of a prior statute only by implication, *i.e.*, because its terms are contradictory of the provisions of the earlier enactment, is itself unconstitutional, it must be obvious that the earlier act remains in full force and effect. This follows inevitably from the fact that in the eyes of the law it never came into existence. Never having come into existence, it could have no effect. The rule that an unconstitutional enactment will not by mere implication repeal a pre-existent valid law is well-established.

Mazurek, 181 A. at 572.

In light of these principles, the Commonwealth maintains that "Megan's Law III[] cannot repeal a valid act, such as Megan's Law II, unless the legislature clearly intended to repeal the statute in the absence of the

unconstitutional provisions. In this case, there is no question that the General Assembly intended to have registration requirements for sex offenders and penalties for their failure to register." Brief for Commonwealth at 9 (citation omitted). This may be true. However, this also does not change the fact that Myers was not charged under Megan's Law II. When Megan's Law III and Section 4915 were ruled unconstitutional, Megan's Law II may have gone back into effect. We need not rule definitively on that point because, even if true, it is of no moment in this case. Myers was not charged under Megan's Law II, and the Commonwealth cites no authority for the proposition that a court can simply substitute one crime for another **after conviction** when the first crime was ruled unconstitutional. That the prior law goes back into effect does not mean, *ipso facto*, that crimes can thereafter be substituted after trial and conviction.

This is particularly true in this case because, even though Megan's Law II and Megan's Law III and Section 4915 both seek to punish the same conduct, the crimes have different elements and grading. Indeed, as is evident above, Megan's Law II and Megan's Law III and Section 4915 are quite different in substance. Megan's Law II contained the following provision: "an individual subject to registration . . . who fails to register with the Pennsylvania State Police . . . commits a felony of the first degree. . . ." ***See*** former 42 Pa.C.S. § 9975.2(d)(2). However, Section 4915 added the specific scienter element of "knowingly," where no previous designation was

included in Megan's Law II's statutory language. Additionally, Section 4915 graded violations of the substantive offense for lifetime reporters as a second-degree misdemeanor for first and second offenses, and a third-degree felony for any subsequent offenses, whereas offenses were graded as first-degree felonies in Megan's Law II. ***See*** 18 Pa.C.S. § 4915(c)(1-4). In view of these significant deviations in form and substance, there is no basis to accept the Commonwealth's position that the crimes can simply be substituted for each other. To put it in clear terms, Myers was convicted of a crime that did not exist at the time he was sentenced. The Commonwealth wants us instead to uphold that conviction based upon the reincarnation of a different crime, with different elements and grading, with which Myers was not charged. We decline the Commonwealth's invitation to do so; there simply is no legal basis upon which such a substitution can rest.

Consider the realities of what would happen if we adopted the Commonwealth's approach. Myers would have made a decision to go to trial based upon his crime being graded as a misdemeanor. He then went to trial on misdemeanor charges. He was convicted of misdemeanor charges. However, if we accept the Commonwealth's substitution argument, his conviction actually would have to be graded a felony of the first-degree, which is the only offense included within Megan's Law II. We could not impose such a result either logically or fairly. Further, the trial court then would have to sentence him based upon the crime being a first-degree felony, because the misdemeanor version no longer existed. Facing a first-

degree felony, Myers might have elected to engage in plea negotiations, or to enter a plea and argue for a lesser sentence. He did not have those options because, at the time he decided to go to trial, he was facing misdemeanors. We know of no principle or authority that would permit a person to be convicted of a misdemeanor to then be sentenced on a felony, and we certainly cannot accept such a circumstance as being consistent with a defendant's rights to due process and a fair trial.

Finally, the parties dispute the relevance and applicability of the Supreme Court of Ohio's recent decision in ***State v. Brunning***, 983 N.E.2d 316 (Ohio 2012), in which that Court addressed a very similar situation as is presented here. Before examining ***Brunning***, we note that decisions of our sister states may serve as persuasive authority, but nonetheless are not binding upon this Court. ***Albert v. Erie Ins. Exch.***, 65 A.3d 923, 929 (Pa. Super. 2013).

In ***Brunning***, the appellant, a convicted rapist and "sexually oriented offender," was required to register under Ohio's initial iteration of Megan's Law. ***Brunning***, 983 N.E.2d at 318. Over a decade later, Ohio supplanted Megan's Law with the Adam Walsh Act ("AWA"), and, pursuant to its terms, retroactively reclassified the appellant's offender status. In 2009, the appellant was living at a different residence than he had registered as his primary residence. At that residence, the appellant engaged in sexual misconduct with a minor male, conduct for which he was subsequently convicted. The appellant was also charged with three crimes related to his

failure to report his correct address and his failure to notify the authorities of his change in residence.

The appellant pleaded guilty to all three charges, and was sentenced to twenty-one years in prison. However, five days before he was sentenced, the Ohio Supreme Court held in ***State v. Bodyke***, 933 N.E.2d 753 (Ohio 2010), that the reclassification provisions of the AWA were unconstitutional. The appellant sought dismissal of his charges, which undeniably were based upon the requirements imposed upon him by the AWA's reclassification provisions. The trial court denied the motion.

The appellant argued to the Ohio Supreme Court that, in light of ***Bodyke***, his convictions must be vacated. Specifically, the appellant contended that ***Bodyke*** created a gap in time in which an offender could not be convicted for failing to comply with the registration and notification requirements of Megan's Law or the AWA. Additionally, the appellant maintained that Megan's Law could not be substituted for the AWA because he was not charged under Megan's Law specifically in his indictment. The Ohio Supreme Court rejected both arguments.

As to the appellant's argument that he fell within a gap in the law where he could not be convicted, the Ohio Supreme Court noted first that the General Assembly would never have intended to create such a gap when it enacted the AWA. ***Brunning***, 983 N.E.2d at 321. More importantly, the Court rejected this argument because "***Bodyke*** reinstated the classifications and community-notification and registrations orders imposed previously by

judges. Once reinstated, those orders operated prospectively from the time they were first instituted. They related back to the time they were first imposed and continued in effect as if they never had been changed." ***Id.*** In light of that order, the appellant had a continuing duty to comply with his original Megan's Law requirements. ***Id.***

The Court also rejected the appellant's argument that he could not be convicted of the crimes because they were not charged specifically in his indictment. To this point, the Court held as follows:

> The second count of the indictment alleged that [the appellant] violated the requirement to provide notice to the sheriff of a change of address; the indictment set forth that [the appellant's] duty to register a change of address was based upon his 1983 first-degree felony rape conviction. The heading of the second count reads "Failure to Provide Notice of Change of Address"; the statutory section listed in the heading was R.C. 2950.05(E)(1). [T]he relevant AWA statutory section is actually R.C. 2950.05(F)(1); the Megan's Law version of the relevant statute was R.C. 2950.05(E)(1) as it existed immediately before it was repealed. Though styled differently, the AWA and the pre-AWA versions are identical as to person required to submit a change of residence address: "No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section * * * shall fail to notify the appropriate sheriff in accordance with that division." Both mention R.C. 2950.05(A), and both the current and former versions of R.C. 2950.05(A) require offenders to provide a 20-day notification of a change in their residential address.

Id. at 322. Accordingly, the Ohio Supreme Court upheld the appellant's convictions.

As noted earlier, we have no duty to abide by the Ohio Supreme Court's decision. Nonetheless, even if we consider it as persuasive

authority, the decision is readily and convincingly distinguishable. First, when Megan's Law III and Section 4915 were ruled unconstitutional, our Supreme Court in ***Nieman*** did not explicitly notify those subject to the various iterations of Megan's Law of the effect that the decision had on their respective requirements. In ***Bodyke***, the Ohio Supreme Court reinstated the relevant Megan's Law orders and reimposed the requirements attending those orders prospectively from the date that the orders were issued. Our Supreme Court took no such action. As well, as demonstrated above, the crime set forth in Megan's Law II differed in style and, more importantly, in substance from the crime set forth in Section 4915. Thus, unlike the relevant provisions in ***Brunning***, the provisions at issue here are not "identical," a conclusion that undeniably was the thrust of the second portion of the ***Brunning*** Court's analysis. ***Brunning***, 983 N.E.2d at 322. Absent similarities in the two main prongs of the Ohio Supreme Court's holding, ***Brunning*** is distinguishable, and compels no similar conclusion in this case.

IV. Conclusion

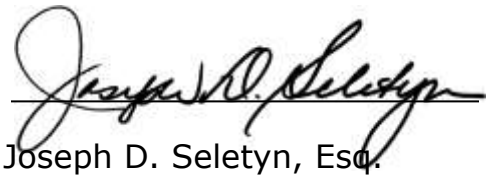
Myers was convicted of crimes that, by the time he was sentenced, did not exist. Bedrock criminal justice axioms mandate that his convictions be vacated. The Commonwealth has advanced no arguments, and we have conceived of none, that would permit us to merely substitute a different crime for the unconstitutional one. Consequently, we vacate the judgment of sentence, and we discharge Myers.

Judgement of Sentence vacated. Jurisdiction relinquished.

Judge Lazarus joins the memorandum.

Judge Jenkins concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/31/2015