NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. GABRIEL J. MARTINEZ Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1420 MDA 2013

Appeal from the Order Entered July 19, 2013
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0001486-2010

COMMONWEALTH OF PENNSYLVANIA Appellant v. SHAWN PATRICK MCGINNIS, JR. Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1421 MDA 2013

Appeal from the Order Entered July 19, 2013
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0007283-2010

COMMONWEALTH OF PENNSYLVANIA Appellant v. ADAM MACKENZIE GRACE Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1522 MDA 2013

Appeal from the Order July 31, 2013

In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0000227-2011

COMMONWEALTH OF PENNSYLVANIA Appellant v. CHRISTINA J. LASATER Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1523 MDA 2013

Appeal from the Order Entered July 31, 2013
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0001263-2010

BEFORE: PANELLA, J., DONOHUE, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.: **FILED APRIL 14, 2014**

The Commonwealth appeals from the July 19, and July 31, 2013 orders granting the motions filed by Appellees, Gabriel J. Martinez, Shawn Patrick McGinnis, Jr., Adam Mackenzie Grace, and Christina J. Lasater, to prevent retroactive application of Pennsylvania's Sex Offender Registration and Notification Act (SORNA) to their cases. After careful review, we affirm.

We summarize the relevant factual and procedural history of each of these cases as follows. On April 14, 2010, the Commonwealth filed an information at docket number CP-67-CR-1486-2010, charging Martinez with one count each of involuntary deviant sexual intercourse, statutory sexual

assault, and indecent assault.[1] On May 20, 2010, Martinez pled guilty to indecent assault and the Commonwealth *nolle prossed* the other two charges. On August 17, 2010, the trial court imposed a sentence of five years' probation.

On March 13, 2013, Martinez filed a "Petition to Enforce Plea Agreement." The trial court conducted a hearing on the petition on June 21, 2013. On July 19, 2013, the trial court entered an order granting Martinez's motion. On August 5, 2013, the Commonwealth filed a timely notice of appeal.

At docket number CP-67-CR-7283-2010, the Commonwealth charged McGinnis with one count each of statutory sexual assault, indecent assault, and corruption of minors.[2] On March 24, 2011, McGinnis pled guilty to statutory sexual assault and corruption of minors, and the Commonwealth *nolle prossed* the indecent assault charge. On June 20, 2011, the trial court imposed a sentence of 11½ to 23 months' imprisonment for statutory sexual assault and five years' probation for corruption of minors, to be served concurrently.

On March 8, 2013, McGinnis filed a motion for extraordinary relief. The trial court conducted a hearing on May 31, 2013. On July 19, 2013, the

---

[1] 18 Pa.C.S.A. §§ 3123(a)(7), 3122.1 and 3126(a)(7), respectively.

[2] 18 Pa.C.S.A. §§ 3122.1, 3126(a)(8) and 6301(a)(1), respectively.

trial court entered an order granting McGinnis's motion. On August 6, 2013, the Commonwealth filed a timely notice of appeal.

On February 10, 2011, the Commonwealth filed an information at docket number CP-67-CR-227-2011 charging Grace with one count each of unlawful contact with a minor, corruption of minors and indecent assault.[3] On March 22, 2011, Grace pled guilty to corruption of minors and indecent assault, and the Commonwealth *nolle prossed* the unlawful contact with a minor charge. That same day the trial court imposed an aggregate sentence of three years' probation.[4]

On June 21, 2013, Grace filed a petition for a writ of *habeas corpus*. The trial court conducted a hearing on July 31, 2013, at the conclusion of which it entered an order granting Grace's petition. On August 19, 2013, the Commonwealth filed a timely notice of appeal.

On April 7, 2010, the Commonwealth filed an information at docket number CP-67-CR-1263-2010 charging Lasater with one count of corruption of minors.[5] Appellant entered a plea of *nolo contendere* on July 27, 2010. That same day, the trial court imposed a sentence of five years' probation.

---

[3] 18 Pa.C.S.A. §§ 6318(a)(1), 6301(a)(1) and 3126(a)(8), respectively.

[4] The trial court imposed three years' probation for corruption of minors and two years' probation for indecent assault, to run concurrently to each other.

[5] 18 Pa.C.S.A. § 6301(a)(1).

On June 24, 2013, Lasater filed a petition for a writ of *habeas corpus*. The trial court held a hearing on July 31, 2013, at the conclusion of which, the trial court entered an order granting Lasater's petition. On August 19, 2013, the Commonwealth filed a timely notice of appeal.[6]

On appeal, the Commonwealth raises four issues for our review. [7]

> 1. Whether the trial court erred in determining that registration under SORNA is not a collateral consequence to a conviction and sentencing[?]
>
> 2. Whether the trial court erred in determining that the registration under SORNA violates the [*E*]*x* [*P*]*ost* [*F*]*acto* [C]lause[?]
>
> 3. Whether the trial court erred in holding that the determination by the Pennsylvania State Police that [Appellees were] now subject to registration under SORNA to be a violation of the [C]ontract [C]lause[?]
>
> 4. Alternatively, whether [Appellees] should have filed [their] request[s] for relief as a *writ*[*s*] *of mandamus* and included the Pennsylvania State Police as a party to the action[s?]

Commonwealth's Brief at 4.

We first address the appeals of Martinez, Grace and Lasater. Within these three appeals, we elect to address the Commonwealth's third issue

---

[6] On all four appeals, the Commonwealth and the trial court have complied with Pa.R.A.P. 1925.

[7] On October 22, 2013, this Court entered an order consolidating these four appeals. Both the Commonwealth and Appellees have each filed one brief addressing all four appeals together.

first, as we conclude it disposes of those appeals. The Commonwealth argues that the trial court erred in concluding that Martinez, Grace and Lasater were entitled to relief insofar that they "w[ere] entitled to the benefit of [their] bargain[s]" that they negotiated with the Commonwealth. Commonwealth's Brief at 23.

An *en banc* panel of this Court recently addressed this very issue in ***Commonwealth v. Hainesworth***, 82 A.3d 444 (Pa. Super. 2013) (*en banc*). In ***Hainesworth***, the defendant pled guilty to three counts of statutory sexual assault, three counts of indecent assault, and one count of criminal use of a communication facility. ***Id.*** at 445. At the time of Hainesworth's guilty plea, none of these offenses were triggering offenses under the version of Megan's Law in effect at the time. ***Id.*** at 445-446. "This fact was acknowledged on the record during Hainesworth's plea colloquy." ***Id.*** at 446. Like Appellant in this case, while Hainesworth was serving his sentence, the new version of Megan's Law went into effect, along with its new tier-system and registration requirements. Hainesworth filed a motion seeking to terminate his supervision due to the new registration requirements. The trial court denied his motion but entered an order concluding that Hainesworth would not be subject to the new registration requirements. The Commonwealth filed a timely notice of appeal with this Court.

This Court began its analysis by noting that "the issue before [the Court] was properly framed by Hainesworth and the trial court as an analysis of contract law." ***Id.*** at 447. This Court then reviewed the transcript of Hainesworth's plea hearing, noting that "the trial court and Hainesworth were assured no less than twice by the Commonwealth that the plea did not obligate Hainesworth to register as a sex offender." ***Id.*** at 448. The ***Hainesworth*** Court concluded that "the record show[ed] that non-registration was a term of Hainesworth's plea bargain." ***Id.***

Next, the ***Hainesworth*** Court addressed the cardinal legal question of the appeal, that is "whether it was error for the trial court to order specific performance of the terms of [Hainesworth's plea] bargain." ***Id.*** This Court concluded it was not erroneous for the trial court to order enforcement of the bargain's terms. The ***Hainesworth*** Court noted the severity of the registration requirements.

> "[R]egistration obviously has serious and restrictive consequences for the offender, including prosecution if the requirement is violated. Registration can also affect the offender's ability to earn a livelihood, his housing arrangements and options, and his reputation." ***Commonwealth v. Gehris***, 54 A.3d 862, 879 (Pa. 2012) (Castille, C.J., Opinion in Support of Reversal). In fact, the requirements of registration are so rigorously enforced, even "[t]he occurrence of a natural disaster or other event requiring evacuation of residences shall not relieve the sexual offender of the duty to register." 42 Pa.C.S. § 9799.25(e). As noted by Hainesworth, when a defendant agrees to a guilty plea, he gives up his "constitutional rights to a jury trial, to confrontation, to present witness, to

> remain silent and to proof beyond a reasonable doubt." Hainesworth's Brief at 22. In negotiating a plea that will not require him to register as a sex offender, the defendant trades a non-trivial panoply of rights in exchange for his not being subject to a non-trivial restriction. Fundamental fairness dictates that this bargain be enforced.

Id. at 449.

The Court also analogized ***Hainesworth*** in part to our Supreme Court's decision in ***Commonwealth v. Zuber***, 353 A.2d 441 (Pa. 1976). In ***Zuber***, the defendant entered into a negotiated plea bargain, "[t]he result of said negotiations was a promise by the Commonwealth to recommend a sentence of seven to fifteen years, and … that the Commonwealth would join with defense counsel in a request to the State Board of Parole that the new sentence run [c]oncurrently with appellant's 'back time' …." ***Id.*** at 443. Appellant argued and the Commonwealth conceded that its promise was hollow since "under the law of Pennsylvania in effect at the time appellant was sentenced, neither a court nor the Parole Board had the power to order that a back time and a front time sentence be served concurrently." ***Id.*** (internal quotation marks omitted). Our Supreme Court concluded that Zuber was entitled to the benefit of his bargain.

> [T]here is an affirmative duty on the part of the prosecutor to honor any and all promises made in exchange for a defendant's plea. Our courts have demanded strict compliance with that duty in order to avoid any possible perversion of the plea bargaining system, evidencing the concern that a defendant might be coerced into a bargain or fraudulently induced to give up the very valued

> constitutional guarantees attendant the right to trial by jury.
>
> …
>
> Appellant Zuber asks this Court to modify his sentence on the murder conviction, reducing it to two and one-half years to fifteen years' imprisonment. By so doing, appellant will then have received the benefit of the bargain made with the Commonwealth and still serve a prison sentence commensurate with the term contemplated by all of the parties to the plea proceedings. We agree that a sentence modification such as that suggested by the appellant affords the most appropriate remedy.

Id. at 444, 446. Based on these considerations, the ***Hainesworth*** Court rejected the Commonwealth's arguments and concluded, "the parties to this appeal entered into a plea bargain that contained a negotiated term that Hainesworth did not have to register as a sex offender." ***Hainesworth***, ***supra*** at 450. "As such, it was not error for the trial court to order specific enforcement of that bargain[.]" ***Id.***

Turning to the cases *sub judice*, we conclude that ***Hainesworth*** controls and disposes of these appeals. We address each of the three cases in turn. At Martinez's sentencing it was stated by the parties that a term of the plea bargain was that Appellant would be subject to a ten-year registration period under the old version of Megan's Law that was in effect at the time.

> [Commonwealth]: … The Commonwealth spoke with another prosecutor. We understand that the agreed-upon sentence is five years' probation plus costs and continue with counseling. We believe

> there is a Megan's Law reading that the Commonwealth will have to read before the Court today.
>
> [Defense Counsel]: Your Honor, that's accurate. There was an evaluation done. He is not a sexually violent predator, so it will be the ten-year registration. Additionally, part of the agreement was at the time of his guilty plea on May 20 that if he has complied with all terms of probation, it may become non-reporting after three years.

N.T., 8/27/10, at 1. Additionally, at Martinez's June 21, 2013 hearing, the Commonwealth stipulated to the facts set forth in Martinez's petition. N.T., 6/21/13, at 14. Contained within those facts is the allegation that "[Martinez] entered into a plea agreement in [this case] pursuant to an understanding **and agreement** that [Martinez] was required to register as a sexual offender for only ten years." Martinez's Petition to Enforce Plea Agreement or for a Writ of *Habeas Corpus*, 3/13/13, at ¶ 1.

In Grace's case, as noted above, Grace pled guilty to corruption of minors and indecent assault, and the Commonwealth *nolle prossed* the unlawful contact with a minor charge. Attached to Grace's *habeas* petition is a joint stipulation of facts between Grace and the Commonwealth. Among other facts, the Commonwealth stipulated that "[t]he plea agreement [defense counsel] negotiated with the Commonwealth was based on Mr. Grace not having to plea to charges which would require registration under the version of Megan's Law in effect at the time … of the plea." Stipulation

of Facts, Exhibit A, Grace's Petition for a Writ of *Habeas Corpus*, 6/21/13, at ¶ 5.

In Lasater's case, as noted above, she pled *nolo contendere* on July 27, 2010 to one count of corruption of minors. As in Grace's case, the certified record contains a joint stipulation of facts between Lasater and the Commonwealth. Therein, the Commonwealth stipulated that "[t]he plea agreement [defense counsel] negotiated with the Commonwealth was based on Ms. Lasater not having to plea to charges which would require registration under the version of Megan's Law in effect at the time … of the plea." Stipulation of Facts, 7/30/13, at ¶ 4.

Based on all of the above-mentioned considerations, we conclude ***Hainesworth*** controls these cases. In each of the above cases, the Commonwealth stipulated, in some form, that each of the respective plea agreements were structured around non-registration, or in Martinez's case ten-year registration, being a condition of the guilty plea. Therefore, we agree with Martinez, Grace and Lasater that "the retroactive application of SORNA will dramatically alter the terms of the plea agreement[s.]" Appellees' Brief at 33.

As to Grace and Lasater, the Commonwealth acknowledges ***Hainesworth*** and concedes "the highest likelihood is that this Court will follow ***Hainesworth*** and [affirm] the decision of the trial court." Commonwealth's Brief at 24. However, the Commonwealth argues that the

trial court nevertheless erred in granting relief because "the prosecutor cannot control the collateral consequences … associated with convictions[.]" ***Id.*** at 26. However, as the Commonwealth fully concedes, ***Hainesworth*** dealt with the same issue in this case, and we are required to follow it absent intervening authority. ***See Commonwealth v. Burkholder***, 719 A.2d 346, 352 (Pa. Super. 1998) (stating, "[a] panel of this court cannot overrule a prior decision rendered by the court sitting *en banc*[]") (citation omitted), *appeal denied*, 747 A.2d 364 (Pa. 1999). In any event, because we agree with the Commonwealth's acknowledgement that ***Hainesworth*** does apply, Grace and Lasater are entitled to relief.

As to Martinez, the Commonwealth argues that ***Hainesworth*** is distinguishable because unlike in ***Hainesworth***, Martinez was always required to register for some period of time and "[Martinez]'s plea was not predicated on his ability to avoid registration requirements." Commonwealth's Brief at 24. It is true that in ***Hainesworth***, the defendant pled guilty to a lesser offense in order to avoid registration in its entirety; whereas in this case, Martinez pled guilty to reduce his registration period from a lifetime to ten years. However, as a recent panel of this Court has suggested, this is a distinction without a legal difference.

> Herein, Appellant was subject to a ten-year reporting requirement under the terms of the plea agreement and there is no indication that he bargained for non-registration as a part of his plea. However, the ten-year Megan's Law registration period was discussed at the plea proceeding. While it was not an explicit

> term of the negotiated plea, it is apparent that Appellant's negotiated plea agreement was structured so that he would only be subject to a ten-year rather than a lifetime reporting requirement, distinguishing the facts herein from those in [***Commonwealth v.***] ***Benner***[, 853 A.2d 1068 (Pa. Super. 2004)]. The two charges carrying a lifetime registration requirement were withdrawn by the Commonwealth as part of the negotiations, leaving Appellant subject to the less onerous ten-year reporting requirement then imposed on indecent assault. Under our reasoning in ***Hainesworth***, Appellant arguably would be entitled to the benefit of that bargain.

Commonwealth v. Partee, --- A.3d ---, 2014 WL 661735, *4 (Pa. Super. 2014).[8]

In the case *sub judice*, as noted above, the plea agreement was structured in a specific manner so that the one charge which carried a mandatory lifetime registration requirement was withdrawn by the Commonwealth. ***See*** 42 Pa.C.S.A. §§ 9795.1(a)(1), 9795.1(b)(2) (mandating a ten-year registration term for indecent assault and a lifetime registration term for involuntary deviate sexual intercourse, respectively). Instead, the Commonwealth agreed to accept Martinez's plea to the lesser charge of indecent assault, which carried "the less onerous ten-year reporting requirement[.]" ***Partee***, ***supra***; ***see also id.*** § 9795.1(a)(1). We

[8] Although in ***Partee***, the Court ultimately concluded that ***Hainesworth*** did not apply because the defendant breached the same plea agreement by violating his probation, we nevertheless find the above analysis helpful to resolve this case.

cannot accept the Commonwealth's limitation of ***Hainesworth***'s logic and rationale to only plea bargains involving non-registration. The result of such a holding would be that **some** plea bargains would be enforced and others would not. Similarly, like in ***Partee***, the ten-year registration term was discussed during the plea hearing. We likewise reject the Commonwealth's implicit assertion that there must be a firm explicit statement on the record in order for ***Hainesworth*** to apply. Even ***Hainesworth*** itself did not have such a rigid requirement. The only portion of the transcript discussed in ***Hainesworth*** was as follows.

> The terms of Hainesworth's plea were carefully laid out on the record, as can be seen in the following exchange:
>
> > [COURT ASSISTANT:] Is this Megan's Law?
> >
> > [THE COMMONWEALTH:] It is not Megan's Law. Terms and conditions are as follows: At Count 1 on case 106, 11-and-a-half to 23-and-a-half months ['] incarceration. Costs and fees. No contact direct or indirect with the victim or the victim's family. At Count 2, 11–and–a–half to 23 concurrent to Count 1. Count 3, no further sentence. Count 6, one year probation consecutive to Count 2. Count 7, one year probation consecutive to Count 6. Count 8, one year probation consecutive to Count 7. Count 9, two years['] probation consecutive to Count 8. That's a total of five years['] probation.
> >
> > [THE COURT:] These are felony sexual assault and they're not Megan's Law?

> [THE COMMONWEALTH:] The Commonwealth will move to dismiss Counts 4, 5 and 10. They are not. They're statutory—
>
> [THE COURT:] Statutory sexual assault, felony two.
>
> [THE COMMONWEALTH:] Is not Megan's Law.
>
> [THE COURT:] You're dismissing 4 and 5?
>
> [THE COMMONWEALTH:] And 10.
>
> [THE COURT:] 4, 5 and 10.
>
> …

N.T. Guilty Plea, 2/27/09, at 2–3. Subsequently, the following exchange occurred:

> [THE COURT:] [W]as the agreement stated correctly by the Commonwealth?
>
> [COUNSEL FOR HAINESWORTH:] Yes, it was …. Do you have any questions about anything you read?
>
> [HAINESWORTH:] No, sir ....
>
> [THE COURT:] There's no restitution or anything like that?
>
> [THE COMMONWEALTH:] There is not, Your Honor.

N.T. Guilty Plea, 2/27/09, at 5–6.

Hainesworth, ***supra*** at 447-448. It was based on this exchange that this Court concluded that "[i]t is unambiguous from the record that both parties to this appeal, and the trial court, understood that a registration requirement was not included as a term of Hainesworth's plea agreement." ***Id.*** at 448.

We likewise conclude that it is unambiguous from this record that the trial court and all parties in this case understood that lifetime registration was not included in Martinez's plea bargain. Even more importantly, it is evident that a ten-year registration term was explicitly included. Based on these considerations, we find the Commonwealth's attempts to distinguish ***Hainesworth*** unpersuasive. Following the ***Hainesworth*** Court's analysis, Martinez, Grace and Lasater are entitled to the benefit of the plea bargains that they negotiated. ***See Zuber***, ***supra***; ***Hainesworth***, ***supra***.

In the final case, the record does not reveal the exact terms or structure of the plea agreement McGinnis negotiated with the Commonwealth, as it appears the registration terms were never discussed on the record. Nor does the certified record contain a stipulation from the Commonwealth as to the same. However, McGinnis has a fallback position that does not depend on the actual substance of the plea agreement or any breach thereof. Rather, his issue is a statutory issue. McGinnis argues that the corruption of minors offense that he specifically pled guilty to "was … a different offense with different statutory language than the amended 2010 offense to which SORNA applies."[9] Appellees' Brief at 39. As a result,

[9] We note that McGinnis did raise this issue below in his motion, so it was properly before the trial court. ***See*** McGinnis's Motion for Extraordinary Relief, 3/8/13, at ¶¶ 11-17.

McGinnis argues that SORNA does not apply to him at all based on the text of the statute.[10]

When construing a statute, our objective is to ascertain and effectuate the legislative intent. 1 Pa.C.S.A. § 1921(a). "In pursuing that end, we are mindful that '[w]hen 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.'" ***Commonwealth v. Shiffler***, 879 A.2d 185, 189 (Pa. 2005), *citing* 1 Pa.C.S.A. § 1921(b). In addition, "[w]hen the language of a statute is clear and unambiguous, the judiciary must read its provisions in accordance with their plain meaning and common usage." ***Commonwealth v. Love***, 957 A.2d 765, 767 (Pa. Super. 2008). However, when the words of a statute are not explicit, courts in this Commonwealth should resort to other considerations including the General Assembly's intent in enacting the provision. ***Commonwealth v. Diamond***, 945 A.2d 252, 256 (Pa. Super.

---

[10] In his motion below, McGinnis argued that this resulted in a violation of the *Ex Post Facto* Clause. ***See*** McGinnis's Motion for Extraordinary Relief, 3/8/13, at ¶ 17. However, as an appellate court, we have a duty to resolve an issue on non-constitutional grounds if possible. ***See Commonwealth v. Wilson***, 67 A.3d 736, 741 (Pa. 2013) (stating, "when considering matters which raise both constitutional and non-constitutional bases for relief, [courts] attempt to resolve the matter on non-constitutional grounds whenever practicable[]") (citations omitted). Because we resolve this issue based on the statutory language, we avoid needing to resolve the serious constitutional question that would arise under the *Ex Post Facto* Clause of retroactively aggravating the offense to which McGinnis pled guilty from a misdemeanor to a felony.

2008), *appeal denied*, 955 A.2d 356 (Pa. 2008), *citing* 1 Pa.C.S.A. § 1921(c).

In the case *sub judice*, SORNA list several offenses that are classified as Tier I offenses.

> **§ 9799.14. Sexual offenses and tier system**
>
> …
>
> **(b) Tier I sexual offenses.--**The following offenses shall be classified as Tier I sexual offenses:
>
> …
>
> (8) 18 Pa.C.S. § 6301(a)(1)(ii) (relating to corruption of minors).
>
> …
>
> (21) A comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth.
>
> …

42 Pa.C.S.A. § 9799.14(b). In its current form, the corruption of minors statute, codified at Section 6301 of the Crimes Code, reads as follows.

> **§ 6301. Corruption of minors**
>
> **(a) Offense defined.--**
>
> (1) (i) Except as provided in subparagraph (ii), whoever, being of the age of 18 years and upwards, **by any act** corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or

> encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.
>
> (ii) Whoever, being of the age of 18 years and upwards, by any **course of conduct** in **violation of Chapter 31 (relating to sexual offenses)** corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.
>
> …

18 Pa.C.S.A. § 6301(a) (emphases added). Prior to the 2011 amendments of the corruption of minors statute, McGinnis pled guilty under the former version of the statute, which read as follows.

> **§ 6301. Corruption of minors**
>
> **(a) Offense defined.--**
>
> (1) Whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.

Id.

Here, the record clearly supports McGinnis's assertion that the offense he pled guilty to was the former version of Section 6301(a)(1). The Commonwealth's charging information stated that it was charging under

Section 6301(a)(1) as a first-degree misdemeanor. Commonwealth's Information, 3/24/11, at 1. We further note that, save for the language excepting out the new subsection (a)(1)(ii), the offense McGinnis pled guilty to under the old Section 6301(a)(1) is *verbatim* the same offense that is now at Section 6301(a)(1)(i). As noted above, with regard to corruption of minors, SORNA's text intentionally limits its application to convictions arising out of "18 Pa.C.S. § 6301(a)(1)(ii)[.]" 42 Pa.C.S.A. § 9799.14(b)(8). As the offense Appellant pled guilty to is now found at 18 Pa.C.S.A. § 6301(a)(1)(i) and not 18 Pa.C.S.A. § 6301(a)(1)(ii) as SORNA requires, the Commonwealth cannot retroactively apply SORNA's provisions to McGinnis on this basis.

However, McGinnis acknowledges that Section 9799.14(b) does contain a type of catch-all provision for "[a] comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth." ***Id.*** § 9799.14(b)(21). Here, McGinnis's conviction did not arise under a military offense, nor is this an out-of-state or foreign offense. Finally, this is not a conviction under "former" law of this Commonwealth, because as noted above, the offense McGinnis pled guilty to is still *verbatim* in the Crimes Code in the same

section.[11] As a result, Section 9799.14(b)(21) does not apply to McGinnis. Therefore, as McGinnis does not fall under SORNA in the first place, the trial court did not err when it granted his motion for extraordinary relief.[12]

Based on the foregoing, we conclude the trial court correctly granted each of Appellees' requests for relief to not have SORNA retroactively apply to their cases. Accordingly, the trial court's July 19, 2013 and July 31, 2013 orders are affirmed.

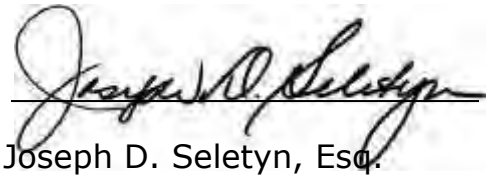
Orders affirmed.

---

[11] McGinnis's brief also argues that the offense he pled guilty to and the offense at Section 6301(a)(1)(ii) are not "similar" for the purposes of Section 9799.14(b)(21). This argument assumes that the term "similar" modifies both non-Pennsylvania offenses as well as former Pennsylvania offenses. As we conclude that McGinnis's offense is not a "former" offense, but rather still a **current** offense under the Crimes Code, we need not consider this argument. Even if we were to do so, we would still conclude that the two offenses are dissimilar as the offense at Section 6301(a)(1)(ii) that is covered by SORNA contains two additional elements that the Commonwealth would be required to prove beyond a reasonable doubt. First, Section 6301(a)(1)(i), the offense McGinnis pled guilty to requires the Commonwealth prove that "an act" corrupted or tended to corrupt the morals of a minor. 18 Pa.C.S.A. § 6301(a)(1)(i). However, Section 6301(a)(1)(ii) requires the Commonwealth to prove that a defendant engaged in a "course of conduct." ***Id.*** § 6301(a)(1)(ii). Additionally, the Commonwealth must prove that the course of conduct was "in violation of Chapter 31 (relating to sexual offenses)[.]" ***Id.*** Finally, we note that the offense Appellant pled guilty to was a first-degree misdemeanor and Section 6301(a)(1)(ii) is graded as a third-degree felony. On these bases alone, we would conclude that the two offenses are dissimilar.

[12] Although the trial court did not grant relief on this basis, we note that we may affirm the trial court on any legal basis supported by the record. ***Commonwealth v. Doty***, 48 A.3d 451, 456 (Pa. Super. 2012).

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014