2014 PA Super 109

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
LAWRENCE JONES,	:	No. 859 WDA 2013
Appellant	:	

Appeal from the PCRA Order, May 14, 2013,
in the Court of Common Pleas of Allegheny County
Criminal Division at No. CP-02-CR-0011852-2011

BEFORE: FORD ELLIOTT, P.J.E., OTT AND WECHT, JJ.

DISSENTING STATEMENT BY FORD ELLIOTT, P.J.E.: FILED: May 28, 2014

I join in the Majority's well-reasoned discussion of the inapplicability and inability of the PCRA to address the claims raised by Jones. I agree that the principal relief sought by Jones is specific enforcement of his plea agreement with the Commonwealth, a claim that is not cognizable under the PCRA. (Majority Opinion at 9.) However, I respectfully dissent from the Majority's analysis with respect to ***Commonwealth v. Hainesworth***, 82 A.3d 444 (Pa.Super. 2013) (***en banc***). Under the facts of this case, I believe we are bound by the supreme court's decision in ***Commonwealth v. Leidig***, 956 A.2d 399 (Pa. 2008).

In ***Hainesworth***, an ***en banc*** decision in which I joined, this court found that Hainesworth's specific bargained-for exchange in his plea agreement resulted in the case being distinguishable from ***Leidig***, ***supra***,

and ***Commonwealth v. Benner***, 853 A.2d 1068 (Pa.Super. 2004). ***Hainesworth***, ***supra*** at 450. "Indeed, the plea agreement appears to have been precisely structured so that Hainesworth would not be subjected to a registration requirement." ***Hainesworth***, ***supra*** at 448. Hence, the contract analysis was appropriate and the enforcement of the plea agreement was required. No such bargained-for exchange occurred in the instant matter or in either ***Leidig***, ***supra***, or ***Benner***, ***supra***.

Instantly, the Majority concedes that:

> [i]n this case before us, there is no clear record evidence of a *quid pro quo* in the form of the systematic withdrawal of charges that would have required registration under the law applicable at the time of the plea or a conviction, had Jones opted to proceed to trial.

Majority Opinion at 23. In fact, since Jones' conviction was not subject to Megan's law registration at all, there was no need for such a discussion. Without that ***quid pro quo***, I cannot distinguish this case from ***Leidig*** or ***Benner***, and therefore Jones is subject to the SORNA increased registration requirements. Again, there is no indication on the record that Jones negotiated for non-registration as a term of his plea agreement. (***See*** Majority opinion at 2-3.) As of December 20, 2012, indecent assault is now one of the enumerated crimes that require registration. 42 Pa.C.S.A. § 9799.14(b)(6). As appellant was still serving probation as a result of committing a sexually violent offense which is now included in the statute, the provisions of SORNA are applicable. ***See*** 42 Pa.C.S.A. § 9799.13(2).

The Majority agrees, based both on its PCRA analysis and its discussion of ***Leidig***, that SORNA registration requirements are collateral consequences and not direct consequences of Jones' plea. (***See*** Majority opinion at 8-9.) I agree that, collateral or not, the registration requirements have serious and restrictive consequences for the offender, and that there is a fundamental unfairness worked by the result I suggest herein. However, I believe we are bound by precedent to decide that requiring registration subsequent to the plea, where there once was none or increasing registration from ten years to lifetime, does not affect the validity of a guilty plea unless the consequences of registration have been specifically bargained for and are not just a result of the plea.

I am constrained to deny any relief.