

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

MICHAEL ROBERT SHAPIRO

Appellant

: No. 3122 EDA 2024

Appeal from the Order Entered October 22, 2024
In the Court of Common Pleas of Bucks County
Criminal Division at No: CP-09-CR-0001661-2019

BEFORE: STABILE, J., LANE, J., and STEVENS, P.J.E.*

OPINION BY STABILE, J.:

FILED AUGUST 27, 2026

Appellant, Michael Robert Shapiro, appeals from the October 22, 2024 order denying his motion to bar the application of Revised Subchapter H of the Sexual Offender Registration and Notification Act ("SORNA"), 42 Pa.C.S.A. §§ 9799.10-9799.42, *et. seq.*, to him as a Tier III offender. We affirm.

This matter arises from Appellant's use of an instant messaging account to plan sexual encounters with undercover law enforcement agents posing as 14-year-old girls. On January 13, 2020, Appellant pled guilty to solicitation to commit aggravated assault (18 Pa.C.S.A. § 3125(a)(8)) and several related offenses. On October 8, 2020, the trial court imposed 10 to 23 months of incarceration and a concurrent 48 months of probation. The trial court, in accordance with the assessment of the Sexual Offenders Assessment Board

* Former Justice specially assigned to the Superior Court.

("SOAB"), found that Appellant is not a sexually violent predator ("SVP"). But because Appellant pled guilty to a Tier III offense under SORNA, he is subject to a lifetime of registration as a sexual offender.

On October 16, 2020, Appellant filed a post-sentence motion¹ to bar the application of SORNA, and in particular 42 Pa.C.S.A. § 9799.11(4), which contains a presumption that persons convicted of sexual offenses pose a high risk of committing future sexual offenses. That presumption is the basis for Appellant's lifetime registration requirement in this case. Appellant argues that the presumption of § 9799.11(4) is unconstitutional as applied to him, because he has evidence to demonstrate that he poses a low risk of reoffending, and because the presumption violates his right, under the Article I, § 1 of the Pennsylvania Constitution, to protect his reputation.² Disposition of that motion was stayed pending our Supreme Court's decision in ***Commonwealth v. Torsilieri***, 316 A.3d 77 (Pa. 2024) (***Torsilieri II***). The ***Torsilieri II*** Court upheld the constitutionality of § 9799.11(4) against a challenge under the irrebuttable presumption doctrine. The ***Torsilieri II***

¹ This order is final and appealable independently of the judgment of sentence. ***Commonwealth v. Torsilieri***, 232 A.3d 567, 574-75 (Pa. 2020) ("***Torsilieri I***").

² "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." PA. CONST. art. I § 1.

Court also held that SORNA's registration and notification requirements were nonpunitive.

Subsequently, the trial court conducted a hearing, on October 18, 2024, at which Appellant presented evidence that he had successfully completed rehabilitation, that he had found professional success, that had not reoffended in the years following his conviction, and that his risk of committing another sexual offense is low. The trial court denied Appellant's motion to bar the application of SORNA's lifetime registration requirement by order of October 22, 2024. This timely appeal followed.

Appellant states the issues before us as follows:

When Appellant presented that he had little to no risk of personally reoffending through evaluation and the testimony of treatment providers, among other evidence, did the lower court err in denying Appellant's motion to preclude the application of SORNA where, as applied to him, SORNA's continued registration violates his constitutional right to reputation because:

1. It violates Pennsylvania's right to substantive due process by requiring people like him who pose no relative risk of danger to be publicly labeled as dangerous and unreasonably bars the opportunity for removal until 25 years after registering; and
2. It violates Pennsylvania's procedural due process rights because the law denies him an opportunity to present his case and rebut the presumption of danger before 25 years of registering without any basis, let alone a compelling one of doing so?

Appellant's Brief at 3.

The success of Appellant's arguments depends upon the import of our Supreme Court's opinion in ***Torsilieri II***. Appellant argues that his "as

applied” challenges remain viable after ***Torsilieri II***, which held the statute to be facially constitutional. The Commonwealth argues that the Supreme Court’s decision upholding the constitutionality of § 9799.11(4) under the irrebuttable presumption doctrine forecloses any subsequent attempt to rebut the presumption on an “as applied” basis. Thus, our first order of business is to determine whether any of Appellant’s arguments remains viable after ***Torsilieri II***.³

In ***Torsilieri II***, as in the instant matter, the defendant did not meet the SVP criteria but was subject to lifetime registration based on a conviction for a Tier III offense. ***Torsilieri II***, 316 A.3d at 81. The ***Torsilieri II*** Court phrased the issue before it as follows:

In this direct appeal following a remand, we consider whether the General Assembly’s determination, in [SORNA], that individuals who commit sexual offenses pose a high risk of committing additional sexual offenses constitutes an unconstitutional irrebuttable presumption violative of due process, because it impairs the right to reputation under the Pennsylvania Constitution.

³ We are not persuaded by the Commonwealth’s argument that the issues Appellant presented during the October 18, 2024 hearing are waived, because they were not the same issues he raised in his post-sentence motion. At the hearing, Appellant presented evidence of his rehabilitation and good conduct in the years following his conviction (he was granted parole on December 24, 2020). His doing so was understandable given the years-long stay pending the outcome of ***Torsilieri II***. Further, the evidence was relevant to and did not substantively alter the underlying issues—whether SORNA is unconstitutional as applied to Appellant as a matter of substantive and/or procedural due process.

Id. at 79. The presumption at issue, as noted above, is set forth in § 9799.11(a)(4): “Sexual offenders pose a high risk of committing additional sexual offenses and protection of the public from this type of offender is of paramount governmental interest.” 42 Pa.C.S.A. § 9799.11(a)(4). To mount a successful challenge under the irrebuttable presumption doctrine, the challenging party must establish: “(1) an interest protected by the due process clause; (2) utilization of a presumption that is not universally true; and (3) the existence of a reasonable alternative means to ascertain the presumed fact.” **Torsilieri II**, 316 A.3d at 80 (citing **In re J.B.**, 107 A.3d 1, 15-16 (Pa. 2014)). In assessing his constitutional challenge, our Supreme Court explained that it has refused to “‘pigeonhole’ the irrebuttable presumption doctrine into either procedural or substantive due process categories, and, rather, [has] addressed such challenges ‘simply as an irrebuttable presumption challenge.’” **Id.** at 82 (quoting **Torsilieri I**, 232 A.3d at 581).

The Supreme Court’s focus, in **Torsilieri II**, was on the second of the three prongs—whether the General Assembly employed a presumption that is not universally true. **Id.** at 97. Recognizing that no presumption is true without exception, the Supreme Court explained that the challenger could satisfy the second element if he could “establish a *consensus* of scientific evidence rebutting the presumption as to the class of adult sex offenders.” **Id.** at 98.

Thus, to meet his heavy burden of establishing that the General Assembly's presumption was not universally true, Appellee was required to establish that there exists a scientific consensus that sexual offenders pose no greater risk of committing additional sexual crimes than other groups not subject to similar registration laws. Informing our understanding of our Court's mandate and this prong of the irrebuttable presumption doctrine, we simply add that a 'consensus' is a generally accepted opinion or general agreement regarding a proposition.

Id. at 98-99.

Notably, the **Torsilieri** Court rejected the appellant's plea for consideration of individualized variation of recidivism risk within the class of adult sexual offenders: "To overturn the legislative presumption that sex offenders are more likely **as a group** to commit new sex offenses, we must conclude there is a universal consensus that this presumption is wrong." **Id.** at 99 (emphasis added).

Again, the meaningful statistical measure is whether the percentage of those who have committed a sexual offense and go on to commit a second sexual offense — the group SORNA targets — is higher than the percentage of those who first commit a non-sexual offense followed by a second, sexual offense. It is this presumed difference in the rates of commission of sexual offenses, as recidivist offenses, between the two groups of offenders on which the legislature rested SORNA's registration and notification scheme.

Id. And because the appellant's experts conceded that "adult sexual offenders reoffend at a rate of at least three times higher than other individuals convicted of non-sexual offenses[,]” the **Torsilieri II** Court concluded that there was no scientific consensus that SORNA's presumption was not universally true. **Id.** at 99-100.

Appellant now asks this Court to treat ***Torsilieri II*** as an examination of the facial constitutionality of the SORNA presumption, and consider Appellant's as-applied claims, in support of which he produced evidence that his own likelihood of reoffending is minimal. We decline Appellant's request. Nowhere did the ***Torsilieri II*** Court style the constitutional challenge before it as "facial" and thus leave open the possibility of future "as applied" challenges. In upholding SORNA's presumption, our Supreme Court considered evidence pertaining to sexual offenders "as a group," or "as a class." ***Id.*** at 98-99. Due to the lack of scientific consensus that the presumption was inaccurate as applied to the class, SORNA's irrebuttable passed constitutional muster.

The Supreme Court arrived at this conclusion despite its recognition that no presumption is true without exception. ***Id.*** at 98. But this recognition of individual differences amongst the class of persons subject to the presumption did not open the door to case-by-case challenges on an as applied basis. To the contrary, the ***Torsilieri II*** Court was not persuaded by the defendant's individualized evidence—i.e. that only 5 to 20% of sexual offenders get arrested for a subsequent sexual offense. ***Id.*** As the trial court in the instant

matter correctly recognized, “individual dangerousness is not relevant to the statutory scheme.”⁴ Trial Court Opinion, 3/19/25, at 4.

Given the foregoing, we conclude that the ***Torsilieri II*** Court’s decision to uphold SORNA against an irrebuttable presumption challenge forecloses any subsequent as applied challenge whose aim is to rebut the presumption. This is true regardless of whether Appellant styles his as applied challenge as one of substantive or procedural due process because, as noted above, the ***Torsilieri II*** Court declined to pigeonhole the irrebuttable presumption doctrine as either. ***Id.*** at 82, 91-92. And regarding procedural due process, an irrebuttable presumption, by definition, forecloses any rebuttal procedure. To conclude otherwise would both disregard the clear import of our Supreme Court’s decision in ***Torsilieri II*** and render the statutory presumption meaningless—effectively opening it to case-by-case as applied challenges. In short, the word “irrebuttable” means what it says.⁵

⁴ The United States Supreme Court made a similar point in ***Connecticut v. Doe***, 538 U.S. 1 (2003) in holding that the registration requirement of the then-extant Connecticut version of Megan’s Law did not violate federal due process because it was the fact of the defendant’s conviction, rather than the fact of the defendant’s current dangerousness, that triggered the registration requirement, and because the conviction came only after the defendant was afforded due process.

⁵ This holding must obtain so long as the irrebuttable presumption doctrine remains viable in Pennsylvania, a question the ***Torsilieri II*** Majority left for another day. ***See Torsilieri***, 316 A.3d at 94.

Appellant cites several opinions of this Court issued prior to ***Torsilieri II***, but they avail him nothing. In ***Commonwealth v. Muhammad***, 241 A.3d 1149 (Pa. Super. 2020), this Court held that SORNA was unconstitutional as applied to the appellant a Tier I offender, because it created an unconstitutional irrebuttable presumption that her convictions for interference with custody of children rendered her likely to commit future sexual offenses. The ***Muhammad*** Court arrived at that conclusion in part because the appellant had no criminal history, and because she was not convicted of a sexual offense. ***Id.*** at 1158-59. And to the extent ***Muhammad*** is distinguishable from ***Torsilieri II*** because the defendant was not convicted of a sexual offense in that case, the distinction is irrelevant here because Appellant has been convicted of sexual offenses. ***Muhammad*** does not salvage the claims Appellant raises here.

Appellant also cites to this Court's unpublished memorandum in ***Commonwealth v. Saunders***, 329 A.3d 670 (Pa. Super. 2024) (unpublished memorandum), in which this Court rejected as waived a post-***Torsilieri II*** as applied challenge to SORNA. Because ***Saunders*** is unpublished and because that Court did not reach the merits of the as applied claim, it does not support Appellant's argument.⁶

⁶ Appellant also cites to ***Commonwealth v. Ross***, 330 A.3d 1262, 1270 (Pa. Super. 2025); ***Commonwealth v. Mucci***, 327 A.3d 1223, 1233 (Pa. Super. 2024), *appeal denied*, 340 A.3d 270 (Pa. 2025); ***Commonwealth v. Krzan***, (Footnote Continued Next Page)

Finally, we observe that our analysis in this case is consistent with this Court's unpublished memorandum in ***Commonwealth v. Nunez***, 334 A.3d 370 (Pa. Super. January 10, 2025) (unpublished memorandum), in which we rejected the appellant's as applied challenges to SORNA because his presentation of evidence of his personal low risk of recidivism was inconsistent with the Supreme Court's analysis in ***Torsilieri II***:

Our Supreme Court's rulings in *Torsilieri* dispose of [the appellant's] claim. [...] While Nunez also claims that the statute's irrebuttable presumption is unconstitutional as applied to him, his argument is based upon nothing more than his own expert's testimony at sentencing as to his low risk of recidivism, [...] which our Supreme Court held in ***Torsilieri*** was insufficient by itself to overcome the presumption. ***See Torsilieri [II]***, 316 A.3d at 99 (rejecting [the defendant's] focus on "individualized recidivism risk" and finding that statistics showing likelihood of sexual offenders to reoffend when looked at as a whole were enough to support the legislative presumption underlying Subchapter H)[.]

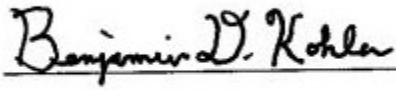
Id. at *13.

For the foregoing reasons, we conclude that our Supreme Court's opinion in ***Torsilieri II*** forecloses the as applied challenges to SORNA Appellant raises here.

Order affirmed.

325 A.3d 714 (Pa. Super. 2024), *appeal granted in part on other grounds*, 341 A.3d 64 (Pa. 2025). Appellant fails to explain how any of these cases supports a conclusion that his as applied challenges to SORNA are viable post-***Torsilieri II***.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/27/2026