

No. 135 WDA 2018

FILED: AUGUST 1, 2023

² **See** 42 Pa.C.S.A. §§ 9799.11-9799.42 (as amended effective 2018).

fifteen years as a sexual offender pursuant to Subchapter H. Chai took a timely appeal challenging: (1) the impartiality of a juror; (2) the weight of the evidence; and (3) his registration requirement, which he claimed constituted an illegal sentence and violated his reputational rights.³ This Court affirmed the judgment of sentence and, in relevant part, held that Chai waived his claims that his registration requirement constituted an illegal sentence. **See Commonwealth v. Chai**, 253 A.3d 277, 2021 WL 1386572, at *8 (Pa. Super. 2021) (unpublished memorandum) (finding Chai's legality-of-sentence challenge to Subchapter H waived pursuant to **Commonwealth v. Reslink**, 257 A.3d 21 (Pa. Super. 2020)).⁴

Chai filed a petition for allowance of appeal ("PAA") in our Supreme Court. Thereafter, our Supreme Court issued its decision in **Thorne**, which disapproved of the waiver analysis in **Reslink** and held that challenges to SORNA which implicate legality-of-sentence claims cannot be waived. **See Thorne**, 276 A.3d at 1197-98. In the present case, the Court granted Chai's

³ Specifically, in his original brief to this Court ("Chai's Brief"), Chai asserted that his fifteen-year registration requirement exceeded the lawful maximum penalty for his conviction. **See** Chai's Brief, 8/22/18, at 67. Further, in conjunction with his due process claims involving the irrebuttable presumptions of future dangerousness and likelihood to reoffend, he asserted that his registration requirement constituted a cruel and unusual punishment. **See** Chai's Brief, 8/22/18, at 67-69. Chai cited research contradicting the presumption of dangerousness. **See id.** at 65-66.

⁴ Our esteemed colleague, the Honorable Mary Jane Bowes, concurred in the prior decision and highlighted the problems of applying the waiver analysis set forth in **Reslink**. **See Chai**, 2021 WL 1386572, at *8-9 (Bowes, J., concurring).

PAA as to the SORNA issues and remanded to this Court to apply **Thorne**. **See Commonwealth v. Chai**, 285 A.3d 885 (Pa. 2022) (*per curiam* order). The Court denied allowance of appeal on Chai's remaining issues. **See id.** at 886.

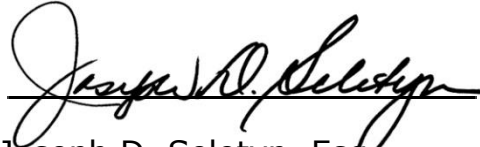
Following our Supreme Court's remand, Chai filed in this Court a supplemental brief requesting a remand to the trial court to afford him the opportunity to substantiate his claims that his SORNA registration requirement constituted an illegal sentence. The Commonwealth submitted a letter stating that it did not oppose a remand to the trial court.

This Court, in **Commonwealth v. Boyd**, 287 A.3d 957 (Pa. Super. 2022), addressed similar procedures and claims involving legality-of-sentence claims concerning Subchapter H. **See Boyd**, 287 A.3d at 958-59. The **Boyd** Court remanded to the trial court for the development of a factual record on claims that a Subchapter H registration requirement constituted an illegal sentence. **See id.** at 960. Here, as in **Boyd**, we conclude that a remand is appropriate for the development of the record on Chai's legality-of-sentence claims concerning his registration requirement.⁵

⁵ We are mindful that in May 2023, our Supreme Court heard oral arguments in **Commonwealth v. Torsilieri**, 97 MAP 2022, to consider the Commonwealth's appeal from a trial court's decision that current Subchapter H contains an unconstitutional irrebuttable presumption of recidivism, is punitive, and imposes unconstitutional punishments. We note that both **Torsilieri** and **Boyd** involve lifetime registration requirements, whereas the instant appeal involves a fifteen-year registration requirement. Nevertheless, we conclude that Chai, like Boyd, should have an opportunity to substantiate his legality-of-sentence claims.

Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/1/2023