

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
WESLEY MORGAN POLLARD	:	No. 1424 MDA 2025

Appeal from the Order Entered September 24, 2025
 In the Court of Common Pleas of Lackawanna County Criminal Division at
 No(s): CP-35-CR-0000912-2025

BEFORE: PANELLA, P.J.E., NICHOLS, J., and NEUMAN, J.

OPINION BY PANELLA, P.J.E.:

FILED AUGUST 28, 2026

The Commonwealth appeals from the order granting Pollard's motion to dismiss the 3 charges of failure to register¹ pursuant to the registration requirements of section I of the current version of the Sex Offender Registration and Notification Act ("SORNA II").² The Commonwealth asserts the trial court erred in finding Pollard was not required to register as a sex offender pursuant to SORNA II. After careful review, we reverse and remand for further proceedings.

The trial court set forth the relevant factual and procedural history:

On May 9, 2025, [the Commonwealth], via criminal information, charged [Pollard] with three (3) counts of failure to register [with the Pennsylvania State Police ("PSP")], in violation of [18] Pa.C.S.A. § 4915.2(a)(1) stemming from an incident on April 21, 2025, wherein [Pollard] allegedly failed to update his residence

¹ 18 Pa.C.S.A. § 4915.2(a)(1).

² 42 Pa.C.S.A. §§ 9799.51-9799.75.

and address, as well as his employment status with [PSP] in accordance with SORNA requirements from a 1990 involuntary deviate sexual intercourse [(“IDSI”)] conviction out of Luzerne County, Pennsylvania.

... On ... August 25, 2025, [Pollard] filed a motion to dismiss alleging that because [Pollard’s] prior conviction occurred in 1990, it predates any Megan’s Law or SORNA requirements, therefore any retroactive application of such is punitive and unlawful pursuant to **Commonwealth v. Stanley**, 259 A.3d 989 (Pa. Super. 2021) and **Commonwealth v. Muniz**, 164 A.3d 1189 (Pa. 2017). On ... September 10, 2025, [the Commonwealth] filed its response and a hearing was held on September 17, 2025. Following said hearing, the [trial court] rendered its decision, granting [Pollard’s] motion to dismiss and effectively dismissing all charge[s] alleged based upon retroactive application of SORNA.

On September 25, 2025, [the Commonwealth] filed a motion for reconsideration ..., which [the trial court] denied via order the same date. ...

Trial Court Opinion, 1/7/26, at 1-2 (unnecessary capitalization and record citations omitted).

The Commonwealth filed a timely notice of appeal to this Court.³ The trial court thereafter ordered the Commonwealth to file a Rule 1925(b)

³ The Commonwealth’s brief asserts this Court has jurisdiction pursuant to 42 Pa.C.S.A. § 742, as this is an appeal from a final order. However, on August 4, 2026, Pollard filed an application to quash with this Court, asserting this Court does not have jurisdiction pursuant to **Commonwealth v. Sutton**, --- A.3d ---, 90 MAP 2024, 104 MAP 2024 (Pa. filed July 21, 2026). We disagree with Pollard. In **Sutton**, the Pennsylvania Supreme Court held that section 742 does not provide this Court with jurisdiction to hear appeals of orders dismissing charges **for failure to make out a *prima facie* case because the Commonwealth has the option to refile the charges** and make another attempt at establishing the factual prerequisite of a *prima facie* case. **See id.** at * 13-14.

(Footnote Continued Next Page)

statement. **See** Pa.R.A.P. 1925(b). The Commonwealth complied and the trial court authored its Rule 1925(a) opinion on January 7, 2026. **See** Pa.R.A.P. 1925(a).

The Commonwealth raises two issues for our review:

[1.] Whether the trial court erred in dismissing failure to register charges against [Pollard] on the basis that [Pollard] was not required to register as a sexual offender pursuant to **Commonwealth v. Muniz**, 164 A.3d 1189 (Pa. 2017) and **Commonwealth v. Santana**, 266 A.3d 528 (Pa. 2021), when the applicable case is, instead, **Commonwealth v. Lacombe**, 234 A.3d 602 (Pa. 2020), which demands that [Pollard] did have an obligation to register as a sexual offender at the time the failure to register charges were brought against him[?]

[2.] Whether the trial court erred in extending to [Pollard's] situation the finding in **Muniz** and **Santana** that retroactive application of the registration requirements of SORNA I was punitive and an *ex post facto* violation, when [Pollard] was required to register pursuant to Subchapter I of SORNA II which was declared non-punitive in **Lacombe**[?]

Appellant's Brief, at 4 (lower court answers omitted).

We begin with our standard of review:

The decision to grant a pretrial motion to dismiss a criminal charge is vested in the sound discretion of the trial court and may be overturned only upon a showing of [an] abuse of discretion or error of law.

Here, however, no such option exists because the court did not dismiss the charges for the Commonwealth's failure to establish the factual prerequisite of a *prima facie* case. Instead, the court found the Commonwealth could not charge Pollard with failure to register **as a matter of law**, which did not leave the Commonwealth with the option to refile the charges. **See** Order, 9/24/25, at 2 (pagination added for ease of reference). Therefore, we conclude **Sutton** is distinguishable and we deny Pollard's application to quash.

The term 'discretion' imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will.

Commonwealth v. King, 932 A.2d 948, 950-51 (Pa. Super. 2007) (quotation marks, brackets, and citations omitted).

Where, however, a defendant has challenged the constitutionality of a statute, "our standard of review is *de novo* and our scope of review is plenary."

Commonwealth v. Mucci, 327 A.3d 1223, 1229 (Pa. Super. 2024) (citation and internal quotation marks omitted).

Here, Pollard argued in his motion to dismiss that he was not required to register as a sex offender for two reasons: (1) the plain language of SORNA II, Subchapter I does not apply to him because his conviction occurred in 1990; and (2) any retroactive application of the SORNA II registration requirements would violate the *ex post facto* clauses of the United States and Pennsylvania Constitutions. **See** Motion to Dismiss, 8/25/25, at 2-3 (pagination added for ease of reference). The trial court agreed and held that "SORNA [II] was unlawfully applied retroactively based upon [Pollard's] 1990 convictions of rape and involuntary deviate sexual intercourse. Further,

requiring [Pollard] to register [under SORNA II] as an additional condition of sentence is punitive, and in clear violation of *ex post facto* principles.” Order, 9/24/25, at 2 (pagination added for ease of reference).

We first will address whether Pollard is required to register under the plain language of SORNA II before we turn to the trial court’s finding that requiring Pollard to register would violate the *ex post facto* clauses of the United States and Pennsylvania Constitutions.

Before we do, though, we recognize the confusion surrounding the many versions of, and cases interpreting, Megan’s Law and SORNA. We therefore find it helpful to briefly address the different versions and notable decisions regarding each:

In 1995, Pennsylvania enacted its inaugural version of Megan’s Law, a comprehensive regulatory scheme designed, among other things, to protect the safety and general welfare of the people of this Commonwealth by providing for registration, community notification and access to information regarding sexually violent predators and offenders who are about to be released from custody and will live in or near their neighborhood. Since then, that law has been amended, revised, replaced, and renamed. All told, there have been four versions of Megan’s Law and two of SORNA, most of which have faced a variety of constitutional challenges. These laws have been challenged upon due process grounds, upon the manner in which the law was passed, and as violations of the *ex post facto* clauses in the United States and Pennsylvania Constitutions.

Commonwealth v. Arnett, 353 a.3d 705, 707 (Pa. 2026) (footnotes, brackets, and quotation marks omitted).

The Pennsylvania Supreme Court struck down portions of Megan’s Law I in ***Commonwealth v. Williams***, 733 A.2d 593 (Pa. 1999) (***Williams I***).

"After **Williams I** was decided, the General Assembly passed Megan's Law II, which was signed into law on May 10, 2000." **Commonwealth v. Muniz**, 164 A.3d 1189, 1198 (Pa. 2017). Portions of Megan's Law II were found unconstitutional in **Commonwealth v. Williams**, 832 A.2d 962 (Pa. 2003) (**Williams II**). This decision did not find the entirety of Megan's Law II unconstitutional and severed the unconstitutional portions from the remainder of the statute. **See Williams II**, 832 A.2d at 986. This severance did not affect the registration requirements. **See id.**

Notably, in the case currently before us, Pollard was released from prison on July 11, 2003, prior to the decision of **Williams II**. Pollard was therefore required to, and did in fact, register under Megan's Law II upon his release.

"The General Assembly made further amendments to Megan's Law II with the passage of Act 152 of 2004, commonly referred to as Megan's Law III, which was signed into law of November 24, 2004." **Muniz**, 164 A.3d at 1197 (citation omitted). The Pennsylvania Supreme Court struck down Act 152 as unconstitutionally violative of the single subject rule in **Commonwealth v. Neiman**, 84 A.3d 603 (Pa. 2013). The Court stayed its decision for 90 days to allow the General Assembly to remediate their error. **Neiman**, 84 A.3d at 75.

"Megan's Law III was replaced by SORNA [I]." **Muniz**, 164 A.3d at 1198.

The General Assembly enacted SORNA [I] in response to the federal Adam Walsh Child Protection and Safety Act of 2006, ...

which mandates that states impose on sex offenders certain tier-based registration and notification requirements in order to avoid being subject to a penalty, *i.e.*, the loss of federal grant funding. Accordingly, Pennsylvania's General Assembly sought to comply with this federal legislation by providing for the expiration of prior registration requirements, commonly referred to as Megan's Law III, ... as of December 20, 2012, and for the effectiveness of SORNA [I] on the same date.

Id. at 1203-04 (quotation marks, brackets, and citations omitted).

The Court then found SORNA I violated the *ex post facto* clauses of both the United States and Pennsylvania Constitutions in ***Muniz***. ***See id.*** at 1193, 1218, 1223.

On June 12, 2018, SORNA I was then replaced with SORNA II to remedy the former version's unconstitutional requirements for offenders whose crimes preceded the effective date of SORNA I. Subchapter H of SORNA II governs crimes committed on or after December 20, 2012, whereas, Subchapter I of SORNA II applies to [individuals who were:

(1) convicted of a sexually violent offense committed on or after April 22, 1996, but before December 20, 2012, whose period of registration with the Pennsylvania State Police, as described in section 9799.55 (relating to registration), has not yet expired; or

(2) required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth on or after April 22, 1996, but before December 20, 2012, whose period of registration has not yet expired.

42 Pa.C.S.A. § 9799.52.]

Commonwealth v. Frehafer, 344 A.3d 1070, *1 (Pa. Super. filed July 1, 2025) (unpublished memorandum).⁴

It is this latest version, SORNA II, Subchapter I, that we must interpret in this case. Here, both parties agree subsection 9799.52(1), quoted above, does not apply to Pollard. **See** Appellant's Brief, at 16; Appellee's Brief, at 7-8.

However, the Commonwealth contends that Pollard must register under subsection 9799.52(2). **See** Appellant's Brief, at 16. Pollard argues subsection 9799.52(2) cannot apply to him because, if it did, its retroactive application would be an unconstitutional *ex post facto* punishment. **See** Appellee's Brief, at 9-12.

Subsection 9799.52(2) "considers whether an individual was previously required to register and whether that registration period was still in effect as of February 21, 2018." ***Commonwealth v. Worthington***, 289 A.3d 86, *3 (Pa. Super. filed Nov. 22, 2022) (unpublished memorandum) (citation omitted). As noted above, Pollard was released from prison in 2003, prior to the decision in ***Williams II***. When Pollard was released from prison, he did register with PSP as required under Megan's Law II. He was therefore "required to register with [PSP] under a former sexual offender registration

⁴ Pursuant to Pa.R.A.P. 126(b), this Court may rely upon unpublished memorandum filed after May 1, 2019, for their persuasive value.

law ... after April 22, 1996, but before December 20, 2012[.]” 42 Pa.C.S.A. § 9799.52(2).

The sentence Pollard was serving prior to his release from prison was for IDSI, which, under Megan’s Law II, required Pollard to register as a sex offender for the remainder of his life. **See** 42 Pa.C.S.A. § 9795.1(b)(2) (expired; version in effect Jan. 21, 2003, to Jan. 23, 2005). Therefore, at the time SORNA II was enacted, Pollard’s “period of registration ha[d] not yet expired,” and we agree with the Commonwealth that Pollard is required to register pursuant to subsection 9799.52(2). 42 Pa.C.S.A. § 9799.52(2).

As the plain language of subsection 9799.52(2) applies to Pollard, we turn to the Commonwealth’s argument that the trial court erred in finding the application of subsection 9799.52(2) violates *ex post facto* principles.

Both Pollard and the trial court rely upon **Muniz** and **Commonwealth v. Santana**, 266 A.3d 528 (Pa. 2021) in finding that Pollard’s registration violates the *ex post facto* clauses. However, both **Muniz** and **Santana** interpreted SORNA I, not SORNA II. **See Muniz**, 164 A.3d at 1192; **Santana**, 266 A.3d at 529 n.2. As such, neither case is directly on point herein.

The Pennsylvania Supreme Court addressed whether the retroactive application of SORNA II, Subchapter I, violates the *ex post facto* clauses in **Commonwealth v. Lacombe**, 234 A.3d 602 (Pa. 2020), and found that it did not violate the *ex post facto* clauses because Subchapter I is non-punitive. **See Lacombe**, 234 A.3d at 605-06, 626-27. As the Court stated: “the

threshold question for determining whether the retroactive application of Subchapter I to appellees violates the constitutional prohibition against *ex post facto* laws is whether the requirements of Subchapter I constitute criminal punishment.” **Id.** at 618 (citation omitted).

The Court applied the same standard as enunciated in **Muniz** to determine if Subchapter I of SORNA II constitutes criminal punishment:

We first consider whether the General Assembly’s intent was to impose punishment, and, if not, whether the statutory scheme is nonetheless so punitive either in purpose or effect as to negate the legislature’s nonpunitive intent. If we find the General Assembly intended to enact a civil scheme, we then must determine whether the law is punitive in effect by considering the [**Kennedy v. Mendoza-Martinez**, 372 U.S. 144 (1963) (“**Mendoza-Martinez**”)] factors. We recognize only the clearest proof may establish that a law is punitive in effect. Furthermore, in determining whether a statute is civil or punitive, we must examine the law’s entire statutory scheme.

Id. at 618 (quoting **Muniz**, 164 A.3d at 1208).

The Court noted “the General Assembly’s purpose in enacting Subchapter I was non-punitive, that is, it intended to enact a civil regulatory scheme.” **Id.** Then, the Court evaluated all the **Mendoza-Martinez** factors and held:

As the above **Mendoza-Martinez** analysis clearly reflects, Subchapter I effected significant changes from the original version of SORNA, retroactive application of which we found unconstitutional in **Muniz**. To summarize, we find three of the five factors weigh in favor of finding Subchapter I nonpunitive. Additionally, we give little weight to the fact Subchapter I promotes the traditional aims of punishment and give significant weight to the fact Subchapter I is narrowly tailored to its

nonpunitive purpose of protecting the public. As we have not found the requisite clearest proof Subchapter I is punitive, we may not override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.

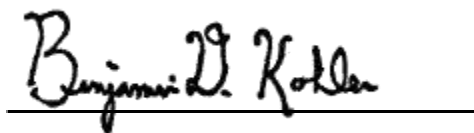
We hold Subchapter I does not constitute criminal punishment, and the *ex post facto* claims forwarded by appellees necessarily fail.

Id. at 626-27 (citations and quotation marks omitted).

As it is clear that Subchapter I is nonpunitive and therefore cannot be an *ex post facto* violation, we are constrained to reverse the order of the trial court and reinstate the 3 charges of failure to comply with 42 Pa.C.S. Ch. 97 Subch. I registration requirements. ***See Commonwealth v. Strickler***, 262 A.3d 508, *5 (Pa. Super. filed Aug. 17, 2021) (unpublished memorandum) (“***Lacombe*** applies equally to individuals who, like [Pollard] were convicted of an offense prior to the enactment of any sex offense registration scheme.”) (citation omitted).

Order reversed. Charges reinstated. Application to quash denied.
Jurisdiction relinquished.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 08/28/2026