

**[J-66-2021] [MO: Wecht, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 23 MAP 2021
	:	
Appellant	:	Appeal from the Order of the
	:	Superior Court at No. 3488 EDA
	:	2017 dated October 20, 2020
v.	:	Vacating the Judgment of Sentence
	:	and Reversing the conviction in the
	:	Monroe County Court of Common
DAVID SANTANA,	:	Pleas, Criminal Division, at No. CP-
	:	45-CR-0000031-2017 dated July 18,
Appellee	:	2017.
	:	
	:	ARGUED: October 26, 2021

DISSENTING OPINION

CHIEF JUSTICE BAER

DECIDED: December 22, 2021

I respectfully dissent from the majority opinion because I view the issues presented in this case as distinct from those addressed in *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017) (plurality). Contrary to my colleagues and as explained below, I conclude that application of the General Assembly’s 2012 enactment of Section 4915.1(a), entitled “failure to comply with registration requirements,” to Appellee David Santana’s alleged violation of that statutory provision in 2016 does not constitute an *ex post facto* violation.¹

¹ Section 4915.1(a) provides as follows:

(a) Offense defined. -- An individual who is subject to registration under 42 Pa.C.S. § 9799.13 (relating to applicability) commits an offense if he knowingly fails to:

(1) register with the Pennsylvania State Police as required under 42 Pa.C.S. § 9799.15 (relating to period

Accordingly, I would reverse the order of the Superior Court and reinstate the trial court's judgment of sentence.

Our courts have long recognized that the *ex post facto* clauses of the United States and Pennsylvania Constitutions prohibit, *inter alia*, “[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.”² *Calder v. Bull*, 3 U.S. 386, 390 (1798). As the majority observes, the United States Supreme Court further explained that “the focus of the *ex post facto* inquiry” is on whether the relevant change in law “increases the penalty by which a crime is punishable.” *California Dept. of Corrections v. Morales*, 514 U.S. 499, 506 n.3 (1995).

I continue to agree that this standard was met in *Muniz*. In that case, we held that the 2012 enactment of punitive registration requirements in the Sexual Offender Registration and Notification Act (SORNA) constituted an *ex post facto* violation when applied to individuals whose relevant sexual offenses occurred prior to 2012. Very simply, application of SORNA registration requirements in *Muniz* was unconstitutional because it applied 2012 registration requirements to pre-2012 crimes, and it increased the penalty

of registration), 9799.19 (relating to initial registration) or 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police);

(2) verify his address or be photographed as required under 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25; or

(3) provide accurate information when registering under 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25.

18 Pa.C.S. § 4915.1.

² See U.S. CONST. art. I, § 10 (“No State shall . . . pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.”); PA. CONST. art. I, § 17 (“No *ex post facto* law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.”).

imposed on the offender because it substituted punitive registration requirements for the lesser, non-punitive registration requirements (or, indeed, the lack of registration requirements), which were applicable when the offenses were committed.

I view the issue in *Muniz* and the question raised in this case as distinguishable based upon the timeline of the relevant criminal conduct. Unlike *Muniz*, the criminal act involved in this case is not the pre-2012 sexual offense, but rather the distinct crime of “failure to comply with registration requirements” by failing to “provide accurate information when registering,” 18 Pa.C.S. § 4915.1(a)(3). As applied to this case, Appellee Santana’s failure to register occurred years after the 2012 enactment of Section 4915.1(a)(3). Thus, it does not involve a retroactive application of increased punishment, but instead the prospective application of the statute to acts that were committed subsequent to its passage.

Specifically, while Santana partially complied with the registration provisions between 2015, when he moved to Pennsylvania, and December 2016, when he was charged with violating Section 4915.1(a)(3), he nonetheless failed to provide the requisite accurate information during that time when he did not disclose a change in phone numbers, the commencement of employment, and the use of internet identifiers. As Santana’s acts that violated Section 4915.1(a) occurred after its enactment, I conclude that the application of the statute to Santana does not implicate *ex post facto* protection.