

Recent Updates to SORNA Create Vagaries

By Regina M. Parker

IN JULY 2017, THE SUPREME COURT OF Pennsylvania in *Commonwealth v. Muniz* declared the Sexual Offender Registration and Notification Act punitive in nature and deemed portions of the act unconstitutional. This decision has left many unanswered questions, Aaron Marcus told attendees during Philadelphia Bar Association CLE hosted by the Criminal Justice Section “SORNA Shake Up: Why Everything You Thought You Knew May Be Wrong!” on Jan. 25. Marcus is an assistant defender with the Defender Association of Philadelphia.

In *Muniz*, defendant was found guilty of indecent assault in 2007. At that time, he would have been required under Megan’s Law to register as a sex offender for 10 years. However, he failed to appear, and was not apprehended again until 2014, following the Dec. 20, 2012, implementation date for SORNA. It should also be noted that all prior versions of Megan’s Law were repealed in 2012. Therefore, under the SORNA regulations, *Muniz* became subject to a lifetime registration requirement. He challenged that aspect of his sentence. The court deemed SORNA’s registration provisions as punishment

and held that retroactive application of SORNA violated state and federal ex post facto clauses, which prevent an increase in punishment for a crime after the fact.

Marcus said that this decision essentially separates the registrants in Pennsylvania into two separate classes. The outcome is that individuals who committed an offense prior to Dec. 20, 2012, SORNA’s effective date, cannot be registered under the law as it stands. However, he added that *Muniz* does not completely invalidate SORNA. SORNA remains law in any instance where the crime or offense was committed on or after Dec. 20, 2012.

For new cases, the *Muniz* decision changes little. The registration process will still apply to prospective registrants. Marcus said that the only change is that the process for determining whether someone meets the criteria for a sexually violent predator, or SVP, is unconstitutional because certain procedural protections must apply. That was the holding in *Commonwealth v. Butler*. At the moment, anyone who currently has a conviction for SORNA offenses are not getting processed as an SVP.

Marcus told attendees that the consequences of *Muniz* should impact how we need to think about registration

obligations and the law surrounding both prospective and retroactive registrants. He explained that with respect to people who committed their crimes before Dec. 20, 2012, the effect will be significant. *Muniz* leaves a gap and does not address what will happen to these individuals who were retroactively registered under SORNA. There is no answer to this question. However, *Muniz* essentially requires the removal of more than 14,000 current registrants whose crimes occurred prior to SORNA, Marcus said. This is because there is no existing legal mechanism that requires these individuals to register.

It is too early to tell what the courts will do with SORNA. Marcus mentioned that he expects to see additional challenges in the future. However, the effect of *i* is to immediately alter the registration terms of thousands of registrants across Pennsylvania who saw their periods of registration increase dramatically on the date SORNA took effect.

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Susan Lin, cochair, Criminal Justice Section, and Aaron Marcus at the Philadelphia Bar Association CLE on Jan. 25.

Photo by Wesley Terry