

JOSEPH P. GREEN, JR.

Atty I. D. No. 32604

138 West Gay Street

West Chester, PA 19380

Telephone: (610) 692-0500

Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA : IN THE MONTGOMERY COUNTY

: COURT OF COMMON PLEAS

VS.

: CRIMINAL DIVISION

WILLIAM H. COSBY, JR.

: No. CP-46-CR-0003932-2016

MOTION FOR DECLARATION OF UNCONSTITUTIONALITY

AND NOW, Comes defendant, and respectfully requests that this Honorable Court enter an Order declaring that SORNA II may not be retroactively applied to him. In support of that Motion he sets forth the following:

1. Defendant stands charged with 3 counts of Aggravated Indecent Assault related to the complaint of a single complainant. He has been found guilty of those charges, and is awaiting sentencing and appeal.

2. After the entry of the jury verdict, the Commonwealth requested and the Court directed that an "assessment" be conducted. That procedure has now been completed by a single member of the Board. The District Attorney has filed a Praecipe for a hearing, requesting that the Court determine whether the defendant should be deemed to be a sexually violent predator.

3. The true facts establish that this defendant is not a sexually violent

predator. The single Board member who conducted the “assessment” did not conduct any “hearing” and considered and apparently credited largely irrelevant and improper information, apparently without fairly considering the propriety and credibility of the sources of the information relied upon, without any right to a fair hearing, and without confrontation or cross-examination.

4. The process undertaken here was declared to be unconstitutional by the Pennsylvania Supreme Court in its decision in *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017). The process sought to be invoked by the District Attorney here is foreclosed by the Superior Court’s decision in *Commonwealth v. Butler*, 173 A.3d 1212 (Pa. Super. 2017) (SVP statute is unconstitutional under *Apprendi*).

5. The Legislature’s efforts to re-instate the retroactive effects of SORNA culminated in the enactment of Act 10 of 2018, (SORNA II) (signed into law by Governor Wolfe on February 21, 2018) which purports to apply retroactively to offenses which occurred before December 20, 2012.

6. The District Attorney’s request for a hearing on the application of SORNA II seeks to impose retroactively on this defendant (1) the obligation to submit to lifetime reporting to the state police and (2) SVP status, all without confrontation, without trial by jury and without proof beyond a reasonable doubt in violation of defendant’s state and federal constitutional protections.

7. SORNA II also violates this defendant’s right to reputation without

confrontation, without trial by jury and without proof beyond a reasonable doubt in violation of defendant's state constitutional protections.

8. SORNA II is so similar to the version of SORNA declared unconstitutional in *Commonwealth v. Muniz* and *Commonwealth v. Butler* that SORNA II may not be applied retroactively in light of those rulings.

9. The unconstitutionality of SORNA II is generally accepted by the Courts of Common Pleas. See, e.g., *Commonwealth v. Lacombe*, No. CP-46-CR-0001445-1997 (Montgomery Cty., Carpenter, J.); *Commonwealth v. Torsilieri*, No. CP-15-CR-0001570-2016 (Chester Cty., Sarcione, J.).

10. No constitutional SORNA II hearing may be conducted in response to the District Attorney's Praecipe, as there is no constitutional statute to apply to this defendant.

WHEREFORE, defendant respectfully requests that this Honorable Court enter an Order declaring that Act 10 of 2018 is unconstitutional, and may not be applied retroactively to this defendant.

Respectfully submitted,
law offices of
JOSEPH P. GREEN, JR.
a professional corporation

Dated: 7/24/2018

By: 

Joseph P. Green, Jr.

VERIFICATION

JOSEPH P. GREEN, JR. counsel herein, hereby certifies that the factual statements contained in the within document are true and correct to the best of his knowledge, information and belief. Counsel acknowledges that this certification is made subject to the penalties contained in Section 4904 of the Crimes Code (Unsworn Falsification to Authorities), 18 Pa.C.S. §4904.

Dated: July 24, 2018

By: _____


Joseph P. Green, Jr

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 24, 2018
Attorney ID No. 32604

By: _____


Joseph P. Green, Jr

JOSEPH P. GREEN, JR.

Atty I. D. No. 32604

138 West Gay Street

West Chester, PA 19380

Telephone: (610) 692-0500

Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA : IN THE MONTGOMERY COUNTY

: COURT OF COMMON PLEAS

vs.

: CRIMINAL DIVISION

WILLIAM H. COSBY, JR.

: No. CP-46-CR-0003932-2016

ORDER

AND NOW, this day of , 2018, upon consideration of the defendant's Motion seeking a declaration that SORNA II is unconstitutional, and after hearing and argument, it is hereby ORDERED and DIRECTED that SORNA II may not be retroactively applied to defendant.

BY THE COURT:

J.