

# FAYETTE LEGAL JOURNAL

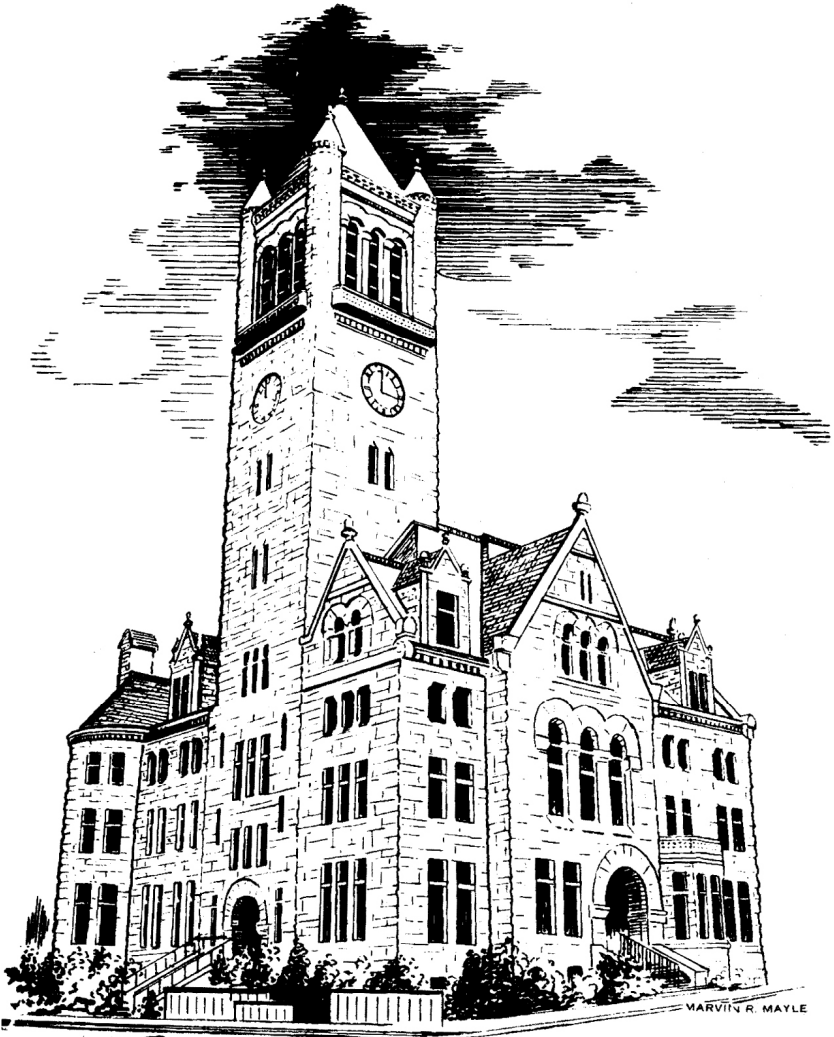
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## FAYETTE LEGAL JOURNAL

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### Third Publication

**FLORA JEAN ESSIG**, late of Masontown,  
Fayette County, PA (3)

*Personal Representatives:* David L. Essig  
and Kim M. Essig  
c/o Davis and Davis  
107 East Main Street  
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*Attorney:* Gary J. Frankhouser

**ANDREW MIGYANKO**, late of Georges  
Township, Fayette County, PA (3)

*Administrator:* Mark Migyanko  
c/o P.O. Box 953  
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*Attorney:* Ricardo J. Cicconi

**PATRICIA A. MILLER**, late of Fairchance,  
Fayette County, PA (3)

*Executor:* Wayne David Moser  
c/o Adams and Adams  
55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason Adams

**MARGARET PRICE**, late of Scottdale,  
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*Administratrix:* Carolyn Price  
111 Broad Street  
Scottdale, PA 15683  
c/o 108 Lexington Avenue  
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*Attorney:* M. Elizabeth Williams

**RONALD KELLY SABO**, late of Brownsville  
Township, Fayette County, PA (3)

*Administrator:* Ronald V. Sabo  
c/o Adams and Adams

55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason Adams

**GEORGE R. SMALLEY**, late of Stewart  
Township, Fayette County, PA (3)

*Co-Executors:* George R. Smalley, Jr. and  
Teresa G. Christman  
c/o Proden and O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

### Second Publication

**GEORGE H. BURKETT**, late of Washington  
Township, Fayette County, PA (2)

*Executor:* Debra L. Morrow  
1243 Ridge Road  
Rostraver Township, PA 15012  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

**EDITH A. MASNEY**, late of Luzerne  
Township, Fayette County, PA (2)

*Executrix:* Diana S. Green  
c/o 9 Court Street  
Uniontown, PA 15401  
*Attorney:* Vincent J. Roskovensky, II

**DOROTHY M. PAQUET, a/k/a DOROTHY  
PAQUET**, late of Fayette City, Fayette County,  
PA (2)

*Executrix:* Chris A. Pierce  
900 Fayette City Road  
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Elizabeth, PA 15037  
*Attorney:* Daniel F. Bekavac, Jr.

**JAMES E. SUMEY**, late of South Union  
Township, Fayette County, PA (2)

*Executor:* Bradley A. Sumej  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

## First Publication

**ANGELA BROOKS**, late of South Connellsville, Fayette County, PA (1)

*Executor:* William A. Brooks  
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Connellsville, Pa 15425  
c/o Snyder & Snyder  
17 North Diamond Street  
Mt. Pleasant, PA 15666  
*Attorney:* Marvin Snyder

**THERESA M. BROOKS**, late of Uniontown, Fayette County, PA (1)

*Personal Representative:* Vincent T. Brooks  
c/o P.O. Box 953  
Uniontown, PA 15401  
*Attorney:* Ricardo J. Cicconi

**GERY GMITER, a/k/a GERY J. GMITER**, late of South Union Township, Fayette County, PA (1)

*Administrator:* Nicole Bounds  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

**JANET HILTABIDEL**, late of Connellsville, Fayette County, PA (1)

*Co-Executor:* Arnold Hiltabidel  
6470 Lucky Lane  
Liberty Township, OH 45044  
*Co-Executor:* Victoria S. Cowles  
16 Granite Peak Court  
Oroville, CA 95966  
c/o Mears, Smith, Houser & Boyle, P.C.  
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Greensburg, PA 15601  
*Attorney:* Kim Ross Houser

**MELODIE SUE HODNIK, a/k/a MELODIE S. HODNIK**, late of Dunbar Township, Fayette County, PA (1)

*Personal Representative:* Matthew D. Maple  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**BERTHA LOUISE NICHOLSON**, late of Dunbar Township, Fayette County, PA (1)

*Executor:* Janet Mickey  
c/o Rowan Law Office  
890 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Mark Rowan

**ALAN WILSON**, late of Franklin Township, Fayette County, PA (1)

*Administrator:* Daniel L. Rockwell  
255 Sleepy Hollow Road  
Smithfield, PA 15478  
c/o 111 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert Harper

## LEGAL NOTICES

**IN THE UNITED STATES  
DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA  
CIVIL ACTION NO. 2:19-cv-00102-MJH**

UNITED STATES OF AMERICA,  
Plaintiff  
vs.

DEBORAH S. LEE,  
Defendant

**MARSHAL'S SALE:** By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at and being more fully described at Fayette County Instrument No. 200400010638, Book 2909, Page 1640.

**SAID SALE** to be held at the Fayette County Courthouse, in the hallway outside of the Sheriff's Office, 61 E. Main Street, Uniontown, PA 15401 at **10:00 a.m.** prevailing standard time, on **February 12, 2020**.

**ALL** that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No. 21-11-0185 recorded in Fayette County, Pennsylvania, commonly known as: **216 Smithfield Road, Masontown, PA 15461**.

IDENTIFIED as Tax/Parcel #: 21-11-0185 in

the Deed Registry Office of Fayette County, Pennsylvania. HAVING erected a dwelling thereon known as 216 SMITHFIELD ROAD, MASONTOWN, PA 15461. BEING the same premises conveyed to Deborah S. Lee, dated June 17, 2004, and recorded on June 25, 2004 in the office of the Recorder of Deeds in and for Fayette County, Pennsylvania. Seized and taken in execution as the property of Deborah S. Lee at the suit of the United States of America, acting through the Under Secretary of Rural Development on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 2:19-cv-00102.

**TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth (30th) day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at [www.resales.usda.gov](http://www.resales.usda.gov).

**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
v.	:	
	:	
RYAN THOMAS REESE,	:	No. 1118 of 2015
Defendant.	:	President Judge John F. Wagner, Jr.

**OPINION AND ORDER**

Wagner, P.J.

January 2, 2020

Before the Court is the first Amended Post Conviction Relief Act Petition of the Defendant, Ryan Reese. After a trial by jury, on November 9, 2016, the Defendant was convicted of Corruption of Minors, 42 Pa. C.S. §6301(A)(1)(ii), a felony of the third degree. On January 25, 2017, the Defendant was sentenced to nine (9) to twenty-four (24) months incarceration. After an assessment was performed by Herbert Hayes of the Sexual Offender Assessment Board, the Defendant was determined not to be a sexually violent predator. The Defendant filed a Notice of Appeal to the Superior Court on May 23, 2018 and that Court affirmed the Defendant's Judgment of Sentence. Thereafter, on June 22, 2018, the Defendant filed for Allowance of Appeal to the Pennsylvania Supreme Court and the Court denied him relief on November 20, 2018. On May 17, 2019, the Defendant filed a pro se Motion for Post Conviction Relief. On September 10, 2019, his appointed counsel filed an amended motion. This Opinion and Order follows the hearing held on that motion.

In his Amended Petition, the issues raised are as follows:

1. Counsel for the Defendant was ineffective for failing to effectively cross-examine Corporal Auchinbaugh as regarding the phone contacts between the Defendant and the victim, S.L.
2. Counsel for the Defendant was ineffective for failing to effectively cross-examine corporal Auchinbaugh as to the original reason for the surveillance.
3. The Defendant's Sexual Offender Registration Requirements are unconstitutional.

**BACKGROUND**

On October 3, 2013, when the victim, S.L., was fifteen (15) years of age, she resided in an apartment with her eighteen (18) year old boyfriend. The Connellsville Police entered the apartment and located marijuana, drug paraphernalia and a hand gun. The

victim's boyfriend was arrested for possession of the drugs. The victim was informed that she would be charged as a juvenile with possession of drug paraphernalia. After the incident, the victim was contacted by the Defendant, who was thirty-eight (38) years of age at the time, and she met him at the Connellsville Police gym. After a casual discussion, the victim tried on a weight vest. When she complained the vest was too heavy, the Defendant removed it but in the process he had contact with her nipple. The victim assumed the contact was accidental.

In November, 2013, the Defendant informed the victim that her boyfriend had to tum himself in on the October 3rd charges. He suggested that the victim might be able to help her boyfriend and herself if she acted as a confidential informant. On her birthday on November 20th when she turned sixteen years of age, the Defendant gave the victim a shirt and a cookie. In December, 2013, the victim met with the Defendant in his vehicle, he asked her to have sex with him and she refused. He did kiss her and put his hand down her pants, and then asked her to perform oral sex on him. She agreed and did perform oral sex on him in hopes that the charges would go away.

Approximately a month later, the Defendant had the victim act as a confidential informant for two drug buys. He had informed her that if she did three drug buys then her charges would be dismissed. The Defendant told her that in place of the third drug purchase, she could work off her charge if she performed oral sex on him, which she did.

In February, 2014, while investigating the victim's mother for the mother's involvement with the theft of some jewelry, the mother revealed the sexual relationship between her daughter and the Defendant. When Troopers spoke with the victim regarding her relationship with the Defendant, she confirmed that she was a confidential informant on two drug purchases and also performed oral sex on the Defendant to get her charges dismissed. In an attempt to get the Defendant to incriminate himself, the victim agreed to contact the Defendant while the call was recorded by the Troopers. No evidence was obtained from the telephone contacts or their texts.

On May 16, 2014, the mother informed the Trooper Auchinbaugh that her daughter was meeting the Defendant that evening. Trooper Auchinbaugh and six other troopers arranged to provide surveillance of that meeting. They followed the Defendant's vehicle with the Defendant and the victim inside. The vehicle parked in a gravel parking lot next to a school bus and remained there for twenty minutes. Trooper Auchinbaugh was unsure of the purpose of the meeting. He testified that he was unsure whether it was to conduct a drug purchase or involve a sexual encounter. He testified that if the undercover officers approached the vehicle, the Defendant might believe he was being robbed and react. Due to his concerns, the officers did not approach the vehicle or intervene. After the vehicle left the lot, the Troopers followed the vehicle. Later the victim admitted that they had sexual intercourse in the backseat of his vehicle that night.

## DISCUSSION

1. Counsel for the Defendant was ineffective for failing to effectively cross-examine Corporal Auchinbaugh as regarding the phone contacts between the Defendant and the victim, S.L.

When a Defendant makes a claim of ineffectiveness of his trial counsel on direct appeal, the claim is evaluated according to the three-prong performance and prejudice test established by *Commonwealth v. Pierce*, 527 A.2d 397 (Pa. 1987). To establish ineffectiveness of counsel, the defendant must establish that the issue underlying the claim has arguable merit and that defense counsel's acts or omissions were not reasonably designed to advance the interests of the defendant. Prejudice, the third prong, must be met by demonstrating that there is a reasonable probability that, but for counsel's errors or omissions, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S.668 (1984). To be entitled to relief, the defendant must meaningfully discuss each of the three prongs. *Commonwealth v. Fears*, 86 A.3d 795 (Pa. 2014).

Counsel is presumed to be effective. Counsel is accorded broad discretion to determine tactics and strategy. *Commonwealth v. Thomas*, 744 A.2d 713 (Pa. 2000). It is the defendant's burden to establish ineffective assistance of counsel. *Commonwealth v. Speight*, 677 A.2d 317 (Pa. 1996). To establish an ineffectiveness of counsel claim, the defendant must allege in detail the basis for his claim by citing to the record or specific facts that clearly and distinctly establish the claim. Failure to do so precludes review of the claim. *Commonwealth v. McGill*, 680 A.2d 1131 (Pa.1996).

The Defendant asserts that the Trooper testified to three hundred and seventy (370) telephone contacts between the victim and himself, with the majority of the contacts made by the victim. He alleges that the number of text messages and telephone contacts between them initiated by the victim demonstrates that she was attempting to pursue a sexual relationship with him and therefore he should not be guilty of the charge of Corruption of Minors.

The Defendant was charged under the following subsection of the Corruption of Minors statute:

Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offense) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.

18 Pa. C.S. §6301(a)(1)(ii).

The provisions of the Corruption of Minors statute evidence a clear intent to provide penalties for acts that corrupt the morals of a minor that are sexual offenses, irrespective of whether the sexual offense was committed by an adult defendant or a minor victim. *Commonwealth v Kelly*, 102 A.3d I 025 (Pa.Super. 2014). The plain language of the second part of subsection (a)(1)(ii) is unambiguous in that the Defendant is culpable when he acts or abets in a minor 's commission of a single offense under Chapter 31. *Id.* As the victim was under eighteen years of age and the Defendant was twenty years older, his participation in a sexual act with the minor was s violation of the statute. As the Defendant engaged in sexual acts with the minor victim, those acts are in violation of the statute. Whether the minor initiated the contact does not make the acts of the adult any less illegal or a violation of the statute. Therefore, his attorney's cross-examination of the victim regarding the number of calls to the Defendant by the victim would have not impacted the outcome of the verdict, do not mitigate his guilt, thus, the



Defendant's argument is without any merit.

2. Counsel for the Defendant was ineffective for failing to effectively cross-examine corporal Auchinbaugh as to the original reason for the surveillance.

The Defendant asserts that Corporal James Auchinbaugh testified at the Preliminary Hearing that the initial purpose of the surveillance was a potential drug encounter but then changed his testimony at the time of trial to the purpose of the surveillance was for a potential sexual encounter. His counsel's failure to bring out the discrepancy between his testimony at the preliminary hearing and at trial would have raised doubts as to the truthfulness of the Trooper.

At the preliminary hearing, after learning about a meeting between the Defendant and the victim, Trooper Auchinbaugh testified that he planned a surveillance of them. (Preliminary Hearing at pg. 86). The Trooper testified that the victim's mother had informed him of the meeting but she was not aware of its purpose and was unaware that her daughter was a confidential informant. (N.T. Preliminary Hearing at pg. 86). Trooper Auchinbaugh had not been informed by the victim of the meeting, As he was unaware of the Defendant and victim's intentions, when the car parked, he decided not to intervene Id.

At trial, Trooper Auchinbaugh testified that surveillance of the Defendant and victim was arranged after the victim's mother informed him of their meeting. However, the officers were unaware of the purpose of the proposed meeting. (N.T. at pg. 1 33. Trooper Auchinbaugh testified that they weren't sure whether the Defendant and the victim intended to conduct a drug purchase or if their meeting was of a sexual nature. Id. When the Defendant parked his personal vehicle, the troopers could not see inside the vehicle due to the tinting on the windows. (N.T. at pg. 134). Trooper Auchinbaugh testified that if several of the undercover officers approached the vehicle, the Defendant might assume it was a robbery and this could put lives in danger so he decided not to intervene. (N.T. at pgs. 141-142).

The testimony of the Trooper was essentially the same at both the preliminary hearing and at the trial. It is apparent that there was no issue that counsel could have used to impeach the credibility of the trooper. Therefore, this allegation of ineffectiveness is without merit and provides no basis for relief under the PCRA.

3. The Defendant's Sexual Offender Registration Requirements are unconstitutional.

The Defendant asserts that the registration requirements that he is subject to under the Sexual Offender Registration and Notification Act (SORNA) are unconstitutional. He asserts that the reporting requirements of SORNA are unconstitutional, he should be resentenced with the registration requirements removed from his sentence. The Defendant alleges that the retroactive application of SORNA to his case violates the ex post facto clause of the United States Constitution. *Commonwealth v. Muniz*, 154 A.3d 1 189, 1 218 (Pa, 2017). At the hearing, it was generally alleged that the ruling in *Muniz* was applicable to the Defendant's case and that the retroactive application of SORNA violates the ex post facto clause of the United States Constitution. In *Muniz*, the Su-

preme Court did not determine that the registration and reporting requirements are unconstitutional but rather that their retroactive application was unconstitutional.

The constitutional prohibition against ex post facto laws ensures fair warning about what constitutes criminal conduct, and what the punishments for that conduct entail. *Commonwealth v. Moore*, 2019 WL 5415854 (2019 Pa.Super. 320). An individual is not entitled to less punishment under ex post facto laws, but rather he is entitled to fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was committed. *Id.* The Pennsylvania Supreme Court in *Muniz* declared that the retroactive provisions of SORNA to be punitive in nature and held that retroactive application of the registration and reporting requirements of SORNA violated the ex post facto clauses of the United States and Pennsylvania Constitutions. *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1189 (2017) and *Pennsylvania v. Muniz*, 138 S.Ct. 925, 200 L.Ed.2d 213 (2018).

SORNA went into effect on December 20, 2012. The Defendant's initial contact with the victim in this case was on October 3, 2013. In December, 2013, after the victim turned sixteen the Defendant asked the victim to have sex with him and had her perform oral sex on him in his vehicle. The victim testified that the Defendant engaged in other sexual acts with her during 2014. There was no retroactive application of SORNA as the acts that form the basis for the Corruption of Minors charge occurred after the effective date of SORNA. The Defendant was not determined to be a sexually violent offender and any changes related to that classification would not impact the Defendant. This argument is without merit and provides no relief for the Defendant.

#### ORDER

AND NOW, this 2nd day of January, 2020, upon consideration of the Amended Post Conviction Relief Act Petition and the testimony presented at the hearing in this matter, it is hereby ORDERED and DECREED that the Defendant's Amended Post Conviction Relief Act Petition is hereby DENIED.

BY THE COURT:  
WAGNER, P.J.

ATTEST:  
Clerk of Courts



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