

STATE OF MICHIGAN
SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Case No. 153696
COA No. 325449
Gratiot CC. 2014-007061-FH

DAVID ALLEN SNYDER,
Defendant-Appellant.

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BRIEF IN SUPPORT OF WILLIAM SIM SPENCER'S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF
IN SUPPORT OF DEFENDANT-APPELLANT

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Dated: October 23, 2018.

TABLE OF CONTENTS

INDEX OF AUTHORITIES..... iii

STATEMENT OF JURISDICTION..... iv

STATEMENT OF FACTS 6

ARGUMENTS..... 8

I. THE REQUIREMENTS OF SORA CONSTITUTE PUNISHMENT BECAUSE THEY ARE CONSTRUED WITH THE FINALITY OF JUDGMENTS RULE TO CREATE AN IRREBUTTABLE PRESUMPTION WHICH REQUIRES LESS EVIDENCE TO CONVICT A DEFENDANT ON A CRIMINAL ACCUSATION OF FAILURE TO COMPLY WITH THE “REMEDIAL” REQUIREMENTS OF SORA..... 9

A. SORA’s Remedial and Punitive Parts must be construed in Pari Materia at SORA Criminal Trials. 10

B. Construction of SORA’s remedial and punitive parts with the Finality of Judgments Rule Results in an Unconstitutional Irrebuttable Presumption at Criminal Trials. 10

1. Where the Underlying Criminal Proceeding Was Infected by Fatal Structural Error..... 12

2. Where the Underlying Criminal Proceeding Was Infected by Non-Harmless Procedural Error. 15

3. A Challenge to the Prosecutor’s Introduction of Documentary Evidence of a Prior Conviction, Without Proper Foundation, is Not a Collateral Attack on the Prior Conviction. 17

II. THE SEVERAL AFFIDAVITS SUBSCRIBED AND SWORN BY SORA REGISTRANTS AND ATTACHED TO THIS AMICUS BRIEF DEMONSTRATE THE DEVASTATING AFFECT THAT SORA HAS ON THE LAW-ABIDING CITIZENS WHO ARE TRYING TO RECLAIM A PLACE IN SOCIETY..... 18

CONCLUSION..... 19

INDEX OF AUTHORITIES

Cases

<i>Aroma Wines & Equipment, Inc., v. Columbian Distribution Servs., Inc.</i> , 497 Mich. 337 (2015).....	9
<i>Calder v. Bull</i> , 3 U.S. (3 Dall.) 386, 390, 1 L.Ed 648 (1798).....	9, 14
<i>Elba Twp. v Gratiot County Drain Comm'r</i> , 493 Mich. 265 (2013).....	9
<i>Hughes v Gault</i> , 271 US 142 (1926).....	11
<i>In re Winship</i> , 397 U.S. 358 (1970).....	11
<i>McCormick, Evidence</i> (2d ed), § 342, p 804.....	11
<i>Mullaney v Wilbur</i> , 421 U.S. 684 (1975).....	10, 11
<i>People v Aaron</i> , 409 Mich. 672 (1980).....	11
<i>People v Fountain</i> , 71 Mich. App 491.....	10
<i>People v Lee</i> , 489 Mich. 289 (2011).....	15, 17
<i>People v Spencer</i> , 85 th District Court Case # 16-390-FY.....	8
<i>Richardson v Jackson County</i> , 432 Mich. 377 (1989).....	10

Statutes

<i>In re Winship</i> , 397 US 358 (1970).....	14
MCL 750.520a.....	12
Model Criminal Jury Instructions 20.2.....	12
<i>Morissette v. United States</i> , 342 US 246 (1952).....	13
<i>People v Krukilowski</i> , 60 Mich. App 28, 29-30 (1975).....	17
<i>People v McGilmer</i> , 95 Mich. App. 577 (1980).....	18
<i>People v Wager</i> , 233 Mich. App 1, 5 (1998).....	17
<i>People v Whalen</i> , 412 Mich. 166, 170 (1981).....	17
<i>Sandstrom v Montana</i> , 442 US 510 (1979).....	13
<i>United States v. U.S. Gypsum Co.</i> , 438 US 422 (1978).....	13

Treatises

2A Sutherland, Statutory Construction (4th Ed), § 46.06.....	8
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Court Rules

MCR 2.601.....	24
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STATEMENT OF JURISDICTION

MCR 7.303B

STATEMENT OF QUESTIONS INVOLVED

- I. WHETHER THE REQUIREMENTS OF THE SEX OFFENDERS REGISTRATION ACT (SORA), MCL 28.721 ET. SEQ. AMOUNT TO “PUNISHMENT,” SEE PEOPLE V EARLE, 495 MICH. 33 (2014), SEE ALSO DOES # 1 – 5 V SNYDER, 834 F 3RD 696, 703-706 (CA 6, 2016), CERT. DEN. SUB NOM SNYDER V JOHN DOES # 1 – 5, 138 S CT 55 (OCTOBER 2, 2017)?

Plaintiff-Appellee says: No.
Defendant-Appellant says: Yes.
Amicus William Sim Spencer says: Yes.

- II. WHETHER THE DEFENDANT’S CONVICTION PURSUANT TO MCL 28.729 FOR FAILURE TO REGISTER UNDER SORA IS AN EX POST FACTO PUNISHMENT, WHERE THE REGISTRY HAS BEEN MADE PUBLIC, AND OTHER REQUIREMENTS ENACTED, ONLY AFTER THE DEFENDANT COMMITTED THE LISTED OFFENSE THAT REQUIRED HIM TO REGISTER, US CONST, ART I, § 10; CONST 1963, ART 1, § 10?

Plaintiff-Appellee says: No.
Defendant-Appellant says: Yes.
Amicus William Sim Spencer says: Yes.

STATEMENT OF FACTS

Do the requirements of SORA amount to “punishment”? To be clear, Amicus Spencer points no finger at SORA’s remedial requirement to register. The header of 1994 PA 295 introduces SORA, in relevant part, as:

“AN ACT to require persons convicted of certain offenses to register ... and to prescribe penalties and sanctions.”

The header of 1995 PA 295 makes clear that SORA’s requirements concerning sex offender registration are remedial. But it makes equally clear that SORA’s requirements concerning SORA’s criminal procedure have always been punitive. Spencer argues that SORA is unconstitutional on its face, because construction of its remedial and punitive requirements with the Finality of Judgments Rule allows the prosecution to convict on less evidence on an accusation of failure to comply with the remedial part of SORA. While the legislature may have separated SORA’s punitive and remedial parts at the Capitol, it was for naught where the glue provided by the Finality of Judgments Rule binds the remedial and punitive parts of SORA together to deprive the substantive rights of defendants at criminal proceedings across the state.

Amicus Spencer has a direct interest in the outcome of this case. Regarding Spencer, the Court has held:

On order of the Court, the motion for immediate consideration is DENIED. The application for leave to appeal the September 21, 2012 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). The later changes to [SORA] did not render defendant’s 2001 guilty plea involuntary. The proper means of obtaining relief, if any, for the retroactive application of new restraints on liberty imposed by the amendments to the SORA would be for the defendant to raise his *ex post facto* claims in a civil action for declaratory judgment on his release from prison.¹

¹ *People v William Sim Spencer*, 493 Mich. 939 (2013).

Spencer is currently directly involved in civil² and criminal³ cases involving SORA, which are each on review at the Court of Appeals.

Common to both Defendant Snyder and Amicus Spencer, is that on one hand, the legislature has declared that the registration requirements of SORA are remedial.⁴ But on the other hand, SORA imposes punishment for failure to comply with the remedial part of SORA.⁵ Despite the legislative attempt to separate the “remedial” part of SORA from its “punitive” part, it cannot be avoided that at a SORA criminal trial, these bifurcated parts are construed with the Doctrine of Finality of Judgments to constitute a criminal offense.

The remedial part of SORA and the punitive part of SORA are in *pari materia*. At a SORA criminal trial, the remedial part of SORA has no force and effect without application of the punitive part of SORA - - *and vice versa*. The problem is that when the remedial and punitive parts of SORA are construed with the Finality of Judgments Rule, the result gives rise to an irrebuttable presumption at a criminal trial of the factual accuracy, and of the legal validity, of the government’s documentary evidence of “a prior conviction which required the defendant to comply” with the remedial part of SORA.

The issues presented by this Amicus Brief are not hypothetical. Amicus Spencer’s *after-quash* cross-appeal is now before the Court of Appeals in *People v Spencer*, COA # 343468. In that criminal case, the special prosecutor assigned by the attorney general appealed after the circuit court quashed the bind-over to stand trial under SORA’s punitive part. Because the circuit court found that Spencer was not informed of the nature and cause of the criminal accusation, the irrebuttable presumption issue was not resolved. In his brief on cross-appeal, Amicus Spencer

² *Spencer v Department of State Police Director*, COA # ?

³ *People v William Sim Spencer*, COA # ?

⁴ MCL 28.721a.

⁵ MCL 28.729.

argues that the SORA charges against him were based on construction of the Finality of Judgments Rule with both SORA's remedial and punitive parts. These three components are necessary to manifest a requirement that allows the prosecution to convict on less evidence on an accusation of failure to comply with SORA.

During the SORA criminal proceedings against Spencer referenced above, Magistrate Mead of the 85th District Court of Benzie County, examined the documentary evidence of a prior conviction and did not dispute Spencer's record supported assertion that his prior conviction was infected by both structural and non-harmless procedural error.⁶ But with his next breath, the magistrate determined that the Finality of Judgments Rule bars Spencer from challenging the factual accuracy and legal validity of the government's documentary evidence to establish the criminal element of: "a prior conviction which required the defendant to register" under SORA's "remedial" part.

Thus, according to the 85th District Court of Benzie County, construction of SORA's remedial and punitive parts with the Finality of Judgment Rule allows the prosecution to convict on less evidence, on an accusation of failure to comply with SORA's remedial part. In other words, when SORA's legislature-separated remedial and punitive parts are construed together with the Finality of Judgments Rule in the criminal courts, the result is a requirement that construction of SORA's remedial and punitive parts with the Finality of Judgment Rule allows the prosecution to convict on less evidence on an accusation of failure to comply with SORA.

ARGUMENTS

⁶ *People v Spencer*, 85th District Court Case # 16-390-FY.

I. THE REQUIREMENTS OF SORA CONSTITUTE PUNISHMENT BECAUSE THEY ARE CONSTRUED WITH THE FINALITY OF JUDGMENTS RULE TO CREATE AN IRREBUTTABLE PRESUMPTION WHICH REQUIRES LESS EVIDENCE TO CONVICT A DEFENDANT ON A CRIMINAL ACCUSATION OF FAILURE TO COMPLY WITH THE “REMEDIAL” REQUIREMENTS OF SORA.

Amicus Spencer incorporates herein his argument that his friend Defendant Snyder’s conviction pursuant to MCL 28.729 for failure to register under SORA is an ex post facto punishment, where the registry has been made public, and other requirements enacted, only after the defendant committed the listed offense that required him to register.

Spencer asserts that construction of the remedial and punitive requirements of SORA, together with the Finality of Judgment Rule at criminal trials, amounts to “punishment” because SORA allows the prosecution to convict on less evidence.⁷ SORA’s “punitive” part is enforced with an irrebuttable presumption of factual accuracy and legal validity of the prosecution’s documentary evidence to establish a valid legal trigger for enforcement of SORA’s “remedial” part.

Standard of Review:

Questions of statutory interpretation are subject to review de novo.⁸ When interpreting a statute, the foremost rule of construction is to discern and give effect to the Legislature's intent.⁹ Because the language chosen is the most reliable indicator of that intent, we enforce clear and unambiguous statutory language as written, giving effect to every word, phrase and clause.¹⁰

⁷ *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L.Ed 648 (1798).

⁸ *Elba Twp. v Gratiot County Drain Comm'r*, 493 Mich. 265 (2013) at 278.

⁹ *Aroma Wines & Equipment., Inc., v. Columbian Distribution Servs., Inc.*, 497 Mich. 337 (2015) at 345.

¹⁰ *Aroma Wines & Equipment., Inc., v. Columbian Distribution Servs., Inc.*, 497 Mich. 337 (2015) at 345 – 346.

A. SORA’s Remedial and Punitive Parts must be construed in Pari Materia at SORA Criminal Trials.

“Two statutes that relate to the same subject or share a common purpose are in pari materia and must be read together.” *People v Webb*, 458 Mich. 265, 274 (1998). “The goal of the pari materia rule is to give effect to the legislature purpose found in the harmonious statutes.” *Id.* “When two statutes lend themselves to a construction that avoids conflict, that construction should control.” *Id.*

Both the “remedial” part of SORA and the “punitive” part of SORA each share a common goal, which is declared at MCL 28.721a. Both the “remedial” part of SORA and the “punitive” part of SORA apply to the same individuals, as set forth by MCL 28.725a. A criminal prosecution under SORA’s “punitive” part requires establishment beyond reasonable doubt that the requirements of SORA’s “remedial” part compelled the defendant to register under SORA. As a result, the bifurcated “remedial” and “punitive” parts of SORA must be applied together, in pari materia, at a SORA criminal trial.¹¹

B. Construction of SORA’s remedial and punitive parts with the Finality of Judgments Rule Results in an Unconstitutional Irrebuttable Presumption at Criminal Trials.

A conclusive presumption has been explained as follows: “In the case of what is commonly called a conclusive or irrebuttable presumption, when fact B is proven, fact A must be taken as true, and the adversary is not allowed to dispute this at all. The language of the punitive part of SORA establishes a “*conclusive implication*”,¹² or an “*imputation (as a matter of law)*”,¹³ or a

¹¹ See, e.g., *Richardson v Jackson County*, 432 Mich. 377 (1989).

¹² See and compare *Mullaney v Wilbur*, 421 U.S. 684 (1975) at 686.

¹³ See, e.g., *People v Fountain*, 71 Mich. App 491, 494-495, fn 2 (“In effect malice was imputed to the act of killing from the intent to commit the underlying felony by operation of law.”).

"conclusive presumption"¹⁴ of the implied *validity* of the prior conviction out of factual proof that a prior conviction exists.

Spencer concedes that a conclusive presumption with respect to an element of a crime does not necessarily render the element a nullity. It only does so when the presumption's basic fact is an element of the crime,¹⁵ as it is under the requirements of SORA. As to a violation under SORA, it might be said that the "presumed fact" is that all undisturbed prior convictions are valid and the "basic fact" is the existence of documentary evidence of an undisturbed prior conviction. When the presumed fact is truly an element of the crime, the presumption, especially if it is conclusive, may run afoul of the Fourteenth Amendment Due Process Clause.¹⁶ Such presumptions may unconstitutionally dilute the "beyond a reasonable doubt" standard of criminal culpability.¹⁷

The Supreme Court of the United States, in *Hughes v Gault*,¹⁸ held that the accused has a constitutional right to rebut the evidence against him. But according to Magistrate Mead, SORA's essential criminal element of "a prior conviction which required the defendant to comply with SORA" may be established at a criminal trial simply by showing irrebuttable documentation that the referenced judicial proceeding resulted in an undisturbed criminal conviction. Spencer has diligently exhausted all available remedies without obtaining relief from the wrongful conviction. But, as shown below, the documentation of the referenced judicial proceeding remains both structurally and procedurally flawed.

¹⁴ A conclusive presumption has been explained as follows: "In the case of what is commonly called a conclusive or irrebuttable presumption, when fact B is proven, fact A must be taken as true, and the adversary is not allowed to dispute this at all." *McCormick, Evidence* (2d ed), § 342, p 804.

¹⁵ *People v Aaron*, 409 Mich. 672 (1980) at 743.

¹⁶ See *In re Winship*, 397 U.S. 358 (1970); *Mullaney v Wilbur*, 421 U.S. 684 (1975); *Ulster County Court v Allen*, 442 U.S. 140 (1979).

¹⁷ *People v Aaron*, 409 Mich. 672 (1980) at 743.

¹⁸ *Hughes v Gault*, 271 US 142 (1926).

1. Where the Underlying Criminal Proceeding Was Infected by Fatal Structural Error.

Amicus Spencer was convicted in 2001 on conclusory allegations set forth by MCL 750.520c. That statute is a “listed offense” under SORA.

a) Insufficient Notice of the Nature and Cause of the Accusation of a SORA Listed Offense.

Model Criminal Jury Instruction 20.2 provides that to obtain a valid conviction under MCL § 750.520c, the prosecutor must establish that the defendant:

[touched (name complainant)’s / made (name complainant) touch (his / her) / permitted (name complainant) to touch (his / her)] [genital area / groin / inner thigh / buttock / (or) breast] or the clothing covering that area.

The record of the prior conviction in Amicus Spencer’s case is void of any specific accusation or admission or evidence of fact to establish any of the elements enumerated by Model Criminal Jury Instruction 20.2.¹⁹

The charging instruments filed in Spencer’s 2001 criminal conviction under a SORA listed offense merely set forth the criminal accusation in the words of MCL § 750.520c. MCL § 750.520c does not define the legal artifice: “sexual contact” and fails to warn that a legal artifice exists in a different statute that fundamentally changes those words’ common dictionary meaning.²⁰ Amicus Spencer relied on the Webster’s Dictionary definition of the words “sexual contact” to mean “a meeting of or relating to the sexes.”

It is more likely than not, that if tasked to determine Spencer’s record-supported rebuttal of the presumption that the documentary evidence presented by the prosecution is factually accurate, legally valid and did not instead reflect the fact that an innocent man went to prison for

¹⁹ [Model Criminal Jury Instructions 20.2](#)

²⁰ MCL 750.520a.

15 very long years, reasonable-minded jurists could find that there was no record allegation of specific facts to establish sufficient notice to Spencer of the nature and cause of an accusation under MCL § 750.520c. And further, a reasonable minded jurist could find that there are no specific facts in the record to support a conviction under MCL § 750.520c. Upon finding these facts, reasonable-minded jurists could conclude that SORA's essential criminal element of "a prior conviction which required the defendant to register under SORA," may not be established beyond a reasonable doubt by documentation that is infected with fatal structural error.

In *Sandstrom v Montana*,²¹ the Supreme Court for the United States held that because the jury may have interpreted the challenged presumption as conclusive, like the presumptions in *Morissette v. United States*²² and *United States v. U.S. Gypsum Company*,²³ or as shifting the burden of persuasion, like that in *Mullaney v. Wilbur*²⁴ and because either interpretation would have violated the Fourteenth Amendment's requirement that the government prove every element of a criminal offense beyond a reasonable doubt, the instruction is unconstitutional.

The *Sandstrom* Court went on to hold that the effect of a presumption in a jury instruction is determined by the way in which a reasonable juror could have interpreted it, not by a government court's interpretation of its legal import.²⁵ Justice Brennan, writing for a unanimous Court, advised that conclusive presumptions "conflict with the overriding presumption of innocence with which the law endows the accused and which extends to every element of the crime," and they "invad[e] the] factfinding function," which, in a criminal case, the law assigns to the jury. SORA, by depriving defendants of the due process right to challenge the factual accuracy and legal validity

²¹ *Sandstrom v Montana*, 442 US 510 (1979), starting at page 514

²² *Morissette v. United States*, 342 US 246 (1952)

²³ *United States v. U.S. Gypsum Co.*, 438 US 422 (1978).

²⁴ *Mullaney v. Wilbur*, 421 US 684 (1975).

²⁵ *Sandstrom* at page 517

of the evidence purported to establish the element of a prior conviction, runs afoul of Justice Brennan's Opinion of the Court in *Sandstrom*.

The presumption announced by SORA itself at MCL § 28.723 may well lead to exactly the same consequences described in *Sandstrom*, since upon finding proof of actual facts to establish a prior conviction, and of facts insufficient to establish the factual accuracy and legal validity of the government's proof of a prior conviction *which required the defendant to comply with SORA*, a jury could reasonably conclude that it was directed to find against the defendant on the element of legal status as one properly required to comply with SORA. The government would thus not be forced to prove "beyond a reasonable doubt . . . every fact necessary to constitute the crime . . . charged," as set forth by: *In re Winship*,²⁶ and Spencer would be deprived of his constitutional right to challenge the government's evidence against him at a criminal trial.

The requirements of SORA constitute punishment because in any SORA criminal case where there is an undisturbed prior conviction for a SORA "listed offense," construction of SORA with the Finality of Judgments Rule unconstitutionally stops defendants from rebutting the factual accuracy and legal validity of the prosecutor's documentary evidence of "a prior conviction which required the defendant to register under SORA." Thus, the prosecution is allowed to convict on less evidence on an accusation of failure to comply with the requirements of SORA. Such an abnormality constitutes punishment.²⁷

In the interest of sound public policy, the Supreme Court should find that the Finality of Judgments Rule has no place in the establishment of an essential element of a criminal offense. Accordingly, SORA's lack of a procedure to allow a defendant to challenge the factual accuracy and legal validity of the government's documentary evidence of "a prior conviction which required

²⁶ *In re Winship*, 397 US 358 (1970) at page 364

²⁷ *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L.Ed 648 (1798).

the defendant to comply with SORA,” constitutes punishment under *Calder v Bull*²⁸ and renders SORA unconstitutional on its face.

b) Insufficient Evidence to Support the Prior Conviction for a SORA “Listed Offense.”

The 85th District Court entered into evidence certified copies of the record in the underlying conviction involving a SORA “listed offense.” At a motion hearing on 10/30/2017,²⁹ Magistrate Mead carefully reviewed the certified Felony Information and transcripts, but he couldn’t find any specific accusation, or any proof that somebody got touched, in the certified record of the 2001 undisturbed prior judicial proceedings under MCL 750.520c. The special prosecutor had an opportunity to dispute Spencer’s claims at the hearing, but on this point, as he followed along in his copy of the authoritative documents and transcripts of the prior judicial proceedings, he remained silent. It’s an unavoidable fact by the record, that Spencer is an innocent man who spent 15 years in prison under Michigan’s touching statute, on a judicial record where nobody was touched.

2. Where the Underlying Criminal Proceeding Was Infected by Non-Harmless Procedural Error.

The Michigan Supreme Court has held that a trial court’s failure to adhere to the mandatory pre-sentence procedure established by [MCL § 28.724\(5\)](#) results in an invalid order to register under SORA.³⁰

²⁸ *Id.*

²⁹ Attachment ? *People v Spencer*, 16-390-FY. Motion Hearing Transcript dated: 10/30/2017. Although the transcript confuses Spencer’s dialogue to a great degree, it remains obvious that both Magistrate Mead and the special prosecutor did not dispute Spencer’s record-supported claim that he was convicted on inadequate notice of specific facts to constitute a charge arising from MCL 750.520c and without specific evidence to support a violation of MCL 750.520c.

³⁰ [People v Lee](#), 489 Mich. 289 (2011) at 297 – 298.

a) *The Order to Comply with SORA is legally Invalid.*

No part of the mandatory pre-sentence procedures set forth by MCL § 28.724(5) was adhered to by the trial court that sentenced Amicus Spencer in 2001. In fact, the transcript of the 10/30/2017 hearing at the 85th District Court,³¹ at page 7, establishes that MSP had no knowledge of Amicus Spencer until six years after he had been sentenced in 2001. The transcript reflects the questions to the State Police SORA Enforcement Coordinator, and his answers, as follows:

QUESTION: So, it's your understanding that--when did Mr. Spencer originally get this CSC conviction?

ANSWER: According to what was entered into our database, 2007.

QUESTION: Okay. And do you know where he was located in 2007?

ANSWER: I believe it was Pontiac.

QUESTION: Okay. And that was in State Prison, wasn't it?

ANSWER: From the time he was convicted, I think there was a short period where he was not and then once he was sentenced, he was in State Prison until he was released this year--or correction--last year.

QUESTION: Okay. So, do you know when he was originally convicted and sentenced?

ANSWER: Originally convicted and sentenced? I would have to look at his criminal history to verify that. I have the conviction date on this document that shows May 29, 2007.

After Spencer clarified that he was, in fact, convicted in 2001 and not in 2007, it was not disputed that he was convicted on the underlying charge in 2001 and not in 2007; And further, that he had been in prison continuously from 2001 through 8/15/2016. It is a matter of public record that Amicus Spencer had already served more than one third of his 15-year prison sentence before the Michigan State Police Sex Offender Registry Unit first became aware of him. MCL § 28.724(5) unequivocally required that the sentencing court ensure SORA registration had already occurred

³¹ Attachment ? *People v Spencer*, 16-390-FY. Hearing Transcript dated 10/30/2017.

BEFORE Spencer was sentenced - - not six years after the fact, as the State Enforcement Coordinator testified. Thus, the record shows on its face that SORA's mandatory presentence procedure was not adhered to by the sentencing court, resulting in an invalid order to register under SORA.³²

MCL § 28.724(5) required that the trial court in the prior case ensure that Amicus Spencer was initially registered *BEFORE* it imposed sentence; and the State Enforcement Coordinator's testimony proves that the trial court did not adhere to the MCL § 28.724(5) procedural requirements, which the Supreme Court, in *People v Lee*,³³ has held to be fundamental to every proper order to require registration under SORA. This is not a case where *Lee* may not be retroactively applied. Thus, there has never at any time been a valid legal basis to require Spencer to comply with SORA because the sentencing court did not adhere to the mandatory presentence procedure mandated by MCL § 28.724(5).³⁴

3. A Challenge to the Prosecutor's Introduction of Documentary Evidence of a Prior Conviction, Without Proper Foundation, is Not a Collateral Attack on the Prior Conviction.

Spencer's challenge to the prosecution's introduction of documentary evidence of a prior conviction, without a proper foundation as to the accuracy and validity of the particular documents is not a collateral challenge against the prior conviction. See, e.g., *People v Krukilowski*, 60 Mich. App 28, 29-30 (1975). *Krukilowski* was further explained in *People v Wager*, 233 Mich. App 1, 5 (1998):

³² See *People v Whalen*, 412 Mich. 166, 170 (1981) (recognizing that sentences that "do not comply with essential procedural requirements" are invalid).

³³ *People v Lee*, 489 Mich. 289 (2011) at 297 – 298.

³⁴ *People v Lee*, 489 Mich. 289 (2011) at 297 – 298.

“In *People v Krulikowski*, this Court stated that a failure to adduce evidence of the foundational requirements ‘precludes the admission of the [document] into evidence, and does not go merely to the weight which the trier of fact may accord the [document].’”

Spencer’s narrow direct attack is against the documentary evidence a prosecutor relies on to establish an indispensable element at a subsequent criminal SORA trial. Because the application of SORA will not alter the prior conviction for a SORA “listed offense,” a challenge to the factual accuracy and legal validity of the prosecutor’s documentary evidence of a prior conviction is not a collateral attack on the prior conviction, it is a direct attack against the prosecutor’s use of evidence without a proper foundation as to the factual accuracy and legal validity of the evidence.

This is not a collateral attack on Spencer’s prior conviction, and he’s fully aware that the Court is in no position to pass on that question today. Spencer’s prior conviction is not affected by a decision that there is no valid legal trigger to require SORA registration arising from the documentation of the prior conviction. In *People v Lee*, 489 Mich. 289 (2011), the Supreme Court, without disturbing the conviction, reversed the judgment of the Court of Appeals and vacated the trial court’s order requiring defendant to register under SORA.³⁵

II. THE SEVERAL AFFIDAVITS SUBSCRIBED AND SWORN BY SORA REGISTRANTS AND ATTACHED TO THIS AMICUS BRIEF DEMONSTRATE THE DEVASTATING AFFECT THAT SORA HAS ON THE LAW-ABIDING CITIZENS WHO ARE TRYING TO RECLAIM A PLACE IN SOCIETY.

A comprehensive determination by the Supreme Court in this matter would seem to call for a look at the attached sampling which depicts the plight of SORA registrants, many of whom

³⁵ See also, *People v McGilmer*, 95 Mich. App. 577 (1980).

have committed no crime since the twentieth century. These people are indefinitely stymied in life under the ominous shadow of compelled SORA registration. The writer affirms under penalty of perjury that his quality of life is no better than the worst of the affiants in this matter where the requirements of SORA, which amount to punishment when they are construed with the Finality of Judgments Rule, cloud every single personal relationship, even when decades separate the person convicted for a SORA “listed offense” and the person now shamed in the public forum under the requirements of SORA.

CONCLUSION

Based on these reasons, the Court should find that SORA is unconstitutional on its face because the requirements of SORA amount to punishment where they allow the prosecution to convict on less evidence as discussed in *Calder v Bull as cited by People v Earle*, 495 Mich. 33 (2014) - - *which was incorporated by the Court into Question 1 herein*; and that Defendant Snyder’s conviction pursuant to MCL 28.729 for failure to register under SORA is an ex post facto punishment, where the registry has been made public, and other requirements enacted, only after the defendant committed the listed offense that required him to register, U.S. Const, art I, § 10; Const 1963, art 1, § 10.

Respectfully,

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Dated: 23 October 2018.