917 F.3d 161
United States Court of Appeals, Third Circuit.

Jason PIASECKI, Appellant
v.
COURT OF COMMON PLEAS, BUCKS COUNTY, PA; District Attorney Bucks County; Attorney General of the Commonwealth of Pennsylvania

No. 16-4175
|
Argued March 6, 2018
|
(Opinion Filed: February 27, 2019)

Vacated and remanded.

Appeal from the United States District Court for the Eastern District of Pennsylvania (No. 2-14-cv-07004), District Judge: Honorable Legrome D. Davis

Attorneys and Law Firms

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Before: McKEE, AMBRO and RESTREPO, Circuit Judges.

OPINION OF THE COURT

McKEE, Circuit Judge.

We are asked to decide whether a habeas corpus petitioner who was subject only to registration requirements under Pennsylvania's Sex Offender Registration and Notification Act ("SORNA") when he filed his petition was "in custody pursuant to the judgment of a State Court," as required for jurisdiction. We hold that the registration requirements were sufficiently restrictive to constitute custody and that they were imposed pursuant to the state court judgment of sentence. Accordingly, we will reverse the District Court and remand for further proceedings.

I.

Following a bench trial in the Court of Common Pleas of Bucks County, Jason Piasecki was convicted of fifteen counts of possession of child pornography. On April 26, 2010, the court sentenced him to a term of

three years' probation. At sentencing, the court informed Piasecki:

> So as to counts 16 through 30, as to each count the defendant is sentenced to 36 months' county probation. The conditions of his sentence are that he undergo sex offender supervision, that he be subject to ten-year registration, that he have no unsupervised contact with minor children under the age of 18, excluding your son and your girlfriend's son, without written permission of Bucks County Adult Probation and Parole.
>
> You're to have no computer Internet use. You're to continue in treatment with Dean Dixon and Dr. Nover. You're not to drink, and you're to take medications as directed. You're ordered to pay court costs.
>
> I'm going to have you sign the mandatory sex offender conditions.[1]

At the time of sentencing, Pennsylvania sex offenders were subject to registration requirements under a statutory scheme referred to as Megan's Law III.[2] But in December of 2012, as Piasecki pursued appellate and collateral relief in state court, the Pennsylvania legislature permitted its Megan's Law statute to expire and replaced it with SORNA. It was enacted to "bring the Commonwealth into substantial compliance with the Adam Walsh Child Protection and Safety Act

[1] App. 150–52.

[2] 18 Pa.C.S. § 4915(a)(1) *et seq.* (expired Dec. 20, 2012).

of 2006."[3] Any state that did not implement restrictions similar to those set forth in the Adam Walsh Act stood to lose ten percent "of the funds that would otherwise be allocated for that fiscal year [under] . . . the Omnibus Crime Control and Safe Streets Act of 1968."[4] When Piasecki filed his petition under 28 U.S.C. § 2254, SORNA applied retroactively to any Megan's Law registrant who lived in the Commonwealth.[5] An offender who had been required to comply with Megan's Law III was therefore automatically subject to SORNA's increased registration and reporting requirements.

Piasecki was a Tier III offender under the provisions of SORNA. Accordingly, he was required to register in-person with the State Police every three months for the rest of his life.[6] The statute also required him to appear, in-person, at a registration site if he were to:

- Change his name;
- Change his residence or become transient;
- Begin a new job or lose previous employment;

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[3] 42 Pa.C.S. § 9799.10 (citing P.L. 109-248, 120 Stat. 587).

[4] P.L. 109-248, 120 Stat. 587 34, § 125 (implemented as 34 U.S.C. § 20927).

[5] 42 Pa.C.S §§ 9799.12–9799.14.

[6] 42 Pa.C.S. §§ 9799.15(a)(3), 9799.15(e)(3). A Tier III SORNA registrant could petition a court to exempt him or her from the registration requirements after twenty-five years provided that the registrant satisfied certain criteria and satisfy a threat assessment board. *Id.* § 9799.15(a.2)(1)-(9).

- Matriculate or end enrollment as a student;
- Add or change a phone number;
- Add, change, or terminate ownership or operatorship of a car or other motor vehicle, and, as part of that visit, provide his license plate number, VIN number, and location where the vehicle will be stored;
- Commence or change "temporary lodging;"[7]
- Add, change, or terminate any email address or other online designation; or
- Add, change, or terminate any information related to an occupational or professional license.[8]

If Piasecki were to become homeless, he was required to "appear in person monthly and to be photographed."[9] Prior to any international travel, Piasecki had to "appear in person at an approved registration site no less than 21 days" before his anticipated departure.[10] Failure to abide by any of these reporting requirements exposed Piasecki to criminal prosecution.[11]

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[7] Temporary lodging is defined as "[t]he specific location, including street address, where a sexual offender is staying when away from the sexual offender's residence for seven or more days." 42 Pa.C.S. § 9799.12.

[8] 42 Pa.C.S. § 9799.15(g)(1)-(9).

[9] 42 Pa.C.S. § 9799.15(h)(1).

[10] *Id.* § 9799.15(i).

[11] 42 Pa.C.S. § 9799.21(a); *see also* 18 Pa.C.S. § 4915.1 (relating to failure to comply with registration requirements).

The parties do not dispute that Piasecki was subject to these restrictions—and only these restrictions—when he filed his § 2254 petition on December 4, 2014.[12] His probation and its attendant conditions of supervision had expired on April 26, 2013. Piasecki's habeas petition attacked his underlying conviction on four grounds, none of which are relevant to the issues before us.[13]

The District Court referred the matter to a Magistrate Judge, who recommended that the petition be dismissed for lack of jurisdiction. The Magistrate Judge acknowledged that Pennsylvania's SORNA statute made "sex offenders' registration obligations considerably more burdensome," but ultimately concluded that Piasecki was "free to live, work, travel, or engage in any legal activity without the approval of a government official."[14] The Magistrate Judge also concluded that Pennsylvania's sex offender registration requirements were "collateral consequences and not direct consequences of the petitioner's conviction."[15] Accordingly, the court reasoned that they were not part of the

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[12] Br. for Appellant 12; Br. for Appellee 13–15.

[13] Specifically, Piasecki alleged that the incriminating statements that were admitted at trial were given in violation of *Miranda*; the evidence was insufficient to support the verdict; the Commonwealth failed to preserve electronic evidence that was favorable to his defense; and that his attorney was ineffective for failing to raise these issues.

[14] App. 13a–14a.

[15] App. 15a.

judgment of the state court and could not support habeas corpus jurisdiction.

In overruling objections that Piasecki filed to the Report and Recommendation, the District Court emphasized that Piasecki's sentence had expired, and that the registration requirements were "merely collateral consequences of a conviction."[16] It also noted that Piasecki's reporting requirements were not explicitly included in the state court's judgment and that the requirements were "remedial rather than punitive."[17] Consequently, the court held that they could not support habeas jurisdiction because they did not constitute custody.

We granted a certificate of appealability, and this timely appeal followed.

II.[18]

A federal court has jurisdiction to entertain a petition for a writ of habeas corpus under § 2254 only if the petitioner was "in custody pursuant to the

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[16] App. 3a.

[17] App. 4a.

[18] This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 (granting jurisdiction over appeals from all final decisions of the District Court) and § 2253 (subjecting the final order in a habeas corpus proceeding to review). We granted a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2) & (3). We review the District Court's dismissal of a habeas petition on jurisdictional grounds *de novo*. We review the denial of an evidentiary hearing for abuse of discretion.

judgment of a State court" when the petition was filed.[19] "Thus, custody is the passport to federal habeas corpus jurisdiction."[20] The jurisdictional requirement has two components—"custody" that arises "pursuant to the judgment of a state court" that is under attack.[21] Put differently, the habeas jurisdictional provision requires that the petitioner be subject to a "non-negligible restraint on physical liberty" that is a "direct consequence of [the] conviction" being challenged.[22] Therefore, we must examine these elements separately to determine if Pennsylvania's SORNA requirements were sufficiently restrictive to constitute custody. If they were, we must determine if they were directly imposed pursuant to the judgment of a state court.

A. "In Custody"

Over the past half-century, courts have addressed the issue of habeas custody in an effort to determine when various state-imposed restrictions were sufficiently onerous to constitute "custody" for purposes of habeas jurisdiction. It is now beyond dispute that custody is not limited to "actual physical custody."[23] Rather, for the purposes of habeas jurisdiction, a petitioner is "in custody" if he or she files while subject to

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[19] 28 U.S.C. § 2254(a).

[20] *United States ex rel. Dessus v. Pennsylvania*, 452 F.2d 557, 560 (3d Cir. 1971).

[21] 28 U.S.C. § 2254(a).

[22] *Stanbridge v. Scott*, 791 F.3d 715, 719 (7th Cir. 2015).

[23] *Jones v. Cunningham*, 371 U.S. 236, 239, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963).

significant restraints on liberty that are not otherwise experienced by the general public.[24]

In *Jones v. Cunningham*, the Supreme Court considered whether a parolee was "in custody" for the purposes of habeas jurisdiction under 28 U.S.C. § 2241.[25] The conditions of Jones's parole required him to live with his family in Georgia; obtain permission to leave the community, change residence, and own or operate a car; and make monthly visits to his parole officer.[26] Additionally, he was required to permit parole officers to come into his home or place of employment, "follow the officer's instructions and advice," and be subject to "revocation and modification at any time."[27]

Jones held that these parole restrictions were sufficiently restrictive to render the petitioner "in custody." It rooted its analysis in the historical development of the custody requirement. The Court acknowledged that "the chief use of habeas corpus

[24] *Id.*; *see also Lehman v. Lycoming Cty. Children Servs. Agency*, 458 U.S. 502, 510, 102 S.Ct. 3231, 73 L.Ed.2d 928 (1982) ("[P]ast decisions have limited the writ's availability to challenges to state-court judgments in situations where—as a result of a state-court criminal conviction—a petitioner has suffered substantial restraints not shared by the public generally."); *Hensley v. Mun. Court, San Jose Milpitas Judicial Dist., Santa Clara Cty., Cal.*, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973) ("The custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty.").

[25] *Jones*, 371 U.S. at 238, 83 S.Ct. 373.

[26] *Id.* at 237, 83 S.Ct. 373.

[27] *Id*. at 238, 83 S.Ct. 373.

statutes has been to seek release of persons held in actual, physical custody in prison or jail."[28] However, the Court also noted that courts had "long recognized the writ as a proper remedy even [when] the restraint [was] something less than close physical confinement."[29] For example, English courts permitted the use of habeas corpus where "a woman alleged to be the applicant's wife was being constrained by her guardians to stay away from her husband against her will."[30] The test employed in England was "simply whether she was 'at her liberty to go where she pleased.' "[31] *Jones* noted that United States courts have historically found that "the use of habeas corpus has not been restricted to situations in which the applicant is in actual, physical custody."[32] Rather, "[h]istory, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on [a person's] liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus."[33]

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[28] *Id*.

[29] *Id*.

[30] *Id*. at 238–39, 83 S.Ct. 373 (citing *Rex. v. Clarkson*, 1 Str. 444, 93 Eng. Rep. 625 (K.B. 1722)).

[31] *Id*. (quoting *Clarkson*, 93 Eng. Rep. at 625); *accord Rex v. Delaval*, 3 Burr. 1434, 97 Eng. Rep. 913 (K.B. 1763) (ordering an indentured girl "discharged from all restraint, and be at liberty to go where she will" after her "master" assigned her to another man for "bad purposes").

[32] *Jones*, 371 U.S. at 239, 83 S.Ct. 373.

[33] *Id*. at 240, 83 S.Ct. 373.

Turning to the specific conditions of Jones's parole, the Court found that they constituted custody because they "significantly restrain[ed] petitioner's liberty to do those things which in this country free men [were] entitled to do."[34] Indeed, the parole restrictions were myriad and demanding. The parole order confined Jones to "a particular community, house, and job at the sufferance of his parole officer."[35] He could not drive a car without permission, and he was required to open his home and place of employment to his parole officer at any time. Additionally, his parole officer required him to "keep good company and good hours," stay away from "undesirable places," and "to live a clean, honest, and temperate life."[36] Any failure to follow these provisions, however slight, could have resulted in Jones being returned to prison.

Under these circumstances, the Court concluded that even though Jones has been "release[d] from immediate physical imprisonment," his parole conditions

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[34] *Id.* at 243, 83 S.Ct. 373. The Court also observed that the Virginia statute that governed Jones's supervision explicitly provided that a "paroled prisoner shall be released 'into the custody of the Parole Board,' and the parole order itself placed Jones under the 'custody and control of the Virginia Parole Board.' " *Id.* at 241–42, 83 S.Ct. 373 (quoting Va. Code Ann. § 53-264). While not dispositive, the Court was informed by the plain language of the statute and the order to which Jones was subject. As we discuss below, Pennsylvania's sex offender registration requirements were included in the state court's judgment of sentence here.

[35] *Id.* at 242, 83 S.Ct. 373.

[36] *Id.*

"significantly confine[d] and restrain[ed] his freedom."[37] That was "enough to keep him in the 'custody' of the members of the Virginia Parole Board within the meaning of the habeas corpus statute[.]"[38]

After *Jones*, the Supreme Court decided *Hensley v. Municipal Court*.[39] There, it considered whether a similar—but slightly less—restrictive scheme than the one in *Jones* could support habeas jurisdiction to adjudicate a § 2254 petition of a petitioner who was released on his own recognizance pending appeal.[40] The relevant bail statute required Hensley to appear "at all times and places as ordered by the court or magistrate releasing him and as ordered by any court in which, or any magistrate before whom, the charge [was] pending."[41] Finally, any court could "revoke the order of release and either return him to custody or require that he give bail or other assurance of his appearance."[42]

The Court held that these conditions supported habeas jurisdiction even though Hensley was subject to less restrictive supervision requirements than Jones.[43] Despite the less intrusive requirements,

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[37] *Id.* at 243, 83 S.Ct. 373.

[38] *Id.*

[39] 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973).

[40] *Hensley*, 411 U.S. at 351, 93 S.Ct. 1571.

[41] *Id*. at 348, 93 S.Ct. 1571. Additionally, if he failed to "appear and [was] apprehended outside of the State of California" he waived his right to an extradition hearing. *Id.*

[42] *Id.*

[43] *Id.* at 348, 93 S.Ct. 1571 ("It is true, of course, that the parolee is generally subject to greater restrictions on his liberty

Hensley was still subject to "restraints 'not shared by the public generally,'" as Jones had been.[44] Hensley was obligated to appear wherever and whenever a court ordered him.[45] He could not "come and go as he please[d]" because his "freedom of movement rest[ed] in the hands of state judicial officers, who [could have] demand[ed] his presence at any time without a moment's notice."[46] The Court also noted that any failure to abide by these conditions was, itself, a criminal offense.[47] He was, therefore, "in custody."[48]

We have also held that the jurisdictional "custody" requirement can be satisfied by restrictions other than physical confinement.[49] In *Barry v. Bergen County*

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of movement than a person released on bail or his own recognizance.").

[44] *Id.* (quoting *Jones*, 371 U.S. at 240, 83 S.Ct. 373).

[45] *Id*.

[46] *Id.* at 351, 93 S.Ct. 1571.

[47] *Id. Hensley* also found it compelling that the petitioner's liberty only resulted from a judicial order staying his sentence—which the government had twice tried to lift. In other words, incarceration was not a "speculative possibility." Rather, Hensley had been forced to "fend off the state authorities," and this "need to keep the stay in force [was] itself an unusual and substantial impairment of his liberty." Finally, the Court also noted that its holding "did not interfere with any significant interest of the State" because even if it had concluded that Hensley was not in custody, it would only delay the filing of the petition until he was incarcerated after the stay was lifted.

[48] *Id*. at 351, 93 S.Ct. 1571.

[49] *See*, *e.g. Barry v. Brower*, 864 F.2d 294, 296 (3d Cir. 1988) (finding that habeas jurisdiction continued "at least until the expiration of Barry's probationary term"); *Pringle v. Court of Common Pleas*, 744 F.2d 297, 300 (3d Cir. 1984) ("Custody, however,

Probation Department,[50] we were asked to decide whether a sentence of community service was sufficiently onerous to qualify as custody under § 2254. Barry's probationary sentence had expired when he filed his petition, but the sentencing court had also ordered him to complete 500 hours of community service over a period of three years.[51] The community service requirement was imposed in lieu of a fine, which the sentencing court concluded Barry was unable to pay.[52]

We held that the community service obligation constituted custody even though the "State did not monitor or restrict Barry's every act" because his sentence nevertheless required him "to be in a certain place—or in one of several places—to attend meetings or to perform services."[53] Thus, he was "clearly subject to restraints on his liberty not shared by the public generally."[54] As a result, Barry's community service sentence constituted custody that was sufficiently restrictive to support habeas jurisdiction.[55]

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has been liberally defined to include persons on parole, those released on their own recognizance pending appeal, and those who have been released from confinement pursuant to [a 'good behavior' time credit statute].").

[50] 128 F.3d 152 (3d Cir. 1997).

[51] *Id.* at 159, 161.

[52] *Id.* at 158–59.

[53] *Id.* at 161.

[54] *Id.* at 161 (citing *Dow v. Circuit Court of the First Circuit*, 995 F.2d 922 (9th Cir. 1993) (per curiam)).

[55] We rejected the state's argument that Barry was not in custody because he was not "supervised on a continuous basis." *Barry*, 128 F.3d at 161 (*citing Poodry v. Tonawanda Band of*

In reaching that decision, we relied on *Dow v. Circuit Court of the First Circuit*, a per curiam decision from the Court of Appeals for the Ninth Circuit, which we found to be "quite compelling and analogous" to the question before us in *Barry.*[56] Dow's sentence for DUI required him to attend fourteen hours of alcohol rehabilitation classes.[57] He had the option of scheduling the classes over a three- or five-day period.[58] Dow filed a § 2254 petition after his probationary sentence was completed but before he attended the classes. The court concluded that Dow's in-class obligation supported habeas jurisdiction. The sentence required Dow's "physical presence at a particular place" and "significantly restrain[ed] [his] liberty to do those things which free persons in the United States are entitled to do."[59] His mandated presence at the classes meant that he could

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Seneca Indians, 85 F.3d 874 (2d Cir. 1996)). A per curiam opinion issued by this Court in 2003, *Obado v. New Jersey*, 328 F.3d 716 (3d Cir. 2003) (per curiam), cited *Barry* for the proposition that "some type of continuing governmental supervision" was required to support habeas jurisdiction. However, *Obado* cited the portion of *Barry* that discussed the state's argument concerning habeas jurisdiction. *Obado*, 328 F.3d at 717 (citing *Barry*, 128 F.3d at 160). The very paragraph in *Barry* that *Obado* cites ends with the conclusion "that the state has read § 2254's custody requirement too narrowly," *Barry*, 128 F.3d at 160. In fact, *Barry* conclusively rejects that argument. *Id.* at 161 ("Equally unavailing is the State's contention that Barry was not 'in custody' because he was not supervised on a continuous basis.").

[56] *Barry*, 128 F.3d at 160.

[57] *Dow*, 995 F.2d at 922.

[58] *Id.* at 922–23.

[59] *Id*. at 923.

not "come and go as he please[d]."[60] Therefore, the Court held that the sentence "must be characterized, for jurisdictional purposes, as 'custody.'"[61]

More recently, in *United States v. Ross*,[62] we considered whether a $100 "special assessment" that accompanied a conviction for possessing a machine gun constituted "custody" for the purposes of § 2255.[63] Relying on the precedent we have described above, *Ross* set forth a three-part test for answering that question.[64] We held that a restriction is custodial if it provides for restraints that are "(1) severe, (2) immediate (*i.e.* not speculative), and (3) not shared by the public generally."[65]

Applying this test to Ross's special assessment, we concluded that a fine is not the type of obligation that can support habeas jurisdiction. We noted that the

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[60] *Id* (quoting *Hensley*, 411 U.S. at 351, 93 S.Ct. 1571).

[61] *Id*.

[62] 801 F.3d 374 (3d Cir. 2015).

[63] *Ross*, 801 F.3d at 379. *Ross* arose in a slightly different context, but it is still helpful. In *Ross*, the government alleged that the petitioner was ineligible for relief under § 2255 because that statute could only afford relief to a "prisoner *in custody . . . claiming the right to be released* upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States[.]" *Id.* at 378 (quoting 28 U.S.C. § 2255a). The issue in *Ross* was, therefore, about "custody," but not jurisdiction. Nevertheless, we addressed the definition of "custody" for the purposes of habeas corpus. Accordingly, we think that its analysis is helpful to our inquiry here.

[64] *Id.* at 379.

[65] *Id.* (parenthetical in original).

Supreme Court has "emphasized the physical nature of the restraints" when defining custody.[66] Ross's fine imposed no analogous restriction on his freedom of movement and thus could not be viewed as "severe."[67] Thus, Ross could not challenge a special assessment under § 2255. The decision was consistent with our own precedent and decisions of our sister circuit courts of appeals. Courts consistently conclude that the "monetary component of a sentence is not capable of satisfying the 'in custody' requirement of federal habeas statutes."[68]

Given this precedent, the question of whether Piasecki's registration requirements were sufficiently restrictive to constitute custody is easily answered. They were. At a minimum, Piasecki was required "to be in a certain place" or "one of several places"—a State Police barracks—at least four times a year for the rest of his life.[69] The state's ability to compel a petitioner's attendance weighs heavily in favor of concluding that the petitioner was in custody.[70] Further, Piasecki was not free to "come and go as he please[d]."[71] Any change of address, including any temporary stay at a different residence, required an accompanying trip to the State

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[66] *Id.* at 379–80 (citing *Hensley*, 411 U.S. at 351, 93 S.Ct. 1571; *Peyton v. Rowe*, 391 U.S. 54, 66–67, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968); *Jones*, 371 U.S. at 242, 83 S.Ct. 373).

[67] *Id.* at 379.

[68] *Id.* at 380 (citations omitted).

[69] *Barry*, 128 F.3d at 161; 42 Pa.C.S. § 9799.15(a)(3).

[70] *Dow*, 995 F.2d at 923; *Barry*, 128 F.3d at 160–61.

[71] *Hensley*, 411 U.S. at 351, 93 S.Ct. 1571.

Police barracks within three business days.[72] He was even required to regularly report to police if he had no address and became homeless. In addition, Piasecki could have no "computer internet use."[73] The SORNA

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[72] 42 Pa.C.S. § 9799.15(g)(2), (3), (4), (7).

[73] Such prohibitions on computer and internet access are relatively common. Yet, it is not at all clear that the judges imposing such sweeping and unconditional bans appreciate the impact they would have if literally interpreted and enforced. A literal enforcement of such provisions would subject one to violation for using an ATM, using a "smartphone," seeking directions from any device that utilizes GPS navigation, or even driving a relatively late model car—most, if not all, of which are equipped with computers that are an integral part of the car's functioning. *See United States v. Voelker*, 489 F.3d 139, 148 n.8 (3d Cir. 2007) (noting that modern cars "contain at least one computer" and "might have as many as 50 microprocessors") (citations omitted). As a result, many courts have struck down statutes or vacated sentences that impose broad bans on computer and internet usage. *See*, *e.g.*, *Packingham v. North Carolina*, ___ U.S. ___, 137 S.Ct. 1730, 1738, 198 L.Ed.2d 273 (2017) (holding that a statute that prevented sex offenders from accessing social media websites violated the First Amendment); *United States v. Holena*, 906 F.3d 288, 295 (3d Cir. 2018) (vacating a sentence that banned a defendant from possessing or using a computer or other electronic communication device and prohibited him from using the internet without his probation officer's approval); *Voelker*, 489 F.3d at 144 (vacating a sentence that imposed "an absolute lifetime ban on using computers and computer equipment as well as accessing the internet"); *United States v. Miller*, 594 F.3d 172, 188 (3d Cir. 2010) (vacating a sentence that prohibited an offender from using a computer with internet access "unless he received approval from his probation officer to use the internet and other computer networks"); *United States v. Albertson*, 645 F.3d 191, 194, 200 (3d Cir. 2011) (vacating a sentence that barred an offender from using a computer with online access without preapproval from a probation officer and holding that, "in a time where the daily necessities of life and work demand not only internet access but internet fluency, sentencing courts need to select the least restrictive

statute also compelled Piasecki to personally report to the State Police if he operated a car, began storing his car in a different location, changed his phone number, or created a new email address.[74] These are compulsory, physical "restraints 'not shared by the public generally.'"[75] Unlike the special assessment considered in *Ross*, these restraints compelled Piasecki's physical presence at a specific location and severely conditioned his freedom of movement. They were more severe than the community service requirement in *Barry* or the mandatory alcohol classes considered in *Dow*.

Moreover, any failure to abide by the restrictions was "itself a crime," just like the situation facing the petitioner in *Hensley*.[76] If Piasecki failed to report to the State Police barracks within three days of any triggering event listed in the SORNA statute, he could be charged with a felony of the second degree.[77] In Pennsylvania, such felonies are punishable by up to ten years' imprisonment.[78] If Piasecki provided inaccurate information, he faced prosecution for a felony of the

alternative for achieving their sentencing purpose"); *United States v. Holm*, 326 F.3d 872, 878 (7th Cir. 2003) ("We find that to the extent that the condition is intended to be a total ban on Internet use, it sweeps more broadly and imposes a greater deprivation on Holm's liberty than is necessary[.]").

[74] 42 Pa.C.S. § 9799.15(g).

[75] *Hensley*, 411 U.S. at 351, 93 S.Ct. 1571 (quoting *Jones*, 371 U.S. at 240, 83 S.Ct. 373).

[76] *Id.*

[77] 42 Pa.C.S. § 9799.21; 18 Pa.C.S. § 4915.1(c)(1).

[78] 18 Pa.C.S. § 106(b)(3).

first degree and incarceration of up to twenty years.[79] Given the level of restriction imposed by the registration requirements and the harsh consequences that would result from failing to adhere to them, we easily conclude that the restrictions placed on Piasecki were "severe."[80]

The remaining two prongs of the test we announced in *Ross* are also easily satisfied. The restrictions were "immediate (i.e. not speculative)"[81]—neither side disputes that Piasecki was subject to all of SORNA's requirements when he filed the petition at issue. Finally, and as explained above, these restrictions were obviously "not shared by the public generally."[82]

We recognize that several of our sister circuit courts of appeals have found that various sex offender registration schemes were not sufficiently restrictive to constitute "custody."[83] As we explain below, many courts have held that registration requirements cannot support habeas jurisdiction because they were collateral consequences of a conviction that were not imposed pursuant to the judgment of a state court.[84]

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[79] 42 Pa.C.S. § 4915.1(c)(3); 18 Pa.C.S. § 106(b)(2).

[80] *Ross*, 801 F.3d at 379.

[81] *Id*.

[82] *Id.*

[83] *See*, *e.g.*, *Wilson v. Flaherty*, 689 F.3d 332, 338 (4th Cir. 2012); *Virsnieks v. Smith*, 521 F.3d 707, 719 (7th Cir. 2008); *Leslie v. Randle*, 296 F.3d 518, 521–23 (6th Cir. 2002); *Zichko v. Idaho*, 247 F.3d 1015, 1019 (9th Cir. 2001).

[84] *See infra* Part II.B.

Others have held that sex-offender registration conditions do not impose a severe restriction on an individual's freedom.[85] We do not find those cases compelling for two reasons.

First, many of our sister circuit courts of appeals that have found sex offender registration requirements could not support habeas jurisdiction reached that conclusion when considering restrictions imposed under pre-SORNA statutes.[86] Those registration requirements were not as onerous as those imposed under SORNA.[87]

Second, we have explicitly departed from the courts that have held that registration requirements

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[85] *E.g.*, *Calhoun v. Attorney Gen. of Colo.*, 745 F.3d 1070, 1074 (10th Cir. 2014) (holding that "the Colorado sex-offender registration requirements at issue here are collateral consequences of conviction that do not impose a severe restriction on an individual's freedom" because the registrant was "free to live, work, travel, and engage in all legal activities without limitation and without approval by a government official"); *Virsnieks*, 521 F.3d at 719 ("[T]he Wisconsin sexual offender registration statute does not impose any significant restriction on a registrant's freedom of movement. . . . [It] does not limit where a registrant may move or travel within Wisconsin, within the United States or internationally").

[86] *See Zichko*, 247 F.3d at 1019; *Leslie*, 296 F.3d at 521–23; *Wilson*, 689 F.3d at 338.

[87] *See*, *e.g.*, *Wilson*, 689 F.3d at 338 (allowing registration by mail); *Williamson v. Gregoire*, 151 F.3d 1180, 1184 (9th Cir. 1998) (same). We take no position on whether we would find such conditions sufficiently restrictive to constitute custody for habeas purposes if the issue were presented to us in an appropriate case.

are not custodial because they do not require pre-approval from the government before a registrant travels, thus not limiting his or her ability to move freely.[88] In *Barry*, we held that custodial "restraint does not require 'on-going supervision' or 'prior approval.' "[89] Rather, we concluded that even though the government did not "monitor[ ] Barry's every move, [it] nevertheless performed an oversight function" and that "level of supervision was clearly adequate" to qualify as custody.[90] Accordingly, we cannot conclude that Piasecki's supervision did not amount to custody based on a "pre-approval" theory.

In sum, we hold that Piasecki was subject to severe restraints on his liberty not shared by the public generally. Tasks as banal as changing an e-mail address or taking a week's vacation required him to physically appear at a State Police barracks. Even in the absence of those ostensibly elective choices, Piasecki was compelled by the state to report to a police station every three months for the rest of his life. We hold that those requirements were at least as restrictive as those encountered in *Barry* and *Dow* and clearly rise to the level of "custody" for purposes of our habeas jurisdiction.

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[88] *See, e.g.*, *Virsnieks*, 521 F.3d at 719; *Williamson*, 151 F.3d at 1184 ("Williamson cannot say that there is anywhere that the sex offender law prevents him from going.").

[89] *Barry*, 128 F.3d at 161 (*citing Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996)).

[90] *Id.*

B. "Pursuant to the Judgment of a State Court"

Even an onerous restriction cannot support habeas jurisdiction if it is nothing more than a "collateral consequence" of a conviction.[91] Rather, the custody that is a condition precedent to our habeas jurisdiction must be a direct result of "the conviction or sentence under attack" when the petition is filed.[92] Thus, a court will not have jurisdiction to rule on a habeas petition if "the sentence imposed for [the challenged] conviction has *fully expired* at the time [the] petition is filed."[93] This requirement is evident from the plain text of § 2254, which states that the petitioner must be "in custody *pursuant to the judgment of a State court.*"[94]

We must therefore decide whether Piasecki's custodial restrictions were imposed as part of his sentence or if they were merely collateral consequences of his underlying child pornography convictions.

We begin at perhaps the most obvious starting point—the actual judgment of sentence entered by the state court. Two documents from the state court record inform and guide our inquiry—the "Bucks County Criminal Court Sheet" and the "Bucks County Mandatory Sex Offender Conditions" Order. Both show that

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[91] *Maleng v. Cook*, 490 U.S. 488, 492, 109 S.Ct. 1923, 104 L.Ed.2d 540 (1989) (per curiam).

[92] *Id.* at 490, 109 S.Ct. 1923.

[93] *Id.* at 491, 109 S.Ct. 1923.

[94] 28 U.S.C § 2254(a) (emphasis added).

the registration requirements were part of the judgment of sentence.

The Court Sheet has a handwritten notation under "Sentence," stating that, in addition to "Sex Offender Supervision," Piasecki was sentenced to "Registration" for "10 yrs." More compellingly, the Sex Offender Conditions Order states that Piasecki's "SENTENCE IS SUBJECT TO THE FOLLOWING CONDITIONS IN ADDITION TO THOSE WHICH APPEAR ON THE COURT SHEET." Under that heading, the sentencing court checked a box next to "Sex Offender Registration Pursuant to Megan's Law" and another box indicating "10 Year Registration."

These documents weigh strongly in favor of finding that the sex-offender registration requirements were part of Piasecki's sentence and therefore imposed "pursuant to the judgment of a state court."[95] Both of the documents plainly reflect that the registration requirements were a part of the sentence.

As compelling as this record is, we will not end our inquiry there. Federal courts confronted with the question of whether sex offender registration requirements are part of the state court judgment of sentence also look to state law to see if the state construes sex offender registration as a punitive aspect of a criminal sentence or a remedial measure imposed collaterally. Our sister circuit courts of appeals that have held registration requirements are not imposed pursuant to

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[95] 28 U.S.C § 2254(a)

the judgment of sentence have done so, in part, because the respective state courts have determined that their state registration schemes are remedial, not punitive.[96]

Pennsylvania courts have concluded otherwise. Just two months before Piasecki filed his habeas petition, the Commonwealth Court of Pennsylvania decided *Coppolino v. Noonan*, which held that SORNA's "in-person updating requirements" were punitive.[97] There, Coppolino filed a writ of mandamus asking the Commonwealth Court to remove him from the list of offenders required to comply with SORNA. Like Piasecki, he had initially been required to register under Megan's Law, but became subject to SORNA's registration requirements when they took effect in 2012. He

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[96] *See Bonser v. District Attorney Monroe County*, 659 Fed. App'x 126, 127 n.1 (3d Cir. 2016) (quoting *Commonwealth v. Whanger*, 30 A.3d 1212, 1215 (Pa. Super. Ct. 2011) (noting that Pennsylvania deemed a sexually violent predator designation as a "collateral consequence of a conviction" and hence "not a sentence")); *Calhoun*, 745 F.3d at 1074 (citing *People v. Sheth*, 318 P.3d 533, 534 (Colo. App. 2013) ("Moreover, the Colorado sex-offender registration requirements are remedial, not punitive.")); *Virsnieks*, 521 F.3d at 720 (citing *State v. Bollig*, 232 Wis.2d 561, 605 N.W.2d 199, 205 (2000) ("[T]he Wisconsin sexual offender registration is considered remedial, rather than punitive, in nature.")); *Leslie*, 296 F.3d at 522–23 (citing *State v. Cook*, 83 Ohio St.3d 404, 700 N.E.2d 570, 585 (1998) ("The Ohio Supreme Court has also held that the sexual-predator statute is remedial as opposed to punitive in nature. . . . [This] provides additional support for our conclusion that the classification, registration, and community notification provisions are more analogous to collateral consequences. . . .")).

[97] *Coppolino v. Noonan*, 102 A.3d 1254, 1278 (Pa. Commw. Ct. 2014).

alleged that several of the new registration requirements were punitive and that subjecting him to the increased punishment violated principles of double jeopardy.

Coppolino held that the quarterly registration requirements were not punitive, but the in-person updates were. The court reasoned that the quarterly registration requirements were not punitive because they left Coppolino free to live as he chooses and did not prevent him from engaging in any given activity.

The in-person updates, however, were punitive because they imposed "an affirmative disability or restraint on registrants by inhibiting their ability to travel freely."[98] The court specifically pointed to the "temporary lodging" and "motor vehicle" restrictions that SORNA required registrants to follow and held that they were particularly restrictive.[99] If, the court surmised, a hotel where the registrant was planning to stay was full, "he would have three days to return to Pennsylvania and report the change in person or risk a five year prison sentence."[100] Similarly, it was "unclear how a registrant travelling to another city would be able to register, prior to renting a car there, a vehicle's license plate number and registration number and other identifier."[101] If the registrant were unable to determine such information in advance, he would have

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[98] *Id.* at 1277.

[99] *Id.*

[100] *Id.*

[101] *Id.*

to return within three business days to report the information in person."[102] The court noted that this "might be impossible" depending on "where and how the registrant is traveling."[103]

Coppolino concluded that, by impairing a citizen's "basic right" of "freedom of movement," the periodic reporting requirements imposed an affirmative restraint that was disproportionate to any public purpose that it served.[104] "On balance, this disproportionality, along with the similarity to the traditional punishment of parole and the substantial infringement of a fundamental right" led the court to conclude that the provisions were punitive.[105] Therefore, the Commonwealth Court held that those restrictions could not be applied to Coppolino without violating prohibitions against *ex post facto* laws.

The Pennsylvania Supreme Court affirmed *Coppolino* in a per curiam opinion.[106] But that was not its final say on Pennsylvania's SORNA statute. In *Commonwealth v. Muniz*,[107] it held that *all* of the SORNA registration provisions were punitive and that applying them retroactively violated the Pennsylvania

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[102] *Id.*

[103] *Id* (internal quotation marks omitted).

[104] *Id.* at 1278.

[105] *Id.*

[106] *Coppolino v. Noonan*, 633 Pa. 445, 125 A.3d 1196 (2015) (per curiam).

[107] 640 Pa. 699, 164 A.3d 1189 (2017).

Constitution.[108] The OAJC and two concurring justices agreed that the Pennsylvania legislature did not intend to create a punitive scheme—but nevertheless did so when it enacted SORNA.[109] Retroactive application of the scheme therefore violated the Pennsylvania Constitution's *ex post facto* clause.

As a result of *Coppolino* and *Muniz*, Pennsylvania courts have concluded that SORNA's registration requirements are punitive, not remedial—unlike the courts in nearly every other state. This supports Piasecki's claim that the registration requirements imposed upon him are punitive sanctions imposed pursuant to the state court's judgment of sentence

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[108] *Muniz*, 164 A.3d at 1193. *Muniz* was a divided opinion. Three justices joined the Opinion Announcing the Judgment of the Court ("OAJC") concluding that Pennsylvania's SORNA statute violated both the U.S. Constitution and the Pennsylvania Constitution, which, in their estimation, provided "even greater [*ex post facto*] protections than its federal counterpart." *Id.* at 1223. Two justices concurred in the entirety of the opinion except for the portions that held the Pennsylvania Constitution provided greater protections than the U.S. Constitution. In their view, the "state and federal *ex post facto* clauses are coterminous." *Id.* at 1232 (Wecht, J., concurring). The Chief Justice of the Pennsylvania Supreme Court dissented, finding that "SORNA does not impose punishment and, thus, does not violate either the federal or state constitutions' *ex post facto* clauses." *Id.* at 1233 (Saylor, C.J., dissenting). The net precedential effect of these opinions was "confined to the determination that SORNA's registration requirement is punishment that runs afoul of the *ex post facto* clause of the Pennsylvania Constitution when applied retroactively." *Commonwealth v. Hart*, 174 A.3d 660, 667 n.9 (Pa. Super. Ct. 2017).

[109] *Muniz*, 164 A.3d at 1219, 1223; *id*. at 1224 (Wecht, J., concurring).

rather than collateral consequences or remedial measures.

Moreover, Pennsylvania state court decisions have historically treated sex offender registration requirements as part of the judgment of sentence. The Commonwealth concedes that registrants seeking to challenge their registration status have traditionally done so by appealing the judgment of sentence, and Pennsylvania courts treat a registrant's "status" under a sex offender registration statute as "a component of the judgment of sentence."[110] Challenges to a registration classification, therefore, must be made in the context of a challenge to the judgment of sentence itself.[111] Thus, under Pennsylvania law, SORNA registration requirements are imposed pursuant to the state court judgment of sentence.

Nevertheless, we recognize that one factor does support the contrary view. As the Commonwealth notes, the registration requirements at issue here were

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[110] Br. for Appellee, 20 (quoting *Commonwealth v. Harris*, 972 A.2d 1196, 1201–02 (Pa. Super. Ct. 2009) ("We agree that the term 'judgment' is not limited to the court's sentence of incarceration, but also includes that status determination under Megan's Law.")).

[111] *Commonwealth v. Leonard*, 172 A.3d 628, 631 (Pa Super. Ct. 2017) ("Appellant challenges the requirements *imposed by the trial court* that he register as a sex offender for life based upon the court's interpretation of SORNA's requirements.") (emphasis in original); *Commonwealth v. Sauers*, 159 A.3d 1, 16 (Pa. Super. Ct. 2017) (noting that a challenge to a Tier III SORNA classification is a "non-waivable legality-of-sentence issue," vacating "the lifetime registration portion of Appellant's sentence" and "remand[ing] for re-sentencing under SORNA").

created more than two years *after* Piasecki was sentenced. Arguably, then, Piasecki's registration requirements were imposed pursuant to an act of the legislature, not a state court judgment. This argument has some force, but ultimately we disagree with the Commonwealth's position because Piasecki became subject to SORNA's registration requirements as a "direct consequence of [the] conviction" being challenged.[112]

Piasecki became subject to SORNA's registration requirements by virtue of his conviction and subsequent judgment of sentence. Under the initial version of SORNA passed by the Pennsylvania legislature, any person who was "required to register with the Pennsylvania State Police . . . prior to the [amendment]" and who had "not fulfilled the period of registration as of the effective date of this section" became subject to SORNA's increased registration requirements.[113] In other words, Piasecki was subject to SORNA's registration requirements because of the sentence imposed pursuant to the state court judgment.

We therefore conclude that SORNA's registration requirements rendered Piasecki "in custody pursuant to the judgment of a State Court" when he filed his petition.

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[112] *Stanbridge*, 791 F.3d 715, 719 (7th Cir. 2015).

[113] 42 Pa.C.S. § 9799.13(3) (2012); 2011 Pa. Legis. Serv. Act 2011-111 (S.B. 1183) (PURDON'S)

C. The Limits of Our Ruling

Many of our sister circuits have predicted that a ruling such as the one we announce today would render the "in custody" requirement of the habeas statute superfluous.[114] Our decision today raises no such concerns. We do not hold that *any* collateral consequence of conviction can support habeas jurisdiction. Rather, we hold that the custodial jurisdiction requirement is satisfied by severe, immediate, physical, and (according to the state's own definition) punitive restraints on liberty that are imposed pursuant to—and included in—the judgment of a state court such as the one here. Truly collateral consequences—such as the "inability to vote, engage in certain businesses, hold public office, or serve as a juror"[115]—are not analogous to the restrictive and invasive regime created under SORNA's registration requirements. The physical compulsion of SORNA's registration requirements and their direct relation to the judgment of sentence set them apart from consequences that are truly collateral and non-custodial.

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[114] *See*, *e.g.*, *Calhoun*, 745 F.3d at 1074 (quoting *Maleng*, 490 U.S. at 492, 109 S.Ct. 1923)(suggesting that a holding that sex offender registration requirements can give rise to habeas jurisdiction "would read the 'in custody' requirement out of the statute"); *Wilson*, 689 F.3d at 339 ("To rule otherwise [and find that sex-offender registration requirements can support habeas jurisdiction] would drastically expand the writ of habeas corpus beyond its traditional purview and render § 2254's 'in custody' requirement meaningless.").

[115] *Maleng*, 490 U.S. at 491–92, 109 S.Ct. 1923.

Additionally, this is not a situation where Piasecki was in custody as a result of an intervening judgment such as a separate conviction or a civil commitment hearing.[116] In those cases, a litigant could not challenge a previously expired conviction that is no longer the source of any restrictions. As we have explained, Piasecki's registration requirements were part of his sentence and continue as such into the future. No separate order is involved.

Finally, nothing we have said should be interpreted as calling into question the wisdom or propriety of Pennsylvania's sex offender registration requirements. That determination is the province of the legislature, not the courts.[117] The legislature determined that long-term, in-person registration and supervision was necessary for those who commit sexual offenses[118]—including those who possess truly horrific videos such as those possessed by Piasecki. Today, we hold only that the restrictions that follow from that level of supervision constitute custody for the purposes of habeas jurisdiction.

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[116] *Stanbridge*, 791 F.3d at 719.

[117] To the extent that we have cautioned against imposition of overly broad restrictions on internet and computer use, *see supra* note 73, we have done so merely to call attention to the ease with which such restrictions can sweep further than intended or warranted and to note the unintended consequences that may follow if they are not appropriately tailored to focus on the conduct that the court was attempting to address.

[118] 42 Pa.C.S. § 9799.11.

III. CONCLUSION

The writ of habeas corpus "is not now and never has been a static, narrow, formalistic remedy."[119] The scope of the writ has grown in accordance with its purpose—to protect individuals against the erosion of their right to be free from wrongful restraints upon their liberty.[120] SORNA's registration requirements clearly constitute a restraint upon liberty, a physical restraint not shared by the public generally. The restraint imposed on Piasecki is a direct consequence of a state court judgment of sentence, and it therefore can support habeas corpus jurisdiction. For all of the reasons set forth above, the order of the District Court is vacated and the case is remanded for further proceedings consistent with this opinion.

[119] *Jones*, 371 U.S. at 243, 83 S.Ct. 373.

[120] *Id.*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JASON PIASECKI	:	CIVIL ACTION
	:	
v.	:	
COURT OF COMMON	:	
PLEAS, BUCKS	:	
COUNTY, PA, et al.	:	NO. 14-7004

ORDER

AND NOW, this 26th day of October 2016, upon consideration of Jason Piasecki's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. No. 1), Response in Opposition to Petition for Habeas Corpus Relief of the District Attorney of Bucks County (Doc. No. 6), Petitioner's Memorandum in Reply/Traverse to Response (Doc. No 14), Magistrate Judge Marilyn Heffley's Report and Recommendation (Doc. No. 15), Petitioner's Objections to Report and Recommendation (Doc. No. 17), the District Attorney of Buck County's Response to Petitioner's Objections to Report and Recommendation (Doc. No. 19), Petitioner's Supplemental Objections to Report and Recommendations (Doc. No. 20), and an independent review of the record before the Court, it is hereby ORDERED as follows:

1. Petitioner's objections to the Report and Recommendation (Doc. No. 17) and Petitioner's Supplemental Objections to Report and Recommendations (Doc. No. 20) are OVERRULED.

We adopt the Report and Recommendation ("R&R") by Magistrate Judge Heffley, and write separately only to address Plaintiff's objections to the R&R. When reviewing a R&R to which a party has objected, a court must make "a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). Plaintiff raises six objections to the R&R; we shall address each in turn.

First, Piasecki argues the Magistrate Judge erred in denying an evidentiary hearing and depriving him of the opportunity to make a record of the nature and extent of restrictions on his liberty that rendered him "in custody" for purposes of federal habeas jurisdiction. Whether to hold a hearing remains in the discretion of the district court, and depends on whether the hearing "would have the potential to advance the petitioner's claim." Campbell v. Vaughn, 209 F.3d 280, 287 (3d Cir. 2000). Where a petitioner fails to forecast to the district court evidence outside the record that would help his cause or "otherwise to explain how his claim would be advanced by an evidentiary hearing," a court is within its discretion to deny the claim. Id. (internal quotations omitted). Piasecki has failed to do so. Therefore, the Magistrate Judge's denial of an evidentiary hearing was proper.

Second, Piasecki objects to the Magistrate Judge's assertion that a collateral—rather than direct—consequence of a defendant's conviction does not render a defendant "in custody" for purposes of a habeas challenge, as required by the federal habeas statute, 28 U.S.C. § 2241(c)(3). Piasecki

relies on Padilla v. Kentucky, 559 U.S. 356, 365 (2010), but his reliance is misplaced. In Padilla, the Supreme Court considered collateral consequences in a distinct context, that is, whether a defendant may bring an ineffective assistance of counsel claim on the ground that his attorney failed to inform him of the risk of deportation prior to his entering a guilty plea, a matter that some courts had deemed collateral to the conviction. Id. Although the Supreme Court noted "the collateral versus direct distinction is . . . ill suited to evaluating a Strickland claim[,]" this criticism applies to the scope of constitutionally reasonable professional assistance required under Strickland v. Washington, 446 U.S. 668 (1984). Id. at 366.

As germane to the issue at hand, the Supreme Court has made clear that "[w]e have never held . . . that a habeas petitioner may be 'in custody' under a conviction when the sentence imposed for that conviction has *fully expired* at the time his petition is filed." Maleng v. Cook, 490 U.S. 488, 491 (1989) (emphasis original). "[O]nce the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual "in custody" for the purposes of a habeas attack upon it." Id. at 492. Here, Petitioner's sentence consisted of a term of probation of 36 months, which expired on April 26, 2013. Def. Mot. Ex. A, at 12-15 (Doc. No. 6-1). He did not file this petition until December 2014. Pet. for Writ of Habeas Corpus (Doc. No. 1). Every federal court that has considered the issue has concluded that the burdens and requirements of sex offender registration laws, akin to or more onerous than those of the Pennsylvania

statute, are merely collateral consequences of a conviction and they do not cause a registered sex offender to be "in custody" for purposes of § 2254(a). See, e.g., Bonser v. Dist. Attorney Monroe Cty., No. 15-2544, 2016 WL 4271872, at *2 (3d Cir. Aug. 15, 2016); Wilson v. Flaherty, 689 F.3d 332, 337 (4th Cir. 2012); Virsnieks v. Smith, 521 F.3d 707, 720 (7th Cir. 2008); Leslie v. Randle, 296 F.3d 518, 521–23 (6th Cir. 2002); Henry v. Lungren, 164 F.3d 1240, 1241–42 (9th Cir. 1999).

Third, Piasecki objects to the Magistrate Judge's finding that the state court judge did not sentence Piasecki to comply with Pennsylvania's sex-offender registry, citing to the state judge's statement at sentencing that Piasecki is "subject to ten-year registration[.]" Piasecki was sentenced pursuant to 18 Pa. Cons. Stat. § 6312(d), rather than Pennsylvania's Sex Offender Registration and Notification Act ("SORNA"), 18 Pa. Cons. Stat. § 9799. In addition, the registration requirement was not included in the court's judgement. See Stanbridge v. Scott, 791 F.3d 715, 719 (7th Cir. 2015). The triggering fact for the duty to register is a sex offense conviction, not the sentence. See 18 Pa. Cons. Stat. § 9799.13. Under Pennsylvania law, the sentencing court must "inform the individual required to register of the individual's duties[.]" Id. at § 9799. That the judge informed Piasecki of the statutory registration requirement, however, does not render the registration requirement a condition of Piasecki's sentence. Therefore, Piasecki's objection is overruled.

Fourth, Piasecki criticizes the Magistrate Judge's application of Maleng v. Cook, 490 U.S. 488 (1989),

in concluding that the registration requirement does not create a concrete restriction on present liberty. Maleng is on point: the case called on the Supreme Court to consider whether a habeas petitioner remains "in custody" after the sentence imposed for the conviction has fully expired. See, e.g., Governement [sic] of Virgin Islands v. Vanterpool, 767 F.3d 157, 164 (3d Cir. 2014) (applying Maleng in analyzing whether a petitioner remains "incustody" where the petitioner was never incarcerated and had completed probation). Piasecki misconstrues the Magistrate Judge's analysis as reasoning that registration was no more a form of custody than "the possibility that the prior conviction will be used to enhance the sentences imposed for any subsequent crimes of which he is convicted." Maleng, 490 U.S. at 492. Rather, the Magistrate Judge simply heeded the Supreme Court's direction that courts should not read the "in custody" requirement as to render it superfluous. Therefore, Piasecki's objection is overruled.

Fifth, Piasecki objects to the Magistrate Judge's citation to Coppolino v. Noonan, 102 A.3d 1254 (Pa. Commw. Ct. 2014), for the assertion that SORNA's registration requirements are remedial rather than punitive. Although in Coppolino a Pennsylvania Commonwealth Court concluded that a SORNA requirement that offenders update information in person on a quarterly basis was punitive, id. at 1278, Pennsylvania Superior Courts that subsequently considered Coppolino have concluded that the requirements are remedial. See, e.g., Commonwealth v. Woodruff, 135 A.3d 1045, 1061 (Pa. Super. 2016); Commonwealth v. Shrawder, 2015 WL 7354634, at *6 (Pa. Super. Ct. Nov. 20,

2015); Commonwealth v. Whitehead, 2015 WL 7282864, at *4 (Pa. Super. Ct. May 11, 2015); Commonwealth v. Giannantonio, 114 A.3d 429, 438 (Pa. Super. Ct. 2015). In addition, other than Coppolino, the Magistrate Judge has cited ample support for the conclusion that SORNA's registration requirements are remedial rather than punitive. Therefore, Piasecki's objection is overruled.

Finally, Piasecki objects to the Magistrate Judge's denial of a certification of appealability. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Piasecki has made no such showing. Therefore, this Court concludes that jurists of reason would not find it debatable whether dismissal of the petition is correct, and the Magistrate Judge properly denied the certificate of appealability.

2. The Report and Recommendation (Doc. No. 15) is APPROVED and ADOPTED.

3. The petition for a writ of habeas corpus (Doc. No. 1) is DISMISSED without an evidentiary hearing. See Campbell v. Vaughn, 209 F.3d 280, 287 (3d Cir. 2000).

4. No certificate of appealability shall issue because reasonable jurists would not debate the

correctness of this Court's ruling and Petitioner has failed to make a substantial showing of the denial of a constitutional right. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

5. The Clerk of Court is directed to close this matter for statistical purposes.

BY THE COURT:

/s/ Legrome D. Davis

Legrome D. Davis, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JASON PIASECKI, Petitioner,	:	CIVIL ACTION
v.	:	
COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA, et al., Respondents.	:	NO. 14-7004

REPORT AND RECOMMENDATION

MARILYN HEFFLEY, U.S.M.J. April 21, 2016

This is a counseled petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by Jason Piasecki ("Petitioner" or "Piasecki"). Piasecki was not sentenced to imprisonment for his conviction and he has been released from probation. He nevertheless seeks habeas review based on the fact he is subject to the reporting requirements of Pennsylvania's Sexual Offender Registration and Notification Act ("SORNA"), 42 Pa. Cons. Stat. § 9799.10-.41. For the reasons that follow, I find that the Court lacks jurisdiction over Piasecki's petition and recommend that the petition be denied.[1]

[1] Given that the Court lacks jurisdiction over Piasecki's habeas petition, it is not necessary to reach the merits of his claims.

I. FACTUAL AND PROCEDURAL HISTORY

On January 14, 2010, Piasecki was convicted in the Court of Common Pleas of Bucks County, Pennsylvania of 15 counts of Sexual Abuse of Children—Possession of Child Pornography pursuant to 18 Pa. Cons. Stat. § 6312(d)(1). Resp't's Br. (Doc. No. 6) Ex. H, at 1 (Commonwealth v. Piasecki, No. 1482 EDA 2013, slip op. at 1 (Pa. Ct. C.P. July 1, 2013)). On April 26, 2010, Piasecki was sentenced to three years of probation. Id. at 2. The Pennsylvania Superior Court denied Piasecki's direct appeal on July 25, 2011. Id. The Pennsylvania Supreme Court denied Piasecki's petition for allowance of appeal on January 6, 2012. Id.

On December 19, 2012, Piasecki filed a counseled petition for post-conviction relief pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. § 9541 et seq. Id. Hearings on the petition were held on April 4 and April 16, 2013. Resp't's Br. Ex. H, at 2. On April 24, 2013, at the conclusion of the hearing, the PCRA court denied Piasecki's petition on the merits. Id. at 2. Piasecki's probationary sentence expired on April 26, 2013. Id. Piasecki filed an appeal with the Pennsylvania Superior Court on May 21, 2013. Id. On July 1, 2013, the PCRA court filed an opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) in response to Piasecki's appeal.[2] Id. Ex H. The PCRA court did not address the merits of

[2] Under Pennsylvania appellate procedure "the judge who entered the order giving rise to the notice of appeal . . . shall forthwith file of record at least a brief opinion of the reasons for the order. . . ." Pa. R. App. P. 1925(a).

Piasecki's claims in its opinion, but instead suggested to the Superior Court that Piasecki no longer was eligible for PCRA review due to the expiration of his term of probation. Id. at 2-3. On February 21, 2014, the Superior Court agreed that Piasecki was ineligible for PCRA relief under the terms of 42 Pa. Cons. Stat. § 9543(a)(1)(i) and dismissed his appeal. Id. Ex. J, at 2-3. The Pennsylvania Supreme Court denied Piasecki's petition for allowance of appeal on August 19, 2014. Commonwealth v. Piasecki, 32 A.3d 280 (Pa. 2014). Piasecki then filed the present habeas petition (Doc. No. 1) on December 14, 2014.

In his petition, Piasecki seeks habeas relief on the following grounds: (1) the evidence was insufficient to support his conviction; (2) his statements to police were inadmissible because he was interrogated in police custody without Miranda warnings; (3) the police destroyed exculpatory information by unplugging his computer; (4) trial counsel was ineffective in failing to invoke Pennsylvania's corpus delecti rule; and (5) evidence admitted at trial was obtained as a result of an unlawful, warrantless intrusion by the police into his computer using computer software. In addition to challenging Piasecki's arguments on the merits, Respondents contend that this Court lacks jurisdiction to hear Piasecki's petition. As discussed below, I agree with Respondents and recommend that Piasecki's petition be denied.

II. DISCUSSION

The statute governing habeas petitions, 28 U.S.C. § 2254(a), grants jurisdiction for a court to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." As the Supreme Court has explained, "[t]he custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty. Since habeas corpus is an extraordinary remedy . . . , its use has been limited to cases of special urgency, leaving more conventional remedies for cases in which the restraints on liberty are neither severe nor immediate." Hensley v. Mun. Court, 411 U.S. 345, 351 (1973). Because Piasecki's probationary sentence has been completed, Respondents contend that he is no longer "in custody" and, therefore, is ineligible for habeas relief. Resp't's Br. at 11-15. Piasecki argues, however, that the registration requirements of Pennsylvania's SORNA, 42 Pa. Cons. Stat. § 9799.10-.15, are so onerous that they render him "in custody" for the purposes of Section 2254. Reply (Doc. No. 14) at 2-4.

Pennsylvania amended its SORNA statute, effective December 20, 2012, to impose stricter registration requirements on individuals convicted of sexual offenses. 2011 Pa. Legis. Serv. 2011-111 (West). Prior to the amendments, although the United States Court of Appeals for the Third Circuit had not ruled on the issue, federal district courts in Pennsylvania unanimously

agreed that the registration requirements of the pre-2012 version of the statute, known as Megan's Law, did not render a convicted person in custody for the purposes of habeas jurisdiction. See, e.g., Williams v. District Attorney, No. 10-353, 2010 WL 4388073, at *7-9 (W.D. Pa. Oct. 29, 2010); Bankoff v. Commonwealth, No. 09-CV-2042, 2010 WL 396096, at *2-5 (E.D. Pa. Feb. 2, 2010); Cravener v. Cameron, No. 08-1682, 2010 WL 235119 at *2-7 (W.D. Pa. Jan. 15, 2010); Story v. Dauer, No. 08-1682, 2009 WL 416277, at *1 (W.D. Pa. Feb. 18, 2009). Similarly, "every court of appeals to have considered whether the registration requirements imposed on sex offenders place the sex offender in custody for purposes of habeas jurisdiction has concluded that they do not." Wilson v. Flaherty, 689 F.3d 332, 337-38 (4th Cir. 2012).

Piasecki contends that the registration burden imposed on him under SORNA is more onerous than that imposed on sex offenders under Megan's Law prior to December 20, 2012. Megan's Law required offenders, such as Piasecki, to register with the Pennsylvania State Police by mail once a year. 42 Pa. Cons. Stat. § 9796(b) (repealed 2012). SORNA imposes a requirement that a Tier III offender, like Piasecki,[3] appear and register in person at a Pennsylvania State Police facility at least every quarter. Id. § 9799.15(e)(3). It also

[3] Pennsylvania's SORNA classifies offenders into three "tiers" based on the severity of their offenses. 42 Pa. Cons. Stat. § 9799.14. Because Piasecki was convicted of multiple counts of possession of child pornography, he is classified as a Tier III offender. Id. § 9799.14(d)(16).

imposes the obligation to register an expanded range of information and to re-register within three days after an offender changes any of the following: name or alias; residence or the absence of a set residence; employer, location of employment or termination of employment; enrollment or termination of enrollment as a student; telephone number, including cell phone number, or termination of a telephone or cell telephone number; addition, change in ownership, or termination of ownership of a motor vehicle, including watercraft or aircraft; temporary lodging or the commencement or termination of temporary lodging; email address, instant message address or any other designations used in internet communications or postings; and professional or occupational licensing. Id. § 9795.15(g). For Tier III offenders, the registration obligation continues for life. Id. § 9799.15(a)(3).

Piasecki bases his argument that he is in custody for purposes of habeas jurisdiction on Barry v. Bergen Cnty. Probation Dept., 128 F.3d 152, 159-61 (3d Cir. 1997), in which the Third Circuit held that a person who was sentenced to 500 hours of community service was in custody for the purposes of Section 2254 jurisdiction. Reply at 2-4. The Barry court reasoned that "an individual who is required to be in a certain place—or in one of several places—to attend meetings or to perform services, is clearly subject to restraints on his liberty not shared by the public generally." Barry, 128 F.3d at 161 (citing Dow v. Circuit Court, 591 F.2d 404, 407 n.6 (9th Cir. 1979)). Piasecki contends that the in-person registration requirements of

SORNA place restrictions on his freedom of movement "at least as severe and burdensome" as the community service requirement in Barry. Reply at 3.

Piasecki, however, misunderstands the basis for the Third Circuit's holding in Barry and the distinction between it and the numerous cases that have held sex-offender registration requirements do not place the offender "in custody" in a way that meets the jurisdictional requirement of Section 2254. That statute "require[es] [sic] that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed." Maleng v. Cook, 490 U.S. 488, 490-91 (1989). "[O]nce the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." Id. at 492. As the United States Court of Appeals for the Seventh Circuit explained in Stanbridge v. Scott, it is not merely the degree to which a convicted person's freedom of movement is constricted that determines whether a person is in custody for habeas purposes. 791 F.3d 715, 719 (7th Cir. 2015). "[A] habeas petitioner is not "in custody" pursuant to a particular conviction unless his physical liberty of movement is limited in a non-negligible way, and that limitation is a *direct* consequence of the challenged conviction." Id. A limitation is a direct consequence of a conviction if it is "imposed by the sentencing court as part of the authorized punishment, and included in the court's judgment." Id. It is a collateral consequence of the judgment "if it is not

included in the court's judgment, no matter whether the consequence is imposed on a person automatically upon conviction or serves as a necessary predicate for a subsequent determination by a court or administrative agency on grounds related to the conviction." Id.

Stanbridge involved a habeas petitioner convicted of aggravated sexual abuse in Illinois. Id. at 717. After Stanbridge's conviction, while he was still incarcerated under the sentence that resulted from it, the State filed a petition to have him civilly committed under Illinois' Sexually Violent Persons Commitment Act, 725 Ill. Comp. Stat 207/15, /20. Stanbridge, 791 F.3d at 717. That act provides for civil commitment of a person who has been found guilty of a sexually violent offense and "is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in sexual violence." Id. at 721 (quoting 725 Ill. Comp. Stat. 207/5(f)). Although the court recognized that civil commitment was a significant restraint on Stanbridge's freedom of movement, it held that the restraint did not render Stanbridge in custody for habeas purposes because it was not a direct consequence of his criminal sentence, but was a collateral result of the non-criminal Sexually Violent Persons Commitment Act. The court relied in reaching that decision on cases that held that the possibility of civil commitment after the expiration of a criminal sentence is a collateral consequence of a criminal conviction. Id. (citing Chaidez v. United States, ___ U.S. ___, 133 S. Ct. 1103, 1108 n.5 (2013); George v. Black, 732 F.2d 108, 110 (8th Cir. 1984)); see also Stanbridge, 791

F.3d at 719-20 (collecting cases holding that being placed in federal detention awaiting deportation does not render a petitioner in custody). Thus, even where a petitioner faces a deprivation of liberty as serious as indefinite civil commitment, that deprivation does not make the petitioner eligible for habeas review unless the deprivation is imposed as the direct consequence of the conviction. The Stanbridge court specifically distinguished Barry on the ground that the deprivation of liberty at issue there was both substantial and a direct result of the conviction that was being challenged in the habeas petition. 791 F.3d at 720.

Courts have consistently relied on the distinction between the direct consequences of a conviction and collateral consequences in holding that sex-offender registration statutes do not render a person in custody for purposes of habeas jurisdiction. See, e.g., Calhoun v. Attorney Gen., 745 F.3d 1070, 1074 (10th Cir. 2014); Wilson, 689 F.3d at 336-37; Virsnieks v. Smith, 521 F.3d 707, 717 (7th Cir. 2008); Leslie v. Randle, 296 F.3d 518, 521-22 (6th Cir. 2002); Henry v. Lungren, 164 F.3d 1240, 1241-42 (9th Cir. 1999); Williamson v. Gregoire, 151 F.3d 1180, 1182-85 (9th Cir. 1998). Some courts have found additional support in the determination that a sex-offender registration statute was remedial in nature rather than punitive. See, e.g., Calhoun, 745 F.3d at 1074; Virsnieks, 521 F.3d at 720; Leslie, 296 F.3d at 522-23; Diaz v. Commonwealth, No. 12-7082, 2103 WL 6085924, at *6 (E.D. Pa. Nov. 19, 2013). Other courts have relied on the fact that an offender who completes his or her sentence and then fails to comply

with the registration requirement cannot be reincarcerated under the original conviction; any imprisonment would come from a new conviction for failure to comply with the sex-offender registration statute. See, e.g., Calhoun, 745 F.3d at 1074; Wilson, 689 F.3d at 336-37; Bonser v. District Attorney, No. 3:13-CV-1832, 2015 WL 2455164, at *3 (M.D. Pa. May 22, 2015).

Courts also have relied on the Supreme Court's direction in Maleng that reading the "in custody" requirement in a way that would permit a petitioner to seek habeas review at any time after the expiration of his or her entire sentence "would read the 'in custody' requirement out of the statute." 490 U.S. at 492 (denying habeas jurisdiction for prior convictions premised on state statutes that enhanced sentences for subsequent crimes because of the existence of prior convictions because permitting such petitions would allow petitions to be filed indefinitely at any time after the initial conviction). See, e.g., Calhoun, 745 F.3d at 1074; Wilson, 689 F.2d at 336. Furthermore, courts have relied on the basis that a petitioner required to register as a sex offender is not subject to the same type of severe restraints on his or her liberty as the categories of petitioners who have been held can invoke habeas jurisdiction. They have recognized that, unlike a parolee, for example, a registered sex offender "is free to live, work, travel, and engage in all legal activities without approval by a government official." Calhoun, 745 F.3d at 1074; see also Wilson, 689 F.3d at 338; Leslie, 296 F.3d at 522.

Although the 2012 amendments to Pennsylvania's SORNA did make sex offenders' registration obligations considerably more burdensome, those changes do not change the reasoning underlying the courts' unanimous rulings that such statutes do not render a registrant in custody for the purposes of habeas jurisdiction. Burdensome as they may be, SORNA's frequent, in-person registration requirements, like the similarly restrictive registration requirements considered in Calhoun, Wilson, and Leslie, leave a registrant free to live, work, travel, or engage in any legal activities without the approval of a government official. Pennsylvania courts have uniformly held that the current SORNA registration requirements are remedial and not punitive in nature.[4] Commonwealth v. Woodruff, ___ A.3d

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[4] Piasecki argues that SORNA is distinguishable from the statutes addressed in prior cases because its sex-offender registration requirements were "triggered by his conviction under 18 [Pa. Cons. Stat.] § 6312(d) [(criminalizing sexual abuse of children)] **per** 42 [Pa. Cons. Stat.] §§ 8799.13(2), 9799.14(b)(9) [(SORNA) and] was imposed on him by the judge at the time of sentencing." Reply at 3 (emphasis added). However, Section 6312(d), the criminal statute under which Piasecki was sentenced, does not itself impose any registration obligation. Instead, those obligations are imposed under a regulatory statute, SORNA, the purpose of which is to protect the public from additional offenses committed by those who have committed sexual offenses previously. See 2011 Pa. Legis. Serv. 2011-111 § 9791. The trial court judge did not **sentence** Piasecki to comply with Pennsylvania's sex-offender registry; instead, she followed SORNA's requirement that "[t]he sentencing court shall **inform** offenders and sexually violent predators at the time of sentencing of the provisions of [SORNA]." 42 Pa. Cons. Stat. § 9795.3 (emphasis added). The fact SORNA requires a sentencing judge to give a convicted sex offender notice that he or she must comply with the regulatory statute applicable

___, No. 632 MDA 2015, 2016 WL 730637, at *14 (Pa. Super. Ct. Feb. 23, 2016); Coppolino v. Noonan, 102 A.3d 1254, 1274 (Pa. Super. Ct. 2014), aff'd, 125 A.3d 1196 (Pa. 2015); Commonwealth v. Perez, 97 A.3d 747, 758-59 (Pa. Super. Ct. 2014); see also Artway v. Attorney Gen., 81 F.3d 1235, 1264 (3d Cir. 1996) (noting with respect to Megan's Law that "[r]egistration is a common and long standing regulatory technique with a remedial purpose"); 2011 Pa. Legis. Serv. 2011-111 § 9791 (setting out legislative purpose of SORNA as promoting public safety). A registrant who is incarcerated for violating SORNA is not reincarcerated "under the conviction or sentence under attack at the time his [or her habeas] petition is filed." Maleng 490 U.S. at 491. In other words, the registrant is not imprisoned under the sentence for his or her earlier criminal sex-offense conviction. Instead, if the registrant is reincarcerated, it is for having committed an entirely new crime by violating the sexual-offender registration statute. See Wilson, 689 F.3d at 336-37; Bonser, 2015 WL 2455164, at *3; see also Stanbridge, 791 F.3d at 719-21 (same analysis applied to civil commitment statute for certain criminal sex offenders).

Thus, as the Seventh Circuit explained in Stanbridge, the SORNA registration requirements, like the civil commitment statute there, do not provide a basis for habeas jurisdiction because they are collateral consequences and not direct consequences of the petitioner's conviction. 791 F.3d at 720-21. Moreover, to

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to sex offenders does not mean that the offender is sentenced to comply with the statute.

interpret Pennsylvania's SORNA as rendering a registrant in custody for habeas jurisdiction would have the same effect the Supreme Court held impermissible in Maleng; it "would mean that a petitioner whose sentence has completely expired could nonetheless challenge the conviction for which it was imposed at any time on federal habeas. This would read the 'in custody' requirement out of the statute. . . ." 490 U.S. at 492.

The Third Circuit has not had occasion to consider the argument that the 2012 amendment's increased registration requirements are sufficiently onerous that they render a registrant in custody for habeas purposes. Nevertheless, the conclusion that they do not is further supported by the fact that courts that have considered whether sex-offender registration statutes having registration requirements similarly as burdensome as those imposed by Pennsylvania's SORNA uniformly have held that the imposition of such requirements does not make a registrant eligible for habeas jurisdiction. See Wilson, 689 F.3d at 335, 336-38; Leslie, 296 F.3d at 521-23; see also Dickey v. Patton, No. 15-685-M, 2015 WL 8592709, at *2-5 (W.D. Okla. Sept. 28, 2015) (statute requiring quarterly registration by mail as well as re-registration whenever offender changes information similar to that for which SORNA requires re-registration, see Okla. Stat. tit. 57, §§ 583-84); Godwin v. United States, No. 3:12-cr-1387-J-32TEM, 2014 WL 7074336, at *6 (M.D. Fla. Dec. 15, 2014) (statute requiring re-registration every third month and when offender changes information similar to that for which SORNA requires re-registration, see Fla. Stat.

§ 943.0435(2)(b), (14)(b)); Umbarger v. Michigan, No. 1:12-cv-705, 2013 WL 444024, at * 1, *3-6 (W.D. Mich. Feb. 5, 2013) (statute requiring quarterly registration by mail as well as re-registration whenever offender changes information similar to that for which SORNA requires re-registration, see Mich. Comp. Laws §§ 28.725(5)(1), 28.725a(5a)(3)(c)); Rodriguez v. Attorney Gen., No. 3868(PGG)(JLC), 2011 WL 519591, at *3, *4-8 (S.D.N.Y. Feb. 15, 2011) (statute requiring re-registration every 90 days and when offender changes information similar to that for which SORNA requires re-registration, see N.Y. Correction Law § 168-f(3)-(4)).

Moreover, although they have not addressed the specific argument made by Piasecki in reliance on Barry,[5] a number of courts in the Third Circuit have rejected the argument that either SORNA, as amended in 2012, or other state statutes that impose similarly burdensome registration requirements, provide a basis for habeas jurisdiction. See, e.g., Bonser, 2015 WL 2455164, at *2-4 (SORNA); Mooney v. Moore, No. 11-CV-193, 2014 U.S. Dist. LEXIS 126017, at *6-8 (E.D. Pa. July 18, 2014) (SORNA), report and recommendation adopted, 2014 U.S. Dist. LEXIS 124799 (E.D. Pa. Sept. 8, 2014); In re Winn, No. 10-2010, 2012 WL 2362444, at *1 (E.D. Pa. June 21, 2012) (SORNA); see also Jones v.

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[5] It is notable that, although Barry was decided in 1997, Piasecki has not cited, and the Court has not found, any decision applying Barry to a claim of habeas jurisdiction based on a petitioner being subject to sex-offender registration.

Attorney Gen., No. 14-1396-RGA, 2015 WL 7295439, at *2 (D. Del. Nov. 18, 2015) (addressing similar requirements of Del. Code Ann. tit. 11, § 4120(d)(2), (g)(1)); Coar v. Coronato, No. 15-6546 (SDW), 2015 WL 5334863, at *2 (D.N.J. Sept. 14, 2015) (addressing similar requirements of N.J. Stat. Ann. § 2C:7-2c, -2e.

III. CONCLUSION

For the foregoing reasons, I find that Piasecki is not "in custody" for jurisdictional purposes under the habeas statute and consequently, this Court lacks jurisdiction to hear his petition. I recommend that Piasecki's petition be denied in its entirety.[6] Accordingly, I make the following:

RECOMMENDATION

AND NOW, this 21st day of April, 2016, IT IS RESPECTFULLY RECOMMENDED that the petition for writ of habeas corpus be DENIED and DISMISSED. There has been no substantial showing of the denial of a constitutional right requiring the issuance of a certificate of appealability. The Petitioner may file objections to this Report and Recommendation. See Local

[6] In his petition, Piasecki requests an evidentiary hearing. Reply at 15. However, in light of my recommendation that the case be dismissed, Piasecki's request for an evidentiary hearing is denied. See Goldblum v. Klem, 510 F.3d 204, 221 (3d Cir. 2007) (citing Schriro v. Landrigan, 550 U.S. 465, 473 (1993)).

Civ. Rule 72.1. Failure to file timely objections may constitute a waiver of any appellate rights.

/s/ Marilyn Heffley
MARILYN HEFFLEY
UNITED STATES
MAGISTRATE JUDGE