UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0001

September Term, 2012

ROBERT DOUGLAS MORE

v.

STATE OF MARYLAND

Woodward,
Zarnoch,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: August 5, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2006, appellant, Robert Douglas More, was convicted of fourth degree sexual offense and second degree assault in the Circuit Court for Howard County as a result of acts committed in October 2005. The version of the Maryland sex offender registration act ("MSORA") in effect at the time of appellant's offense and conviction did not require that persons convicted of fourth degree sexual offense register as sex offenders, but gave the trial judge discretion to order such registration. *See* Md. Code (2001, 2005 Cum. Supp.), §§ 11-701(b)(3), (d)(2) of the Criminal Procedure Article ("CP 2005").[1] At the time of his plea and sentencing, the court did not order appellant to register as a sex offender.

In 2010, the Maryland General Assembly amended MSORA. The changes required appellant to register as a Tier I sex offender for a term of fifteen years from the date of his conviction, which he did in May 2011. *See* CP 2010 § 11-707(a)(4). In September 2011, the Frederick County Sheriff's Department discovered that appellant had not provided notice of a change in his home address as required by MSORA. In February 2012, appellant was charged and convicted in the circuit court of failure to notify appellee, the State, of a change of address. The court sentenced appellant to three years' incarceration, all suspended, and three years of unsupervised probation.

[1] This opinion makes several references to different versions of the Maryland sex offender registration act ("MSORA"), so the year of the specific version referenced will be stated for clarification purposes.

Appellant appealed his conviction for failing to register and presents one question for our review, which we have rephrased:[2]

> Was the evidence sufficient to sustain appellant's conviction for failing to provide notice of his change in address as required by MSORA for a sex offender registrant?

For reasons we explain below, we answer this question in the negative and reverse the judgment of the circuit court.

BACKGROUND

On September 22, 2006, appellant pled guilty to fourth degree sexual offense and second degree assault as the result of acts committed in October 2005.[3] At the time of the commission of these offenses, a conviction for fourth degree sexual offense did not automatically require the person to register as a sex offender, and instead gave the trial court discretion to order registration. *See* CP 2005 §§ 11-701(b)(3), (d)(2). The court sentenced appellant to five years' probation, but did not require him to register as a sex offender.

Effective October 2010, the Maryland General Assembly made a number of changes to MSORA. The 2010 amendments categorized persons convicted of sex offenses into three tiers of offenders: "Tier I offenders were required to register for fifteen years, Tier II

[2] Appellant's question presented, as set forth in his brief, reads: "Given the highly punitive and restrictive nature of Maryland's sex offender registration law, does its retroactive application violate federal and state constitutional bans on *ex post facto* laws?"

[3] The record provides no factual details describing the basis of appellant's convictions for fourth degree sexual offense and second degree assault.

offenders were required to register for twenty-five years, and Tier III offenders were required to register for life." *Quispe del Pino v. Md. Dep't of Pub. Safety & Corr. Servs.*, 222 Md. App. 44, 48 (2015) (citing CP 2010 §§ 11-701(o)-(q), -707(a)(4)). The General Assembly also made the registration requirement retroactive to include any person "under the custody or supervision of a supervising authority on October 1, 2010." CP 2010 § 11-702.1(a)(1).

Because appellant was still on probation on October 1, 2010, for his 2006 conviction for fourth degree sexual offense, appellant was categorized as a Tier I offender and required to register for a period of fifteen years. *See* CP 2010 §§ 11-701(o)(1), -707(a)(4)(i). Appellant executed a contract with his supervising authority, the Frederick County Adult Detention Center, on May 31, 2011, in order to comply with the registration requirement. On October 7, 2011, appellant was charged with violating CP 2010 § 11-721 by failing to notify his supervising authority of a change in his address ("failure to notify").

At a hearing on February 16, 2012, appellant pled not guilty based on an agreed statement of facts. These facts revealed that on September 11, 2011, Deputy Ron Dement of the Frederick County Sheriff's Department visited the address on file in appellant's registration statement to conduct a sex offender registry compliance check. The owner of the residence told Deputy Dement that appellant had not lived at that address for approximately two months. The following day, on September 12, 2011, appellant called the custodian of records for Frederick County's sex offender registry and left a message stating

that he needed to update his address. The custodian of records spoke with appellant's probation officer, who advised appellant that he needed to file a change of address in writing.

On September 19, 2011, the custodian of records called appellant at his place of employment to ask if he had filed a written change of address. Appellant stated that he had not yet updated his address, because "he had been busy and just had not gotten around to it." Based on these facts, the trial court found appellant guilty of failure to notify, and sentenced him to three years' incarceration, all of which was suspended in favor of three years of unsupervised probation. This timely appeal followed.

STANDARD OF REVIEW

Appellant challenges his conviction for failure to notify "on the ground that retroactive application of Maryland's sex offender registration provisions violates federal and state *ex post facto* prohibitions." "[W]here an order involves an interpretation and application of Maryland constitutional, statutory or case law, [Maryland appellate courts] must determine whether the trial court's conclusions are legally correct under a *de novo* standard of review." *Schisler v. State*, 394 Md. 519, 535 (2006) (citations and internal quotation marks omitted). "If the facts as found by the trier of fact are not clearly erroneous, our review of the application of the law to those facts, such as where impingement on an individual's constitutional rights may be in question, is *de novo*." *Polk v. State*, 378 Md. 1, 8 (2003), *cert. denied*, 541 U.S. 951 (2004).

Because appellant's plea proceeded by way of an agreed statement of the facts, we conclude that the facts found by the trial court are not clearly erroneous. *See Danz v. Schafer*, 47 Md. App. 51, 57-58 (1980). We therefore review the sufficiency of evidence challenge *de novo*.

DISCUSSION

The 2010 amendments to MSORA required, among other things, that registrants notify authorities of any changes to their personal information, including their home address, within three days of such change. CP 2010 § 11-705(e). Failure to notify is punishable by imprisonment or a fine, or both. CP 2010 § 11-721.

Although not explicitly stated in the statutory language, a clear predicate to a conviction for failure to notify is an initial registration requirement. As outlined by the Fourth Circuit, "the elements of a [ ] failure to register offense . . . are that the defendant (1) was required to register . . . ; (2) was previously convicted of a sex offense . . . ; and (3) *knowingly* failed to register . . . ." *United States v. Gould*, 568 F.3d 459, 470 (4th. Cir. 2009) (emphasis in original) (discussing the federal sex offender registration scheme), *cert. denied*, 559 U.S. 974 (2010). The federal statutory requirement that offenders provide notice of a change in address is substantively the same as the notification requirement under the Maryland registration law. *Compare* CP (2010) §§ 11-705(e), -721(a) *with* 18 U.S.C. § 2250(a), 42 U.S.C. § 16913(c) (2012). We conclude that the three elements of failure to notify as outlined in *Gould* apply equally to appellant under Maryland law.

Appellant does not contest that he failed to notify his supervising authority of his change of address. Instead, he argues that he cannot be convicted of failure to notify, because he cannot constitutionally be required to register as a sex offender under the 2010 version of MSORA. According to appellant, the retroactive application of MSORA to him violates the prohibition against *ex post facto* laws, as determined by the Court of Appeals in *Doe v. Department of Public Safety & Correctional Services*, 430 Md. 535 (2013) ("*Doe I*"). Accordingly, our analysis begins with a discussion of *Doe I*.

I.

Doe I

This Court summarized the facts and holding of *Doe I* in *Quispe del Pino*:

> The pertinent facts in Doe I are as follows:
>
> > In 2006, Doe pled guilty to and was convicted in the Circuit Court for Washington County of a single count of child sexual abuse arising out of an incident involving inappropriate contact with a thirteen-year-old student that occurred during the 1983-84 school year when Doe was a junior high school teacher. Doe was sentenced to ten years incarceration, with all but four and one half years suspended, and three years supervised probation upon his release. Although Doe's plea agreement did not address registration as a sex offender as one of the conditions of probation, Doe was ordered at sentencing to "register as a child sex offender." He was also ordered to pay a $500 fine. Following his sentencing, Doe filed a Motion to Correct an Illegal Sentence challenging both the fine and the requirement that he register as a child sex offender. The Circuit Court agreed with Doe and issued an order striking the fine and the registration requirement. Doe

> was released from prison in December 2008. On October 1, 2009, Doe's probation officer directed him to register as a child sex offender. Doe maintained that he did not agree with the requirement, but, against the advice of counsel, he registered as a child sex offender in early October 2009.

The requirement that Doe register as a sex offender was a result of the 2009 amendment to MSORA retroactively requiring offenders who were convicted on or after October 1, 1995, but committed a sexual offense before that date, to register for the first time. In October 2009, Doe brought a declaratory judgment suit in the circuit court, seeking an order that he was not required to register as a sex offender. Doe argued that a registration requirement would make his plea invalid as involuntary, because he was not informed that he would have to register as a sex offender when he entered into the plea agreement in 2006. The State argued that the requirement did not violate the prohibition against *ex post facto* laws. The trial court agreed with the State and ordered that Doe "shall not be removed from the sex offender registry."

After this Court affirmed the circuit court, the Court of Appeals granted *certiorari* and reversed our decision. In a plurality opinion, the Court of Appeals held that "requiring [Doe] to register as a result of the 2009 and 2010 amendments violates the prohibition against *ex post facto laws* contained in Article 17 of the Maryland Declaration of Rights." The three-judge plurality explained that "in many contexts," the Maryland Declaration of Rights offers broader protections than the United States Constitution. The plurality further determined that *ex post facto* claims under Article 17 should be analyzed by using the "disadvantage" standard, under which "any law passed after the commission of an offense which . . . in relation to that offense, *or its consequences*, alters the situation of a party to his [or her] disadvantage" violates Article 17.

Specifically, under the disadvantage standard, "Article 17 prohibits the retroactive application of laws that have the effect on an offender that is the equivalent of imposing a new criminal sanction or punishment." The plurality determined that requiring Doe to register had "essentially the same effect" as placing him on probation, that

"probation is a form of a criminal sanction," and that "applying the statute to [Doe] effectively imposes on him an additional criminal sanction" for a crime committed in the 1980s. The plurality also concluded that the dissemination of Doe's information pursuant to MSORA was "tantamount to the historical punishment of shaming," and thus imposed an additional sanction for Doe's crime. Therefore, according to the plurality, the retroactive application of MSORA to Doe, which had the effect of imposing the additional sanction of probation and shaming, violated the *ex post facto* prohibition contained in Article 17 of the Maryland Declaration of Rights.

Judge McDonald (joined by Judge Adkins) concurred with the plurality's conclusion that the statute violated Article 17, but, in contrast to the plurality, read Article 17 *in pari materia* with Article I, § 10 of the United States Constitution. Judge McDonald's concurrence stated further that "the cumulative effect of [the] 2009 and 2010 amendments of the State's sex offender registration law took that law across the line from civil regulation to an element of the punishment of offenders." Although his concurrence did not expressly state the test that was used, both the language of the concurrence and the two law review articles cited therein lead us to conclude that Judge McDonald analyzed the issue under the "intent-effects test."

The United States Supreme Court explained the "intent-effects" test in *Smith v. Doe*:

> We must "ascertain whether the legislature meant the statute to establish 'civil' proceedings." If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is "'so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil.'"

Stated another way, the "intent-effects" test requires a reviewing court to engage in a two-part inquiry: "first, the court must consider the legislative intent of the statute; second, even if the statute's stated purpose is non-punitive, the court must assess whether its effect

> overrides the legislative purpose to render the statute punitive." Therefore, by declaring that the 2009 and 2010 amendments "took that law across the line from civil regulation to an element of the punishment of offenders," Judge McDonald's concurring opinion found a violation of the State and federal *ex post facto* clauses under the "intent-effects" test.
>
> Judge Harrell, writing separately, concurred in the judgment that Doe was entitled to relief, because his 2006 plea agreement "d[id] not indicate that sex offender registration was a term" of the agreement. Judge Harrell, however, would have denied Doe's *ex post facto* claims under the "intent-effects" test established in *Smith v. Doe*. Lastly, Judge Barbera (now Chief Judge) dissented and, using the "intent-effects" test, would have upheld the 2009 and 2010 amendments to MSORA under both the State and federal constitutions.
>
> Although the Court ultimately held that "the retroactive application to Doe of Maryland's sex offender registration statute violated Article 17 of the Maryland Declaration of Rights," the divided Court did not reach a holding on whether to apply the "disadvantage" standard or the "intent-effects" test to future *ex post facto* challenges to MSORA.

Quispe del Pino, 222 Md. App. at 52-56 (italics and alterations in original) (citations omitted).

Quispe del Pino

In *Quispe del Pino*, this Court revisited MSORA's retroactivity provision in light of the Court of Appeals' decision in *Doe I*. *Id*. at 45. The pertinent facts of *Quispe del Pino* are as follows:

> On January 3, 2001, appellant pled guilty to one count of unlawful communication with a minor, one count of corruption of minors, and one count of loitering and prowling at nighttime, in the Court of Common Pleas in Pennsylvania ("the Pennsylvania Court").

> These offenses were committed in 2000. On April 10, 2001, the Pennsylvania Court sentenced appellant to ten years of probation, with his earliest termination date being April 9, 2011. Because appellant was a Maryland resident, his probation was transferred from Pennsylvania to Maryland. As a condition of his probation, appellant was required to register as a sex offender in Maryland for the duration of the ten-year period, under the supervising authority of the Montgomery County Police Department.
>
> On September 25, 2010, appellant was notified that, due to the 2010 amendment to MSORA, . . . appellant was reclassified as a "Tier II sex offender," and his registration term, which had been ten years, increased to twenty-five years.
>
> On December 21, 2011, appellant filed a Petition for Writ of Prohibition in the Circuit Court for Montgomery County against appellees, Maryland Department of Public Safety and Correctional Services and Gary Maynard, Secretary of the Department (collectively, the "Department"). Appellant argued that requiring his continued registration would violate the prohibition against *ex post facto* laws under both the United States Constitution and the Maryland Declaration of Rights. The Department responded on February 15, 2012, by filing a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. On March 29, 2012, the circuit court held a hearing on appellant's petition and the Department's motion. At the close of the hearing, the court issued an oral ruling and signed two written orders, one denying appellant's petition and the other granting summary judgment in favor of the Department.

Id. at 46-48 (footnote omitted).

In *Quispe del Pino*, this Court, after discussing the plurality and concurring opinions in *Doe I*, refrained from deciding "which test constitutes the 'narrowest grounds' of *Doe I*, because under either the 'disadvantage' standard or the 'intent-effects' test, the same result is reached." *Id*. at 59. We explained:

In *Doe I*, the plurality held that the retroactive application of MSORA to Doe "change[d] the consequences of [Doe's] crime to his disadvantage" by "placing him on probation and imposing the punishment of shaming for life," and thus violated the *ex post facto* prohibition contained in Article 17 of the Declaration of Rights. Judge McDonald's concurring opinion reached the same result by concluding that the retroactive application of MSORA by the 2009 and 2010 amendments "took that law across the line" from civil regulation to punishment. Central to each holding were the following facts: (1) in 1983-1984, when Doe committed the sexual offense for which he was later convicted, Doe was not subject to MSORA—indeed, MSORA did not exist at that time; and (2) because of his conviction, the retroactive provision of MSORA placed Doe on the sex offender registry for life, which required his compliance with all of the requirements of a Tier III sex offender and provided for public dissemination of information about him as a registered sex offender. **In other words, but for the retroactive application of MSORA under the 2009 and 2010 amendments thereto, Doe would not be subject to registration as a Tier III sex offender for the rest of his life.**

Similarly, in the instant case, (1) in 2000, when appellant committed the sexual offense for which he was later convicted, appellant was not subject to MSORA *beyond a period of ten years*; and (2) because of his conviction, the retroactive provision of MSORA placed appellant on the sex offender registry *for an additional period of fifteen years*, which required his compliance with all of the requirements of a Tier II sex offender and provided for public dissemination of information about him as a registered sex offender. **In other words, but for the retroactive application of MSORA, appellant would not be subject to registration as a Tier II sex offender for the fifteen year period following the initial ten years of registration. In sum, at the end of the first ten years as a registered sex offender, appellant was in the exact same position as Doe—the retroactive application of MSORA placed both Doe and appellant on the sex offender registry when they otherwise would have been free from any obligations under MSORA.**

Quispe del Pino, 222 Md. App. at 59-60 (italics and alterations in original) (bold emphasis added) (citations omitted).

In summary, we concluded that the retroactive application of MSORA to Quispe del Pino violated the constitutional prohibition against *ex post facto* laws contained in Article 17 of the Maryland Declaration of Rights. *Id*. at 63.

II.

Application of *Doe I* & *Quispe del Pino* to Appellant

Preliminarily, the State argues that the *Doe I* decision is legally inapposite to the case *sub judice*. Specifically, because Doe requested declaratory relief in a civil complaint, whereas appellant is requesting relief through a criminal case, the State contends that the holding in *Doe I* cannot be applied here. Citing *Sinclair v. State*, 199 Md. App. 130 (2011), the State suggests that, "to the extent that [appellant] argues that he should not have been required to register in the first instance, [appellant] may not make that claim in the context of his criminal case." The State concludes that appellant will continue to be a registrant regardless of the outcome of this appeal, unless a court grants him declaratory relief—relief that is unavailable in the criminal context.

The short answer to the State's contention is that appellant is not seeking a declaratory judgment to have his name removed from the registry; he is only challenging his conviction for failure to register. Appellant recognizes that, even if his conviction is reversed, he may have to pursue a second, civil action to have his name and information removed from the

registry.[4] We agree with appellant that the fact that his name will not be immediately removed from the registry "does not make the present appeal insignificant by any stretch, since what is at stake is a criminal conviction for which [appellant] is currently serving a term of probation."

Moreover, although *Doe I* was decided in the civil context, its rationale and legal conclusions apply equally in a criminal appeal. In applying the holding of a criminal case involving a retroactivity issue to a civil case, the Supreme Court concluded that "[t]he Court has no more constitutional authority in civil cases than in criminal cases to disregard current law or to treat similarly situated litigants differently. In both, adherence to legal principle requires that we determine the rights of litigants in accordance with our best current understanding of the law." *Am. Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 214 (1990). The holdings in *Doe I* and *Quispe del Pino* regarding the constitutionality of the retroactivity provision in MSORA constitute "our best current understanding of the law." *Id. Doe I* and *Quispe del Pino* thus apply equally to civil and criminal cases and will be applied here.

The State next argues that, even if *Doe I* applies despite the different procedural posture, the present case is distinguishable on the facts. The State contends that,

[4] Appellant points out that the Maryland Department of Public Safety and Correctional Services now provides an online form through which registrants can request to have their status as registrants reviewed in light of the *Doe I* decision. *See* Dep't of Pub. Safety & Corr. Servs., *March 4, 2013 Court of Appeals Retroactivity Ruling*, http://dpscs.md.gov/onlineservs/socem/retro_opinion.shtml (last visited July 21, 2015).

> [b]ecause the principle of fairness, upon which the ex post facto clause is grounded, is not violated where, as here, [appellant] had notice of the possible consequence of his conduct, the ex post facto clauses of the Maryland and federal constitutions were not violated when [the State] ordered [appellant] to register.

According to the State, the facts in the instant case are distinguishable from *Doe I*, because "the registry was in place and the legislature had demonstrated a willingness to include fourth degree sex offenses as an enumerated offense requiring registration if the circuit court so ordered."

Appellant responds that the fact that he *could* have been required to register in 2005 is "a distinction without a difference," because the judge did not order him to register as part of his sentence in 2006. Therefore, according to appellant, "[t]he consequences of his crime [ ] changed when the Legislature amended the law in 2009 and 2010." We agree with appellant and shall explain.

When appellant committed his fourth degree sexual offense in 2005, the registry requirements were much less onerous than under the 2010 MSORA amendments. As appellant points out, the current registration laws require offenders like him to register in person every six months for fifteen years. CP 2010 § 11-707.[5] In 2005, when appellant committed his offense, he would have been required to register annually for ten years, but only if ordered by the trial court. CP 2005 §§ 11-701(b)(3), (d)(2), -707(a). In 2005, an

[5] CP 2010 §§ 11-704 to -707, the relevant sections of MSORA at issue in this case, have not been amended since the 2010 amendments. *See Effect of amendments*, CP 2014 §§ 11-704 to -707.

offender needed to provide only basic information, including name and aliases, address, place of employment, social security number, and a description, date and location of the offense. CP 2005 § 11-706.[6] Today, appellant must provide his name and aliases, address, place of employment, social security number, a description, date, and location of his offense, his vehicle and license plate information, his home and cell phone numbers, a physical description including any identifying features, information about his professional licenses, his criminal history, his e-mail addresses, his computer log-in or screen names, his instant messaging identities, his electronic chat room identities, locations where vehicles are kept, fingerprints and palmprints, and any other information that the law enforcement agency requests. CP 2010 §§ 11-705(c)(2), -706(a). Today, if appellant's address, vehicle, e-mail address, telephone number, or employment changes, or if appellant enrolls in school, he must notify authorities within three days. CP 2010 § 11-705(e). Previously, he would have had seven days to notify authorities, and notification was required only for a change of address, a change of legal name, or enrollment in school. CP 2005 § 11-705(d).

In addition, as a result of the 2010 MSORA amendments, trial courts no longer have discretion to order registration of a person convicted of fourth degree sexual offense. Instead, all Tier I offenders, like appellant, must register, regardless of their individual circumstances, for fifteen years. CP 2010 §§ 11-704(a), -707(a)(1), (4). Although Tier I

[6] Sexually violent offenders had to provide more information. *See generally* CP 2005 § 11-706(b).

offenders are given the chance to reduce their registration period to ten years, the offender must not be convicted of any sex offense or any crime with imprisonment of over one year, must successfully complete a sex offender treatment program, and must successfully and without revocation complete any supervised release, probation, or parole. CP 2010 § 11-707(c).

To say that appellant had notice of a registration requirement in 2005 when he committed his offense ignores the differences between the registration requirements in the 2005 and 2010 versions of MSORA. At the time of his offense, appellant had fair warning of a possibility of being placed on the registry for ten years if, and only if, the court ordered him to register. CP 2005 § 11-707(a). He was not, however, on notice that, beginning in 2010, he would automatically be required to register for fifteen years. *See* CP 2010 §§ 11-707(a)(1), (4). Appellant did not have fair warning of the additional requirements and effects of the 2010 amendments, including the amount of information that he would have to provide to the state, the speed with which he would have to notify his supervising authority of changes in his living situation, and that no consideration would be given to his individual circumstances. *See* CP 2010 §§ 11-704 to -706. Thus, due to the many enhanced requirements as a result of the 2010 amendments to MSORA, we cannot conclude that appellant had fair warning of the consequences of his offense when it was committed in 2005.

Nevertheless, the State argues that the requirement that registrants alert the authorities to a change of address became no more onerous with the 2010 amendments, and thus does not implicate *ex post facto* concerns. Appellant responds that this argument is irrelevant because, under *Doe I*, appellant was never lawfully subject to those requirements. Appellant alternatively argues that the 2010 amendments did in fact make the requirements more onerous by decreasing the time offenders have to notify authorities of a change in address.

The argument that the change of address requirement became no more onerous as a result of the 2010 MSORA amendments, and thus that its enforcement is not an *ex post facto* violation, removes the analysis from its proper context. The issue in this case is not whether the notification requirement of MSORA, considered in isolation, creates an *ex post facto* violation, but rather, whether the entirety of the retroactive registration requirement and its "cumulative effect" is unconstitutional. As discussed above, the cumulative effect of registration *did* become more onerous as a result of the 2010 amendments.

Finally, the facts critical to the holdings of *Doe I* and *Quispe del Pino* are substantially similar to the facts in the instant case. Like Doe and Quispe del Pino, in 2005, "when appellant committed the sexual offense for which he was later convicted, appellant was not subject" to the mandatory registration requirement for fourth degree sex offense. *Quispe del Pino*, 222 Md. App. at 59-60. Appellant was subject to the *possibility* of registration if, and only if, the trial court ordered appellant to register as a sex offender at the time of sentencing. *See* CP 2005 § 11-701(b)(3), (d)(2). When the trial court did not place appellant on the sex

offender registry at his sentencing for the fourth degree sexual offense, appellant was placed in the exact same position as Doe and Quispe del Pino relative to the retroactive application of MSORA. "In other words, but for the retroactive application of MSORA, appellant would not be subject" to the registration and notification requirements of MSORA. *See Quispe del Pino*, 222 Md. App. at 60. Therefore, we conclude that, as in *Doe I* and *Quispe del Pino*, the presence of appellant on the registry constitutes a violation of the prohibition against *ex post facto* laws contained in Article 17 of the Maryland Declaration of Rights. *Id*. at 59.[7] Accordingly, because appellant was not obligated to register as a sex offender under the retroactivity provision found in CP 2010 § 11-702.1, there was insufficient evidence to sustain appellant's failure to notify conviction under CP 2010 § 11-721.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED; FREDERICK COUNTY TO PAY COSTS.

[7] Alternatively, the State contends that, even if Article 17 prohibits the State from requiring appellant to register, appellant must continue to comply with the registration requirements imposed by the federal Sex Offender Registration and Notification Act ("SORNA"). The Court of Appeals addressed SORNA in *Department of Public Safety & Correctional Services v. Doe*, 439 Md. 201 (2014) ("*Doe II*"). In *Doe II*, the Court held "that SORNA does not change the consequences of a registration requirement held unconstitutional under Maryland law." *Quispe del Pino v. Md. Dep't of Pub. Safety & Corr. Servs.*, 222 Md. App. 44, 64 (2015). Therefore, because we hold here that the retroactive application of MSORA is unconstitutional as applied to appellant, appellant cannot be required to register under SORNA. *See id.* at 64-65.