IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2011

No. 125

JOHN DOE,
Petitioner

v.

DEPT. OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,
Respondent

On Writ of Certiorari to the Court of Special Appeals

REPLY BRIEF OF PETITIONER AND MOTION TO STRIKE

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TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

JOHN DOE,	*	IN THE
Petitioner	*	
	*	COURT OF
v.	*	
	*	APPEALS
	*	
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I. THIS COURT DOES NOT LACK SUBJECT MATTER JURISDICTION AS ALLEGED BY RESPONDENT.

Respondent asserts that Mr. Doe's constitutional challenges to the retroactivity of Maryland's sex offender registry laws should not be reviewed by this Court because Mr. Doe "failed to plead a violation of any of these [constitutional] claims...and the circuit court had 'no authority, discretionary or otherwise,' to rule on them." Further, because the circuit court lacked authority to rule on Mr. Doe's constitutional claims, "the intermediate appellate court lacked authority to excuse Mr. Doe's failure to preserve the issues for appellate review." (Respondent's Brief at 24-25). Respondent claims that the circuit court, and necessarily, the Court of Special Appeals lacked "subject matter jurisdiction." (Respondent's Brief at 24). In support of its claimed lack of subject matter jurisdiction, Respondent relies on cases that are clearly distinguishable from Mr. Doe's. In *Gatuso v. Gatuso*, 16 Md. App. 632, 299 A.2d 113 (1973), parties in a child support enforcement battle appeared before the circuit court on a complaint filed by the wife to hold the husband in contempt of court for failing to pay monies pursuant to a 17 year old decree for child support. In response, the husband filed a motion to dismiss the

complaint and "asked no affirmative relief." *Id.* at 634. Indeed, the lower appellate court explained:

> In her petition the wife did not ask for a determination of an amount of arrearage, or for a money judgment. Her prayer that the husband be ordered to begin making the payments decreed could add nothing to the previous order. She included no general prayer. Therefore the only relief she sought was to have her husband adjudged in contempt. Neither in his answer nor by way of a request for affirmative relief did the husband ask for modification of the 1954 decree or for an accounting for rents yielded by the jointly owned property.

Id. at 635. Notwithstanding the extremely limited nature of the proceeding, the trial court entered an Order denying "the prayer for a citation of contempt against the husband, ordered him to pay to the wife for her maintenance and support the sum of $7.50 per week accounting from the date of the order, and required the husband to pay the costs." *Id.* The court's order changed the amount of support from $30 per week to $7.50 per week and further, forgave all arrearages owed by Mr. Gatuso. Citing Restatement, Judgments, §8(c) (1942), the appellate court held:

> 'Even though the State has jurisdiction over the parties and even though the court is one with competency to render the judgment, a judgment by default is void if it was outside the cause of action stated in the complaint *and if the defendant was not given a fair opportunity to defend against the claim on which the judgment was based.'*

Id. at 637. The court on appeal was concerned with the "due process aspect of granting relief to [Mr. Gatuso] without notice and an opportunity to be heard on the issue being afforded [to Mrs. Gatuso]." *Id.*

The issue in *Ledvinka v. Ledvinka*, 154 Md. App. 420, 840 A.2d 173 (2003), also relied upon by Respondent was "[w]hether the court erred by setting aside the conveyance of 19730 Eagle Mill Road as a fraudulent conveyance ... when this cause of action was neither pleaded nor was relief requested prior to trial." The parties appeared in court on Mrs. Ledvinka's complaint for annulment. As this Court noted "[w]e agree with appellant that the court exceeded its authority in setting aside the conveyance *when no cause of action sufficient to put appellant on notice that the property was in dispute* was pleaded in this case." *Id.* at 428 (emphasis added). Further, *Scott v. Jenkins*, 345 Md. 21, 690 A.2d 1000 (1997), concerned a failure to request punitive damages, which as the Court had stated previously in *Smith v. Gray Concrete and Pipe Co.*, 267 Md. 149, 297 A.2d 721 (1997), required "a strict pleading requirement...[and] that far greater specificity will be required [when pleading punitive damages]." *Id.* at 168. Mr. Doe's case does not concern punitive damages. Finally, *Early v. Early*, 338 Md. 639, 653, 659 A.2d 1334 (1995), involved an issue identical to that raised in *Gatuso;* that is whether "the circuit court lacked the power to enter a judgment modifying ordered child support in a contempt proceeding." The basis underlying each of these cases was a lack of notice to the opposing party.

Not only was Respondent on notice of Mr. Doe's arguments made at the hearing, it directly defended against the *ex post facto* and due process challenges made by Mr. Doe. (E. 119, "With respect to the retroactivity provision, I think it's well established in this State that the General Assembly can change the law."); (E. 120, Responding to the court's inquiry "[s]o then isn't this a question whether it's the requirement of registration

is punishment...," Respondent stated "...sex offender registration does not constitute punishment in a constitutional sense."); (E. 121; citing this Court's opinion in *Young v. State*, 370 Md. 686, 806 Md. 233 (2002), and *Doe v. Public Safety*, 185 Md. App. 625, 971 A.2d 975 (2009), Respondent argued "lifetime registration did not violate procedural due process,...[w]ith respect to any arguments about ex post facto implications of this, again, because it was not considered to be punishment, but as the court indicated, a collateral consequence...So there are no constitutional problems."); (E. 124; "There are no constitutional violations. As I said, the General Assembly is well within its right to..., to enact statutes requiring retroactive registration. ...There is no ex post facto implication."). Moreover, in closing argument, counsel for Mr. Doe stated:

> [T]his is definitely a punishment in addition to the punishment he's already served, so it is punitive in his mind and that he suffered the collateral consequences as a result of now being required with due process, without..., being required to now all of a sudden years later sign up for sex offender registry...

(E. 151). [1] It is plain from the record that Respondent was on notice of Mr. Doe's constitutional challenges as raised during the hearing. As the Court of Special Appeals correctly held relying upon Md. Rule 8-131(a), "[w]here a party introduces an issue at a hearing, it provides the court with an opportunity to decide the issue...[W]e see no

[1]Mr. Doe's Complaint for Declaratory Judgment, noted that he was ordered by his probation agent to register because of "recent amendments to Md. Crim. Pro. Code Ann. §11-702.1 (2009) which took effect October 1, 2009...Those amendments retroactively applied the requirements of registration...As a result, John Doe, against the advice of Counsel, registered immediately..." (E. 70). Among the remedies sought by Mr. Doe in his Complaint included "[t]hat this Court Order that the plaintiff, John Doe be removed from the Maryland Sex Offender Registry," and "[t]hat this Court award Plaintiff such other and further relief as in law and justice he may be entitled to receive." (E. 75)

prejudice to the State in deciding Doe's Ex Post Facto and Due Process claims as the State had an opportunity to respond to these claims below and directly addressed the issues at the July 23, 2010 hearing." (E. 180). There is no subject matter jurisdiction issue here.

MOTION TO STRIKE

Interestingly, while decrying a lack of subject matter jurisdiction and thus, a lack of notice of Mr. Doe's constitutional challenges, Respondent for the first time in its brief before this Court, raises a question never presented in any court at any time during the life of this case. Respondent adds to this case the following question: "Does federal law preclude the Maryland courts from granting Mr. Doe the relief he seeks, because federal law imposes on child sex offenders like Mr. Doe the independent obligation to register as a Tier III sex offender?" (Respondent's Brief at 4). This question was not raised by Mr. Doe in his Petition for Writ of Certiorari, nor was it raised by Respondent in his Answer to Petition for Writ of Certiorari. Nor did Respondent file a cross-petition. While Respondent couches the issue as a question of federal law; what, in essence it amounts to is a claim of harmless error. This Court has held on many occasions that "an appellee who does not file a cross-appeal cannot urge before us matters not within or related to the issues raised by an appellant." *Walston v. Sun Cab Co., Inc.*, 267 Md. 599, 564, 298 A.2d 391 (1973). In *Robeson v. State,* 285 Md. 498, 501–03, 403 A.2d 1221 (1979), this Court held:

> The defendant petitioned this Court for a writ of certiorari, raising solely the question of whether the trial court erred in admitting evidence of his pre-arrest silence. The State filed an

> answer and conditional cross-petition for a writ of certiorari, arguing that certiorari should be denied because the testimony was clearly admissible and, even if not admissible, the error was harmless. The State requested that, if the defendant's petition were granted, we should grant the State's conditional cross-petition to consider the harmless error question. The defendant then filed a motion ne recipiatur, requesting that we not receive that portion of the State's response constituting a conditional cross-petition raising the issue of harmless error. The defendant pointed out that neither side had raised the harmless error issue in the Court of Special Appeals and that court had not considered the issue sua sponte. The defendant contended that it would be improper for this Court on certiorari to consider a question that had never previously been raised in a case. We granted both the petition and the conditional cross-petition, and we deferred ruling on the motion ne recipiatur.
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> * * *
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> We recognize that this Court will not ordinarily consider an issue which was not raised in the petition for a writ of certiorari, in a cross-petition or in the Court's order granting certiorari. Moreover, in some of these cases, we applied this principle and refused to consider an argument that the decision of the trial court should be affirmed on a ground not raised in the petition, a cross-petition or the Court's order granting certiorari. And with respect to the question of harmless error specifically, we stated in *Coleman v. State, supra,* 281 Md. at 547[, 380 A.2d at 55]: "The State did not, however, file a cross-petition for certiorari raising the harmless error issue, and we therefore will not consider it."

This Court should not address Argument III as presented in Respondent's Brief as it was not raised by way of a cross-petition and was not addressed by the trial court or the Court of Special Appeals and Mr. Doe moves, respectfully, that this be stricken from Respondent's brief.

And, in any event, Respondent's argument that Mr. Doe has an independent obligation, under federal law, to register as a Tier III sex offender, has no bearing on his current challenge to *Maryland's* law. Respondent notes that pursuant to 42 U.S.C.

§16913(a), "SORNA applies to all sex offenders, including those convicted of their registration offenses prior to the enactment of SORNA or prior to particular jurisdictions' incorporation of the SORNA requirements into their programs." (Respondent's Brief at 26). And further, offenders who fail to register "are guilty of a felony under federal law that is punishable by up to ten years' imprisonment." (Respondent's Brief at 25). Respondent's contention assumes the constitutionality of SORNA; an assumption with which Mr. Doe would not agree, were the issue before this Court.[2] But it is not and thus, whatever SORNA may or may not require is irrelevant here.

II. GIVEN THEIR HIGHLY PUNITIVE AND RESTRICTIVE NATURE, RETROACTIVE APPLICATION OF MARYLAND'S SEX OFFENDER REGISTRATION LAWS VIOLATES THE FEDERAL CONSTITUTIONAL BAN ON *EX POST FACTO* LAWS AND BOTH CLAUSES OF ARTICLE 17 OF THE MARYLAND DECLARATION OF RIGHTS PROHIBITING *EX POST FACTO* LAWS AND *EX POST FACTO* RESTRICTIONS.

Clinging to its worn refrain, Respondent insists that "[t]he purpose of the Maryland Act is ... remedial and its effects are non-punitive." (Respondent's Brief at 35). Respondent continues to rely primarily on two old cases, *Smith v. Doe*, 538 U.S. 84 (2003) and *Young v. State*, 370 Md. 686, 806 A.2d 233 (2002). In the nine and ten years respectively, since these cases were decided, the Maryland laws have drastically changed.

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[2] The constitutionality of §2250(a)(2)(B) has been challenged on numerous grounds: the non-delegation doctrine; the Ex Post Facto Clause of the federal constitution; the Due Process Clause; the Commerce Clause; and the Separation of Powers doctrine.

The broad dissemination of information over the internet, the severe restrictions on travel, and the over-inclusiveness of offenses as falling within the various tiers, simply defies any suggestion that these laws are not punitive, at the very least, in their effect. Even Patty Wetterling, whose son was the namesake for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, had this to say about the direction these registry laws are taking:

> Are these policies working? Are our "get tough on sex offenders" laws having the desired effect? Human Rights Watch has taken on the challenge of looking at sex offender policy to see what parts are working and what aren't. This week it published a 143-page report, "No Easy Answers: Sex Offender Laws in the United States." The researchers examined whether we are building safer communities with these laws, and what issues policy-makers should consider. *HRW found that many laws may not prevent sexual attacks on children, but do lead to harassment, ostracism and even violence against former offenders. That makes it nearly impossible to rehabilitate those people and reintegrate them safely into their communities -- and that may actually increase the risk that they'll repeat their crime.* We need to keep sight of the goal: no more victims. We need to be realistic. Not all sex offenders are the same. Not all sex offenses are the same.

Patty Wetterling: "The Harm in Sex-Offender Laws", Sacramento Bee, September 14, 2007. Respondent contends that "[a] Maryland registrant may live wherever he or she chooses, may associate with whomever he or she chooses, and may travel to and from wherever he or she chooses and, with minor exceptions that are also narrowly tailored to the purpose of the statute, may enter into any building and seek any employment of his or her choice." (Respondent's Brief at 39; 42). This is simply inaccurate. Mr. Doe cannot do any of these things without having to report first to his supervising authority. And it is

disingenuous, at the very least, to suggest that someone listed as a lifetime sex offender may live wherever he chooses and seek employment of his choice without at least acknowledging that the likelihood of that offender finding a home or a job is next to impossible.[3] This is because Maryland's laws have no rational connection to a non-punitive purpose and compels treating all sex offenders the same without regard for their actual threat to public safety.

III. THE PLEA AGREEMENT ENTERED INTO BY MR. DOE DID NOT MANDATE REGISTRATION AS A SEX OFFENDER, AND HE IS ENTITLED TO SPECIFIC PERFORMANCE OF THE AGREEMENT AND SHOULD BE REMOVED FROM THE REGISTRY.

Respondent argues that Mr. Doe's claim that he is entitled to removal from the registry is meritless because, (1) the terms of the plea agreement are determined by the record of the criminal case, which cannot be supplemented with extrinsic evidence, allegations, or suppositions; (2) Mr. Doe makes his claims in a civil declaratory proceeding instead of in his criminal case; (3) Maryland law mandates that Mr. Doe register as a Tier III offender; and (4) if Mr. Doe claims that his guilty plea was involuntary, he must prove that claim in either a post-conviction or *coram nobis* proceeding. *See* Brief of Respondent at 48-49.

A. The Agreement Entered Into and Accepted by the Trial Court at the Plea Hearing is Silent on the Point of Registration; Therefore, Registration Was Not a Term of the Agreement, and the Court Breached the Agreement When It Included the Requirement at Sentencing.

[3] 181 of Maryland's current 6,532 registrants are listed as homeless.

Under Md. R. 4-243(c)(3), "if the plea agreement is approved, the judge shall embody in the judgment the agreed sentence...encompassed in the agreement..." In *Cuffley v. State*, 416 Md. 568, 7 A.3d 557 (2010), the Court held that Md. R. 4-243's provisions must be strictly complied with, and, as such, "that any question that later arises concerning the meaning of the sentencing term of a binding plea agreement must be resolved by resort *solely* to the record established at the Rule 4-243 plea proceeding." *Id.* at 582. The Court went on to state that "the record of that proceeding must be examined to ascertain *precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement*, to determine what the defendant *reasonably understood* to be the sentence the parties negotiated and the court agreed to impose." *Id.* at 587 (emphasis added). The State argues that Mr. Doe's plea agreement did not contain a promise that he would never be required to register as a sex offender, further stating that there is nothing in the record to support his claim that non-registration was a term of his plea agreement. Mr. Doe is not arguing that non-registration was a term of the agreement, but that the agreement as proffered and agreed to by him, and subsequently entered into the record and accepted by the Court is *completely* silent as to the issue of sex offender registration. In fact, at Mr. Doe's plea proceeding, when asked by the Court whether there were any agreements as to sentencing, the State said, "[a]t the time of sentencing, the State is going to ask for an executed sentence of five years. At the time of sentencing, we...can discuss the...terms of probation, length of probation, and that sort of thing." (E. 15-16). Furthermore, Mr. Doe's attorney clarified, "My understanding is it's proposed as a binding plea agreement," to which the Court answered

affirmatively. (E.17). Accordingly, the plea agreement entered into by both the State and Mr. Doe, and thereafter accepted by the Court became legally binding, and the court breached the agreement when it later added the registration requirement as a term of the agreement at sentencing. In *Solorzano v. State*, 397 Md. 661, 919 A.2d 652 (2007), the Court stated that although a trial court is not obligated to accept any particular sentence that the State and the defendant have agreed upon, Md. R. 4-243(c)(3) "requires the trial court, if it has approved the agreement, to 'fulfill the terms of that agreement if the defendant pled guilty in reliance on the court's acceptance.'" *Id.* at 669-70. This Court found that the trial court had accepted Solorzano's plea agreement and that he was entitled to its specific performance. *Id.* at 670. Furthermore, the Court recognized that in addition to the Rule 4-243 requirements, "once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain to be honored." *Id.* at 673 (citing *Santobello v. New York,* 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)). In *Cuffley*, the trial court ensured that Cuffley's guilty plea was knowing and voluntary and then accepted the agreement, binding itself to its terms. *Cuffley* at 574. Here, the Court ensured that Mr. Doe's guilty plea was knowing and voluntary, and then accepted the agreement: "The Court finds that the plea made by the defendant...has been freely and voluntarily made." (E. 22). Therefore, the Court bound itself to the agreement's terms, and, under *Solorzano*, "due process requires the bargain to be honored."

In resolving questions that later arise concerning the meaning of the sentencing term of a binding plea agreement, "the record of that proceeding must be examined to

ascertain precisely what was presented to the court, in the defendant's presence and before the court accepts the agreement, to determine what the defendant reasonably understood to be the sentence the parties negotiated and the court agreed to impose." *Cuffley* at 582. To determine what the defendant reasonably understood at the plea hearing, the Court must use objectivity – i.e., it does not matter "what the defendant actually understood the agreement to mean, but rather...what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding." *Id.* If the record clearly discloses what the defendant reasonably understood to be the terms of the agreement, then the defendant is entitled to the benefit of the bargain: specific enforcement or withdrawal of the plea. *Id.* at 583. If the record reveals that the sentence agreed to by the parties is ambiguous, then "the ambiguity must be resolved in the defendant's favor. *Id.* (*See also Solorzano* at 673; *United States v. Gebbie*, 294 F.3d. 540, 552 (3d Cir. 2002) (ambiguity in plea agreement is resolved against the government "[b]ecause of the Government's advantage in bargaining power"); *United States v. Jeffries*, 908 F.2d 1520, 1523 (11th Cir. 1990) (ambiguity in a plea agreement must be resolved against the government because a plea "constitutes a waiver of substantial constitutional rights requiring that the defendant be adequately warned of the consequences of the plea.").

Here, Mr. Doe's plea hearing transcript makes no mention of a registry requirement, nor does the plea agreement. In fact, Mr. Doe was not even notified of the requirement until right before he signed the commitment order, without the presence of

his attorney. As such, Mr. Doe entered into the agreement with the reasonable belief and reliance that he would not be required to register as a sex offender, a belief and reliance that was based on both the fact that he was told by his attorney that he would not be required to register, the prosecutor when placing the terms of the agreement on the record, never mentioned registration as one of the terms, and the court agreed to be bound by the terms of the agreement. If it had been included when the plea agreement was first offered to him, Mr. Doe would not have accepted it. Furthermore, the fact that Mr. Doe's attorney filed a motion to correct Mr. Doe's sentence, that the motion was granted, and that the registration requirement was thereafter struck from his sentence proves that Mr. Doe should have never been required to register.

B. A Civil Declaratory Judgment Action Requesting Specific Performance of the Agreement is the Proper Relief and Proceeding in Which to Request It.

The State argues that Mr. Doe "impermissibly makes request for specific performance in a civil declaratory judgment action, instead of in his criminal case, where, if appropriate, the court could grant him relief." (Respondent's Brief at 50.). However, under the Maryland Declaratory Judgment Act, "...A court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, if (1) an actual controversy exists between contending parties...(3) a party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it." Md. Ann. Code, Cts. & Jud. Proc. Article, § 3-409(a) (2012). The Act also provides that, "Any person interested...whose rights, status, or other legal relations are

affected by a statute...may have determined any question of construction or validity arising under the...statute...and obtain a declaration of rights, status, or other legal relations under it." § 3-406 (2012). As a result of a change in the law in 2009 that from that point forward classifies him as a Tier III offender, Mr. Doe is now required to register as a child sex offender, a requirement, it should be noted, that the sentencing judge struck after Mr. Doe's sentencing hearing. Consequently, Mr. Doe has been denied employment and housing, among other things, and has suffered what is tantamount to social death, even being cast out from the church where he had been a long time parishioner and financial supporter. Mr. Doe clearly falls within the class of persons that the Maryland Declaratory Judgment Act applies to, as his rights, status and other legal relations have been greatly affected.

In *Sinclair v. State*, 199 Md. App. 130, 20 A.3d 192 (2011), Sinclair sought, in his criminal case, a judicial determination that he was not required to register as a child sex offender. The Court stated that the issue that Sinclair sought to raise, as well as the relief he sought, presented a civil matter that was not cognizable in his criminal case. *Id* at 135, The Court went on to say that "'a collateral challenge, by its very nature, is a separate and distinct civil procedure by which a defendant may challenge his or her conviction, sentence, or imprisonment.'" *Id.* at 136. The Court further stated that "because collateral challenges are separate from the underlying judgment, the filing of such an action typically initiates an entirely new action in which the defendant sets forth his or her claims." *Id.* Here, Mr. Doe is not collaterally challenging his conviction or sentence, which he has fulfilled, but is instead challenging the punitive nature and collateral

consequences of the requirement to register, and is seeking declaratory judgment that he not be required to register because, he was not required to register in 2006 after his conviction and after the sentencing judge struck down that requirement, and should not be required to now, simply because of an amendment to the law. Therefore, seeking declaratory relief in a civil declaratory judgment action is proper.

B. Neither The Post Conviction Procedure Act Nor A Writ Of Error *Coram Nobis* Is Appropriate Here.

The State argues that Mr. Doe should avail himself of a post conviction or *coram nobis* proceeding; however, neither form of relief is appropriate. In *Sinclair*, *supra*, the Court stated that the relief Sinclair requested was to avoid application of the registration requirement to him, with the result that no criminal prosecution may be brought, and accordingly, Sinclair's relief was not available under the Post Conviction Procedure Act, because he did not seek to set aside or correct his judgment or sentence. *Id.* at 135-36. The State argued that the relief Sinclair should have sought was a writ of error *coram nobis*, but the Court found that *coram nobis* is available to "persons who are neither confined nor on parole or probation but who suffer significant collateral consequences from their conviction," further stating that "*coram nobis* is a challenge to the conviction that alleges an error of fact or law," and, therefore, did not aid Sinclair's cause. *Id.* at 136 (citing *Skok v. State*, 361 Md. 52, 78, 760 A.2d 647 (2000)).

Similar to *Sinclair*, the relief that Mr. Doe is requesting is to avoid application of the registration requirement to him. As a result, no criminal prosecution can be brought, and, accordingly, the Post Conviction Procedure Act does not afford the appropriate

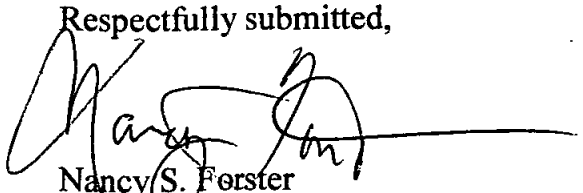
relief, because Mr. Doe is not seeking to set aside or correct his judgment or sentence, nor is he, as the State suggests, alleging that his guilty plea was involuntary. Mr. Doe is simply requesting that he not be required to register as a sex offender because his plea agreement, as he reasonably understood it, did not require him to. Therefore, the Post Conviction Procedure Act is not appropriate for the type of relief that Mr. Doe is seeking.

Likewise, a writ of error *coram nobis* is not the appropriate remedy for the type of relief that Mr. Doe is requesting for the simple reason that, " *the expanded coram nobis remedy to challenge a criminal conviction will ordinarily be available only to a person who, based on the conviction, is not incarcerated and not on parole or probation.*" *Rivera v. State*, 409 Md. 176, 191, 973 A.2d 218 (2009). Mr. Doe is not currently incarcerated, however, he is still on parole. Therefore, he is not eligible for a writ of error *coram nobis.* In short, Mr. Doe appropriately challenged the requirement that he register as a sex offender through the auspices of a Complaint for Declaratory Judgment.

CONCLUSION

For the foregoing reasons and those raised in his opening brief, Mr. Does respectfully requests that this Court reverse the judgment of the Court of Special Appeals, declare that the retroactivity portion of the Maryland sex offender registry law is unconstitutional, and strike question II as presented in Respondent's Brief.

Respectfully submitted,



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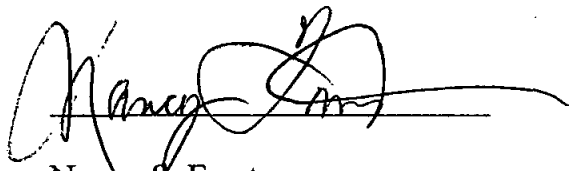
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2012 a copy of the Brief of Petitioner in John Doe v. Dept. of Public Safety & Correctional Services, No. 125 was mailed to Stuart M. Nathan, Assistant Attorney General, 115 Sudbrook Lane, Pikesville, Maryland 21208.



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