STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. Ken-24-482

DANIEL GANTNIER
Appellant

v.

STATE OF MAINE
Appellee

On Appeal from the Superior Court, Kennebec County
Docket No. KENCD-CR-2022-593

BRIEF OF APPELLANT DANIEL GANTNIER

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FACTUAL AND PROCEDURAL BACKGROUND

In 2006, following a jury verdict and a sentencing hearing, the Superior Court (Waldo County, *Studstrup, J.*) entered judgment against Appellant Daniel Gantnier on one count of unlawful sexual contact.[1] (A. 29.) The judgment and commitment, dated May 9, 2007, imposes his sentence. (*Id.*) Mr. Gantnier was sentenced to thirty months in prison, with all but thirteen months suspended, and four years of probation. (*Id.*) The judgment and commitment also ordered that Mr. Gantnier—having been convicted of an offense that requires compliance with Maine's sex offender registration and notification act, 15 M.R.S. §§ 11201-11256 ("SORNA") as a 10-year registrant—must satisfy all SORNA requirements. No party objected to the sentencing court's designation of Mr. Gantnier as a 10-year registrant as part of the imposed sentence in the judgment and commitment. (*Id.*)

In compliance with and reliance on the sentence imposed by the judgment and commitment, Mr. Gantnier served his time and registered as a sex offender for 10 years—up and until May 2017. By that point, more than a decade had passed since his conviction, and he expected that that part of his past was now behind him for good.

[1] *See State v. Gantnier*, 2008 ME 40, ¶ 9, 942 A.2d 1191.

Nearly two more years passed. Then, on or about February 15, 2019, Mr. Gantnier received a letter from the State Bureau of Identification advising him that although the judgment and commitment indicated that he was classified as a 10-year registrant, he is actually required to register for life, and "the Bureau is correcting [his] registration term to reflect the lifetime registration period that is required by law." (A. 30.) According to the letter, the legislature amended SORNA in 2009 to authorize the bureau "to correct a registration period erroneously assigned to a convicted sex offender by a court." (*Id.*) *See* 34-A M.R.S. § 11222(1). The letter makes no mention of why the State waited another full decade after this legislative amendment to attempt to correct the registration period by way of this letter. The sentencing court's judgment and commitment order of May 9, 2007 has never been corrected.

The letter further warns that "[t]here are significant differences between the verification requirements for ten-year and lifetime registrants." (A. 31.) Indeed, while Mr. Gantnier had an obligation to verify registration information with the bureau once a year during the ten years he was required to register, a lifetime registrant's information must be verified every 3 months for their lifetime. *See* 34-A M.R.S. § 11222(4).

In April 2022—15 years after his conviction and 5 years after his obligation to comply with SORNA as a ten-year registrant had come to an end—

the State filed a criminal complaint against Mr. Gantnier, charging him with a violation of 34-A M.R.S. § 11227 for failure to comply with SORNA. (A. 3.) Mr. Gantnier moved to dismiss the complaint (A. 23), which the trial court (*Mitchell, J.*) denied (A. 15-20). Mr. Gantnier then entered a conditional plea of guilty to one count of failure to register under SORNA, reserving the right to appeal. (A. 9-14.) This appeal followed.

ISSUES PRESENTED

1. Did the trial court err by deciding that Mr. Gantnier's obligation to comply with SORNA was not part of his sentence, where it was imposed on him by the sentencing court in the judgment and commitment order?

2. Did the trial court err by deciding that the State could impose new burdens on Mr. Gantnier years after he completed his sentence?

ARGUMENT

At issue in this appeal is whether, years after a person's sentence has been imposed and served, the State may add to the sentence new and onerous burdens that were not imposed in the original sentence. For the reasons set forth below, the State cannot do so here.

I. The trial court erred in determining that SORNA registration requirements were not part of Mr. Gantnier's sentence.

A fundamental flaw in the trial court's order is its finding that SORNA registration requirements were not part of Mr. Gantnier's sentence. This was an

error that permeated the remainder of the court's rulings and requires Mr. Gantnier's conviction be vacated.

In its order, the trial court reasoned that the legislature amended SORNA in 2003 to provide that, for offenders sentenced after July 30, 2004, their registration requirements are not part of their sentences. (A. 17.) But the trial court's blanket ruling that registration requirements imposed after July 30, 2004, are not part of an offender's sentence ignores that, in Mr. Gantnier's case, the registration requirements very much were a part of his sentence.

Here, in the judgment and commitment order the sentencing court imposed a sentence on Mr. Gantnier that included 30 months of imprisonment with all but 13 months suspended, 4 years of probation, and 10 years of compliance with SORNA. (A. 29.) The judgment and commitment is a legally binding court order that imposes the defendant's sentence. *See, e.g.*, *State v. Robbins*, 2019 ME 138, ¶ 5, 215 A.3d 788 ("At a trial held on June 25-26, 2018, the jury returned verdicts of guilty on both counts; the court then entered a judgment and commitment imposing a sentence of ten months' imprisonment for unlawful sexual touching and a concurrent thirty-day jail term and a $300 fine for assault."); *State v. Garcia*, 2014 ME 150, ¶ 5, 106 A.3d 1137 ("The Judgment and Commitment recites that as part of the sentence, Garcia's right to operate a motor vehicle was suspended. Garcia's signature appears on the

Judgment and Commitment, immediately after an acknowledgement, which is part of the form, that he understood the sentence."). The judgment and commitment order plainly demonstrates that the obligation to comply with SORNA requirements for 10 years was imposed as part of Mr. Gantnier's sentence.

This Court has looked to the judgment and commitment order in other cases as part of its determination of whether a SORNA requirement was made part of the offender's sentence. In *Doe v. Anderson*, for example, this Court held that the trial judge imposed SORNA's registration requirement as part of the sentencing process in Doe's case where, inter alia, "Doe's Judgment and Commitment form contained a box that the sentencing judge was required to check if the conviction was for an offense requiring SORNA registration." 2015 ME 3, ¶¶ 5, 25, 108 A.3d 378. Likewise, here Mr. Gantnier's judgment and commitment order contained a box which the sentencing court checked as part of Mr. Gantnier's sentencing, requiring him to comply with SORNA for 10 years. (A. 29.)

Mr. Gantnier does not dispute that, by 2004, there was an intention to remove SORNA registration from the sentencing process. But that does not change the fact that, on May 9, 2007, the sentencing court in Mr. Gantnier's case did impose SORNA registration requirements as part of the sentencing process,

including it in the judgment and commitment. *Cf. State v. Johnson*, 2006 ME 35, ¶¶ 10, 14, 894 A.2d 489 (explaining that, since the amendment, "registration is now a separate order that is not part of the criminal sentence" and noting State's argument that "an order under the current version of SORNA is a civil order, independent of [the] criminal sentence"). Mr. Gantnier then justifiably relied on the judgment and commitment order as the document imposing his sentence. Contrary to the trial court's order, Mr. Gantnier's obligation to comply with SORNA was clearly "tied to sentencing." (A. 17.)

II. The trial court erred in determining that the State could impose new burdens on Mr. Gantnier years after he completed his sentence.

Because SORNA registration requirements were part of Mr. Gantnier's sentence, the sentencing court's improper designation of Mr. Gantnier as a 10-year registrant rather than a lifetime registrant could only be corrected pursuant to Maine Rule of Criminal Procedure 35(a); and the State's attempt to correct it now violates the ex post facto clauses of the Maine and United States Constitutions, as well as protections against double jeopardy. Each are discussed in turn.

a. The State could have moved to correct Mr. Gantnier's sentence within a year pursuant to Rule 35, but did not.

The trial court found that the sentencing court erroneously checked the box indicating that Mr. Gantnier was a 10-year registrant under SORNA, rather

than a lifetime registrant. (A. 15-16.) When there is an error in a sentence, the Maine Rules of Unified Criminal Procedure set out a process and a timeline for correcting it—a process and a timeline that was not followed in this case.

The trial court's interpretation of the Rules of Criminal Procedure is a legal question that this Court reviews de novo. *Johnson*, 2006 ME 35, ¶ 9, 894 A.2d 489. Rule 35(a) provides that "[o]n motion of the defendant or the attorney for the State, or on the court's own motion, made within one year after a sentence is imposed, the justice or judge who imposed sentence may correct an illegal sentence or a sentence imposed in an illegal manner." If the sentencing court erroneously sentenced Mr. Gantnier to comply with SORNA for 10 years instead of for life, that would be an illegal sentence that *could have* been timely corrected. It is not disputed that no one ever asked the sentencing court to correct the judgment and commitment order, and the deadline for doing so (May 9, 2008) has long since passed.

This Court's decision in *State v. Johnson* is directly on point. 2006 ME 35, 894 A.2d 489. There, the court sentenced Johnson to four years incarceration, with all but eighteen months suspended, followed by four years of probation, and "[o]n the judgment and commitment form, Johnson was erroneously designated as a sex offender, and not as a sexually violent predator, the category to which he should have been assigned." *Id.* ¶ 5. When the State tried to fix it

years later, Johnson argued that Rule 35 was available to the State as a remedy to correct the improper designation, albeit only for a one-year period. *Id.* ¶ 11. The Court agreed, reasoning that at the time of Johnson's sentence, sex offender registration was "part of his criminal sentence," and because the State did not move under Rule 35 to correct the infirmity in his sentence within the deadline, the judgment must be vacated. *Id.* ¶ 14. *See also State v. Letalien*, 2009 ME 130, ¶ 61, 985 A.2d 4 ("We held [in *Johnson*] that if SORNA of 1999 registration was made a part of a criminal sentence, the exclusive means by which the State could seek to modify the offender's sex offender classification under SORNA of 1999 was through Rule 35 of the Maine Rules of Criminal Procedure.").

This Court should reach the same result here. The trial court tried to distinguish *Johnson* by stating that "[t]here, the Law Court held that a motion to correct sentence under Rule 35(a) was the exclusive means by which the State could change an erroneous classification that was *made part of a criminal sentence*," but "[i]n this case, Mr. Gantnier's registration classification arises by operation of statute and was not imposed as part of his sentence." (A. 19 (emphasis in original).) As discussed above, Mr. Gantnier's registration classification was part of his sentence, imposed on him by the sentencing court in the judgment and commitment order. That being so, the way to correct any

error in that part of his sentence would have been to move under Rule 35(a) within a year of sentencing. The State failed to do so.

Instead, in 2019—when the error in the 2007 sentence was apparently discovered—the State pointed to 34-A M.R.S. § 11222(1) as authorizing it to now "correct a registration period erroneously assigned to a convicted sex offender *by a court*." (A. 30 (emphasis added).) But that statute provides only that the bureau "may correct the term of a registration erroneously assigned to an offender or registrant." 34-A M.R.S. § 11222(1). It does not provide that the State may bypass Maine rules and alter a sentence imposed on an offender by a sentencing court years after the fact. The mechanism to correct an illegal sentence is Rule 35, and that remedy is no longer available to the State here.

As in *Johnson*, the State missed its opportunity to file a timely motion under Rule 35(a) to correct Mr. Gantnier's sentence. The State cannot now attempt to impose a lifetime registration obligation on Mr. Gantnier in place of the 10-year obligation originally imposed by the sentencing court on May 8, 2007.

b. <u>The State's attempts to now correct Mr. Gantnier's sentence violate the ex post facto clause.</u>

If, as urged by the State, Section 11222(1) could authorize the bureau to swoop in, years after Mr. Gantnier's obligations to comply with SORNA's registration requirements had expired, and impose new lifetime registration

obligations, that would violate the ex post facto provisions of the U.S. and Maine Constitutions.

The U.S. Constitution directs: "No State shall . . . pass any . . . ex post facto Law." U.S. Const. art. I, § 10, cl. 1. Similarly, the Maine Constitution provides, "The Legislature shall pass no . . . ex post facto law." Me. Const. art. I, § 11. The ex post facto clauses "of the two constitutions are interpreted similarly and are coextensive." *Doe I v. Williams*, 2013 ME 24, ¶23, 61 A.3d 718 (quotation marks omitted). The clauses "prohibit[] laws that retroactively alter the definition of crimes or increase the punishment for criminal acts." *Letalien*, 2009 ME 130, ¶ 17, 985 A.2d 4 (quotation marks omitted). "[T]he primary limitation on retroactive application of SORNA of 1999 is that it cannot result in a punitive alteration of sentences imposed at a time when sex offender registration was tied to sentencing." *State v. Proctor*, 2020 ME 107, ¶ 23, 237 A.3d 896.

In *State v. Letalien*, this Court determined that "when sex offender registration is made a part of an offender's criminal sentence, it necessarily constitutes a part of the punishment administered by the State in response to that offender's criminal conviction." 2009 ME 130, ¶ 61, 985 A.2d 4. Thus, the Court found that SORNA implicated ex post facto punishment as to offenders for whom registration was a required part of their sentence and who were subsequently made subject to the more burdensome requirements. *Id.* ¶ 1.

Since then, in evaluating SORNA ex post facto challenges, this Court has considered whether the case is more or less like the defendant in *Letalien*, for whom SORNA was part of sentencing. *Compare Williams*, 2013 ME 24, ¶ 28, 61 A.3d 718 ("Unlike Letalien, who was required to register as a sex offender as part of his criminal sentence, there was no sex offender registration law at the time the Does were originally sentenced") (citations omitted), *with Anderson*, 2015 ME 3, ¶ 24, 108 A.3d 378 ("The instant case is closer to *Letalien* than *Williams.* When Doe was sentenced, there was a sex offender law in effect and SORNA was an integral part of the sentencing process. The *Williams* Court recognized this factual difference as significant and used it to distinguish Letalien from the defendants in *Williams,* who were convicted before the enactment of a sex offender law, and for whom SORNA was not part of sentencing.") (citations and quotation marks omitted); *Proctor*, 2020 ME 107, ¶ 24, 237 A.3d 896 ("Proctor's case is closer to *Letalien* and *Anderson* than to *Williams*.").

Mr. Gantnier is like the defendant in *Letalien*. Because Mr. Gantnier's 10-year registration obligation was part of his sentence, it would be punitive to increase his sentence retroactively by imposing new and burdensome lifetime registration obligations, and the ex post facto clause prohibits this. *See Williams*, 2013 ME 24, ¶ 46, 61 A.3d 718; *Letalien*, 2009 ME 130, ¶ 61, 985 A.2d 4. The

trial court's conclusion that there was no violation of the ex post facto clauses of the U.S. and Maine Constitutions was error.

c. The State's attempts to now correct Mr. Gantnier's sentence violate the double jeopardy clause.

After receiving the sentence imposed by the sentencing court in the judgment and commitment, Mr. Gantnier fulfilled his registration obligation requirements under SORNA, which were completed in early 2017. Two years after Mr. Gantnier had fully served his sentence, the State said he now must comply with new and more onerous registration requirements for the rest of his life. This violates principles of double jeopardy.

Both the U.S. and Maine Constitutions offer protections against double jeopardy. *See* U.S. Const. amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb"); Me. Const. art. I, § 8 ("No person, for the same offense, shall be twice put in jeopardy of life or limb."). "These provisions prevent . . . the imposition of multiple punishments for the same offense." *State v. Weckerly*, 2018 ME 40, ¶ 7, 181 A.3d 675.

The prohibition against double jeopardy serves "vitally important interests," including the "preservation of the finality of judgments." *Id.* (quotation marks omitted). This interest in finality was front of mind for the Supreme Judicial Court of Massachusetts in *Com. v. Selavka*, 469 Mass. 502, 14 N.E.3d 933 (2014). There, after the defendant had completed his sentence and

while he was serving his probationary term, the Commonwealth filed a motion for GPS monitoring, arguing that the sentencing judge had been required by statute to impose it as a condition of the defendant's probation. *Id.* at 504. The court held that the belated correction of the defendant's sentence to impose GPS monitoring could not stand because it "contravened the defendant's legitimate expectation of finality in the terms of his initial sentence." *Id.* at 503.

The court emphasized that "the defendant already had served his entire period of incarceration and had a legitimate expectation of finality in the sentence as initially imposed." *Id.* at 506. In particular, it reasoned:

> A defendant's expectation of finality in his sentence increases once he has begun to serve that sentence. Prior to the Commonwealth's request that GPS monitoring be imposed, the defendant had served approximately seven months of incarceration before being released on parole and, having completed his committed sentence, had begun serving his seven-year term of probation. During that time, the defendant had every reason to believe that his sentence would remain fixed; he could not have anticipated that the judge might revisit his initial sentencing decision and impose new burdens on him.

514 (cleaned up). This is so even where the initial sentence was illegal. *See id.* at 513 ("Where a defendant's expectation of finality in his initial sentence has crystallized after enough time, the invalidity of that sentence does not render its subsequent correction by way of increased penalties immune to a double jeopardy challenge.") (cleaned up). Thus, the court concluded that "[e]ven where a defendant's original sentence . . . is erroneous, his interest in repose remains,

and may suffice to prohibit the addition of even those punitive terms necessary to bring the sentence into compliance with a relevant statute." *Id.* (cleaned up). In sum:

> [E]ven an illegal sentence will, with the passage of time, acquire a finality that bars further punitive changes detrimental to the defendant. Accordingly, in the circumstances here, the delayed correction of the defendant's initial sentence, in which he by then had a legitimate expectation of finality, violated double jeopardy and cannot stand.

Id. at 509.

The trial court dismissed *Selavka* in a footnote, simply stating that it is distinguishable because the imposition of lifetime registration requirements on Mr. Gantnier "did not involve a punitive measure." (A. 18 n.5.) As discussed above, this is wrong. *See Letalien*, 2009 ME 130, ¶ 62, 985 A.2d 4 (concluding that "the retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is punitive"); *Williams*, 2013 ME 24, ¶ 46, 61 A.3d 718 ("By definition, it was punitive to increase Letalien's sentence retroactively.").[2]

[2] *See also Doe v. Dist. Att'y*, 2007 ME 139, ¶ 56, 932 A.2d 552 (Alexander & Silver, JJ. concurring) ("In our internet age, the shaming and branding of sex offenders inevitably leads

The State is attempting to do precisely what the *Selavka* court ruled runs counter to the principles of finality and the protections against double jeopardy. Mr. Gantnier's sentence was final. He served his time and dutifully registered under SORNA for the required 10 years. More than a decade beyond his conviction, he had every reason to believe that his sentence would remain fixed and that the State would not impose new burdens. The State's new imposition of a lifetime registration obligation—even if that is what the sentencing court should have imposed back in 2007—violates protections against the imposition of multiple punishments for the same offense.

CONCLUSION

Mr. Gantnier's 10-year registration obligations under SORNA were part of his criminal sentence and were set out in the judgment and commitment dated May 8, 2007. The State could have moved within a year to correct the sentence, but it did not do so. The State's attempts to impose new lifetime registration obligations on Mr. Gantnier now—more than a decade after his conviction and years after he has completed his sentence—is unconstitutional under ex post facto and double jeopardy clauses. Mr. Gantnier deserves finality, and the criminal charge brought against him by the State for failing to register under

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to community stigmatization and ostracism. Being branded a sex offender in a community indisputably has ostracizing effects, including social isolation, difficulty finding employment, and being targeted for harassment, violence, and even murder.") (quotation marks and footnotes omitted).

SORNA years after his registration obligations expired should have been dismissed. The trial court erred in concluding otherwise.

Dated at Portland, Maine this 24th day of January, 2025

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CERTIFICATE OF SERVICE

I, Jeffrey T. Edwards, attorney for Appellant, Daniel Gantnier, certify that I will, upon notification of approval of the Brief and Appendix by the Court, email and mail (by U.S. mail) copies of this brief to the attorney listed below:

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