

SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania v. Joseph Derhammer

Derhammer · No. 121 MAP 2016 · Decided November 22, 2017

SUMMARY

Justice Wecht concurs in the Pennsylvania Supreme Court’s decision reversing Joseph Derhammer’s conviction because the statute underlying the conviction had been declared unconstitutional in Commonwealth v. Nieman, and subsequent legislation did not fill the resulting gap in criminalization. The concurrence criticizes the Superior Court’s effort to revive or reconstruct prior Megan’s Law provisions, emphasizing that resolving such legislative gaps is the General Assembly’s function rather than the judiciary’s.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Wecht
JURISDICTION	Pennsylvania
DECIDED	November 22, 2017
DOCKET	121 MAP 2016
DISPOSITION	reversed
PROCEDURAL POSTURE	Derhammer appealed from a criminal judgment of sentence. The Superior Court affirmed, and the Supreme Court of Pennsylvania reviewed that decision.
PRECEDENTIAL VALUE	Published Pennsylvania Supreme Court concurring opinion; the binding disposition and majority holding are joined by the concurrence.
PARTIES	Joseph Derhammer v. Commonwealth of Pennsylvania

TOPICS

- statutory interpretation
- legislative intent
- separation of powers
- constitutional law
- criminal procedure

PRACTICE AREAS

- criminal law
- statutory interpretation
- constitutional law
- criminal procedure

QUESTIONS PRESENTED

1. Whether Derhammer could be convicted for failing to register a change of address when the applicable Megan's Law III provision had been held unconstitutional and the General Assembly had not reenacted the relevant criminal provision.
2. Whether courts could revive or combine provisions of prior Megan's Law enactments and amendments to fill the legislative gap created by the invalidation of Megan's Law III.

HOLDINGS

1. Because the statute criminalizing the charged conduct had been invalidated and the General Assembly did not reenact the relevant provision, there was no criminal law in effect under which Derhammer could be convicted.
2. Courts may not fill a gap in criminal legislation by conjecturing which statutory provisions the General Assembly would have preferred to revive or combine; filling such gaps is a legislative function.

KEY QUOTATIONS

"As the learned Majority makes clear, Nieman, and the General Assembly's incomplete response to that decision, created a gap in legislation, leaving no criminal law under which Derhammer can be prosecuted."
(at 4-5)

"We interpret the law. We do not make it." (at 5)

FACTUAL BACKGROUND

Derhammer was prosecuted for conduct involving a failure to register a change of address under Pennsylvania's Megan's Law framework. The statutory provision used to criminalize that conduct had been invalidated in *Commonwealth v. Nieman*. After *Nieman*, the General Assembly enacted Act 19 of 2014 but did not reenact 18 Pa.C.S. § 4915, leaving no applicable criminal provision covering Derhammer's conduct according to the majority and concurrence.

PROCEDURAL HISTORY

The Luzerne County Court of Common Pleas entered judgment of sentence on October 24, 2014. The Superior Court affirmed that judgment on February 16, 2016. The Supreme Court of Pennsylvania considered the Commonwealth's effort to sustain Derhammer's conviction under a registration statute invalidated by *Commonwealth v. Nieman*. Justice Wecht concurred in the Supreme Court's decision reversing the conviction-related ruling.

DISPOSITION

reversed

CASES CITED

- *Commonwealth v. Nieman*, 84 A.3d 603 (Pa. 2013)

- Commonwealth v. Derhammer, 134 A.3d 1066, 1078 (Pa. Super. 2016)
- Marbury v. Madison, 5 U.S. 137 (1803)

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