A case of unchecked prosecutorial abuse

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By Michael M . . . Let’s talk about Bedford County, Pennsylvania’s former district attorney, William Higgins, Jr.

On August the 17th, 2018, Higgins was sentenced after being charged with using his power as a district attorney to coerce female defendants accused of drug offenses into sex acts. At least, that’s how the news media repeatedly framed it. There’s just one problem with that script. Prisoners and those accused of a crime cannot legally consent to sex with any law enforcement officer, district attorney, or other officer of the court. So, let’s just call this what it really was – what the court and news media refuse to call it: rape.

It’s not as if the court is unfamiliar with the word or unaware of its definition. After all, courts routinely tout the legal principle that certain classes of people cannot consent to sex under any circumstances – minors under the legal age of consent, people under the influence of drugs or alcohol, people who are incapacitated while unconscious or
sleeping, people who have significant mental illness, and yes, people who are in the government’s custody.

So, for raping these women, former District Attorney Higgins received the following sentence: $9,700 in fines, eight years of probation, 1125 hours of community service, 120 days of house arrest, and mandated counseling. That’s right... not a single day of jail or prison time, and no sex offender registry!

One might be tempted to think that perhaps he received this judicial slap on the wrist because his offense was a singularly minor infraction of the law. But, in fact, Higgins faced 31 charges which included not only the sexual assaults but obstruction of justice, witness intimidation, reckless endangerment, giving misleading testimony, and concealing or destroying evidence.

Perhaps his sentencing good fortune was the result of the fact that Higgins is just a really, really nice guy who is simply misunderstood? After all, Steven Passarello – Higgins’ defense attorney – extolled his ostensible altruism thusly: “To his credit he decided he did not want to put his family or the county of Bedford through a media circus trial.” And as everyone knows, nothing says “nice guy” like wanting to spare the county a media circus.

Far more likely is the probability that the district attorney’s office simply couldn’t stomach the prospect of the wall-to-wall media scrutiny that such attention would bring to their operations. They were apparently willing to do just about anything to avoid that kind of scrutiny and the inevitable calls for oversight and accountability that would surely result. So, they made a deal. It was one hell of a good deal for Higgins by any conceivable measure. Higgins would pay a small fine, do some community service, and spend some time in “home confinement.” But he would be spared the indignity and substantial risk of serving any jail time, and
there would be no sex offender registration. In return, Higgins would retreat from the limelight, keep his mouth shut, and crawl back into obscurity like the cockroach that he is. It’s a win-win.

This case is the perfect example of how there are two distinctly different kinds of justice in America. There’s the kind of justice you get when you are wealthy, well-connected, and a potential embarrassment to officials because you know where all the “skeletons” are buried. And then there’s the injustice you are subject to when you aren’t wealthy, aren’t well-connected, and wield no political clout at all. The average citizen who is charged with one – one! – misdemeanor sexual offense typically serves significant jail time and is placed on the sex offender registry. Higgins, with 31 charges against him, received not even a taste of either.

That brings us to another major, glaring facet of this case that most have missed. Time and again, the appellate courts have ruled that the sex offender registry is not punishment. In Smith v. Doe, 538 U.S. 84 (2003), the U.S. Supreme Court upheld Alaska’s sex-offender registration statute, opining that the registry was administrative, not punitive, and was therefore not an ex post facto law. But, if the sex offender registry requirement truly isn’t punishment, then why was Higgins not required to register?

The answer, obviously, is because Higgins and his attorney both knew full well that sex offender registration would be the worst possible consequence to be faced at any sentencing hearing. Therefore, the logical assumption is that they did what any reasonable defendant would do under the circumstances, if they had the same kind of dirt on the courts that Higgins had. They made sex offender registration a non-negotiable item in their bargaining discussions.

Higgins, the former Bedford County PA District Attorney, knows full well that not only is the sex offender registry a
punishment, it is an unconstitutionally cruel and unusual punishment of the worst kind. The current Bedford DA, Lesley Childers-Potts, knows it, as does Judge Thomas Ling, who accepted Higgins’ plea agreement. Every registrant in America knows, without a doubt, that the sex offender registry – the so-called “civil death penalty” – is punishment.

Why doesn’t the U.S. Supreme Court know it?