

**State of Michigan
In the Supreme Court**

The People of the State of Michigan

Plaintiff-Appellee,

MSC No. 166766

v.

COA No. 363845

James Ellis

Berrien County Circuit Court

Defendant-Appellant.

Case No. 21-016148 FH

**James Ellis's
Supplemental Brief**

Jessica Zimbelman (P72042)
Deputy Director

Chloe Brueck (P87952)
Assistant Defender

Counsel for James Ellis

State Appellate Defender Office
200 North Washington
Suite 250
Lansing, MI 48913
(517) 334-6069
jzimbelman@sado.org

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***James Ellis*JLZ*Application for Leave to Appeal*February 6, 2026**

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Arguments

I. This Court’s decision in *Kardasz* that 2021 SORA is punishment controls the outcome for Mr. Ellis, either as ex post facto punishment or cruel or unusual punishment.

Mr. Ellis challenged the constitutionality of 2021 SORA based on two provisions: the ex post facto clause and the cruel or unusual punishment clause. *People v Kardasz*, __ Mich __; __ (2025) (Docket No. 165008) mandates that SORA registration be removed from Mr. Ellis’s judgment of sentence, no matter what offense—the sex offense or the unarmed robbery offense—triggers registration. If the registerable sex offense is what causes registration, 2021 SORA is ex post facto punishment. If the later, non-sexual offense is what causes registration, and *People v Lymon*, 515 Mich 145 (2024) does not control, then under *Kardasz*, 2021 SORA is cruel or unusual punishment for people required to register under the recapture provision.

A. Because 2021 SORA is punishment, it cannot be imposed to increase the penalty for registerable sex offenses committed before March 24, 2021. Because Mr. Ellis’s registerable sex offense occurred in 1983, requiring registration is ex post facto punishment.

Amicus Prosecuting Attorneys Association of Michigan (PAAM) suggests that the analysis for ex post facto punishment “is different from the question of whether all the obligations imposed by the 2021 SORA amount to punishment under Const 1963, art 1, §11.” *PAAM Amicus Supplemental*, 2. That is not accurate. This Court has already decided 2021 SORA is punishment by applying the factors from *Kennedy v Mendoza-Martinez*, 372 US 144 (1963)—the same factors that it used in *People v Betts*, 507 Mich 527 (2021) to determine that 2011 SORA was ex post facto punishment. *Kardasz*, __ Mich at __; slip op at 16-33. Therefore, the analysis from Mr. Ellis’s supplemental brief about the *Kennedy* factors is no longer necessary for this Court to engage in because it has already done exactly what Mr. Ellis argued for. See *James Ellis’s Supplemental Brief*, February 21, 2025, pp 20-36.

PAAM is correct that 2021 SORA will only be ex post facto punishment if the registerable sex offense occurred before a certain date. *PAAM Amicus Supplemental*, 2. That date is the effective date of 2021 SORA: March 24, 2021. That decision does not require a different case, given that Mr. Ellis’s sex offense was in 1983. As PAAM pointed out, issues of severance are also relevant to an ex post facto decision, but *Betts* and *Kardasz* read together lead to the inescapable conclusion that 2021 SORA is no more able to be severed than 2011 SORA was.

In *Kardasz*, this Court held the following features of 2021 SORA were what transformed the statute into punishment:

1. SORA resembles the traditional forms of punishment of parole and shaming. *Kardasz*, __ Mich at __; slip op at 17-20.
2. The effects of 2021 SORA on people were “neither minor nor indirect.” *Id.* at __; slip op at 21. Those effects include:
 - a. “Immediate disclosure of extensive personal information”;
 - b. Public internet registry;
 - c. In-person reporting that can lead to vigilante violence, threats, and harassment;
 - d. Fees;
 - e. Threat of imprisonment for violating SORA. *Id.* at __; slip op at 21-23.
3. “2021 SORA meets the traditional aims of punishment: Retribution, specific deterrence, and general deterrence.” *Id.* at __; slip op at 23. There is retribution because 2021 SORA is imposed solely based on the offense of conviction, with no individualized assessment of risk. *Id.* at __; slip op at 24.

4. 2021 SORA is excessive in relation to its nonpunitive goal, and this Court listed the aspects not supported by research:
 - a. The tier system based solely on the offense of conviction;
 - b. Publication of personal information on a public website, which can actually lead to increased recidivism;
 - c. The lack of opportunity for removal, for up to a person's entire life, even if someone can prove they are at low risk of committing another sex offense. *Id.* at __; slip op at 26-32.

As this Court noted in *Betts* and remains applicable here, the punitive portions of SORA cannot be severed because severance would leave “the statute unworkable.” *Betts*, 507 Mich at 564. It would be unworkable because:

The 2011 amendments completely restructured SORA through the imposition of a tiered classification system, and the duties and requirements of each registrant were based on that registrant's tier classification. Removing the 2011 amendments from SORA would render unclear who was required to comply with the act; how long each registrant must comply; how many times annually each registrant must report to law enforcement; and what a registrant must show to petition for removal from registration.

Id. at 564-565 (cleaned up).¹

¹ This Court also acknowledged that even if discreet provisions could be severed, this Court would end up engaging in “legislative choices,” and thus refused to do so. *Betts*, 507 Mich at 565-571. The same legislative choices would be present here if this Court attempted to sever 2021 SORA.

The tiered system remains in 2021 SORA, and thus, this Court is bound by *Betts* and 2021 SORA could not be saved through severance.

So, under *Betts* and *Kardasz*, 2021 SORA is ex post facto punishment and cannot be applied to Mr. Ellis, whose registerable sex offense was before March 24, 2021.

On the registerable offense question, PAAM's arguments conflict with each other. First, PAAM states it was the 2021 attempted unarmed robbery that triggered registration, such that 2021 SORA cannot be ex post facto punishment. *PAAM Amicus Supplemental*, 2-3. But then, PAAM says that because Mr. Ellis committed a Tier III offense, his facial challenge to 2021 SORA must fail under *Kardasz*, according to the *Lorentzen*² factors as discussed by this Court in *Kardasz*. *PAAM Amicus Supplemental*, 3-4. PAAM goes so far as to say that Mr. Ellis "was convicted of an offense akin to one that this Court has categorized as one of the 'gravest sexual crimes, such as assault with intent to commit criminal sexual conduct involving penetration.'" *PAAM Amicus Supplemental*, 4, quoting *Kardasz*, __ Mich at __; slip op at 37.

It seems that in actuality, PAAM believes the 1983 sex offense is what caused registration. 2021 SORA cannot be applied retroactively to Mr. Ellis and others who committed the registerable sex offense before March 24, 2021.³

² *People v Lorentzen*, 387 Mich 167 (1972).

³ If the registerable offense is in fact the 1983 sex offense, then Mr. Ellis may not be required to register, per this Court's order in *People v Klinessmith*, __ Mich __ (2025) (Docket No. 164649). Because Illinois did not have any version of a sex offender registry until 1986, it would not have been on Mr. Ellis's Illinois Judgment of Sentence. See Illinois Voices for Reform <<http://www.ilvoices.org/il-law-history.html>> (accessed February 4, 2026).

B. If this Court considers the registrable offense the 2021 attempted unarmed robbery, *Lymon* should control and Mr. Ellis should not have to register for a non-sexual offense. If *Lymon* does not control, under *Kardasz* it is cruel or unusual punishment to require people to register under the recapture provision.

As argued by Mr. Ellis in his supplemental brief, if it is the attempted unarmed robbery conviction that causes registration, that is a non-sexual offense and under *Lymon*, it would be cruel or unusual punishment to require SORA registration for a non-sexual offense. *James Ellis's Supplemental Brief*, February 21, 2025, 42-43.

But, if this Court does not apply *Lymon*, this Court's opinion in *Kardasz* allows for an as-applied challenge for people required to register under the recapture provision as cruel or unusual punishment. Mr. Ellis will not repeat the arguments as to why it is cruel or unusual punishment for him to have to register as a sex offender for trying to steal food from Wal-Mart, in combination with a sex offense from the 1980s. *Ellis's Supplemental Brief*, February 21, 2025, pp 44-59.

Kardasz allows for this very type of challenge. First, this Court has already found 2021 SORA to be cruel or unusual punishment for a subset of people in *Lymon*. It should do so again here for a second group of people—people required to register under the recapture provision.

Second, this Court acknowledged that “the excessiveness of SORA’s reporting requirements may increase over time, such as for Tier III offenders who have lived offense-free for decades.” *Kardasz*, __ Mich at __; slip op at 35. This applies with full force to people required to register under the recapture provision. Mr. Ellis is Tier III, but he committed that Tier III offense in 1983; he has lived free of sex offenses for over 43 years.

While the prosecutor tries to paint Mr. Ellis as someone who is a threat of committing a sex offense because he committed other felonies,

PAAM Amicus Supplemental, 5,⁴ PAAM cites no authority or research to support its blanket statement that committing *any* new felony offense necessarily increases the risk that one will commit a new sex offense. In fact, they fail to address the complete logical fallacy such a statement poses in *this* case: Mr. Ellis committed one sex offense when he was 19 years old; in the forty-three years since, he has not committed *any* other sex offense. The facts of this case alone disprove such an assertion.

The purpose of SORA registration has never been to “curb criminal conduct,” as the prosecutor now asserts. *PAAM Amicus Supplemental*, 5.⁵ The purpose of SORA, according to the Legislature, is to “better assist law enforcement officers and the people of this state in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders. SORA was further intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor convicted sex offenders.” *Kardasz*, __ Mich at __; slip op at 7 (internal citations omitted). Mr. Ellis’s prior non-sex offenses should bear no weight in this Court’s constitutional analyses of the recapture provision.

In any event, PAAM’s arguments now provide support for the idea that the conduct they are trying to punish is the 1983 sex offense. But, if the registerable offense is the non-sex offense, lifetime public registration with no ability to petition for removal is a wildly disproportionate punishment for trying to steal a steak from Wal-Mart, especially when Mr. Ellis has not committed a subsequent sex offense in over four decades.

⁴ “Where a defendant commits a sex offense in the past and has shown a recent general tendency to recidivate by committing a new felony offense, he poses a potential threat of committing a new sex offense in the future and therefore registration is not a grossly disproportionate punishment.”

⁵ “The mere prospect of re-arrest and re-conviction and SORA registration has not been enough to curb his criminal conduct.”

Conclusion and Relief Requested

For the reasons stated above, James Ellis asks that this Court hold that 2021 SORA is ex post facto punishment, or, in the alternative, that 2021 SORA is cruel or unusual punishment for people required to register under the recapture provision.

Respectfully submitted,

State Appellate Defender Office

/s/ Jessica Zimbelman _____

Jessica Zimbelman (P72042)

Deputy Director

Chloe Brueck (P87952)

Assistant Defender

Counsel for James Ellis

State Appellate Defender Office

200 North Washington

Suite 250

Lansing, MI 48913

(517) 334-6069

jzimbelman@sado.org

Certificate of Compliance

I hereby certify that this application contains 1,836 countable words.

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