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State of Michigan

In the Supreme Court

People of the State of Michigan

Plaintiff-Appellee,

v.

Gary Shaver

Defendant-Appellant.

Supreme Court No. 167736

Court of Appeals No. 361488

Tuscola County Circuit Court
Case No. 15-13521-FH

Gary Shaver's Reply Brief

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Date: November 6, 2025

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Reply

Mr. Shaver's appeal is not about the ability of the Legislature to require a registrant to update their address. It is about whether Mr. Shaver's conviction for violating an unconstitutional statute can be affirmed. This Court answered that question unequivocally in *Betts*[1]: it cannot.

The prosecutor makes two fundamental errors in arguing that *Betts* should not apply retroactively. First, the prosecutor disputes the clear rule from *Betts* by asserting nuance where none exists. Second, the prosecutor attempts to invent an "as-applied" version of retroactivity analysis foreign to this Court's precedent.

The prosecutor does make two correct admissions that are central to this Court's retroactivity determination:

> (1) in the Statement of Facts, states the holding from *Betts* as: "In July 2021, this Court ruled that Michigan's 2011 SORA violated the prohibition against ex post facto laws, when reviewed in aggregate, finding that its obligations were punishment and applying this ruling to offenders who committed their offenses before July 1, 2011." *Prosecutor's Brief*, 11.
>
> (2) agrees that *Betts* is a new rule. *Id.* at 15.

But the arguments quickly go off the legal rails. Essentially, the prosecutor argues that the clear rule from *Betts* was not actually that clear because this Court did not explicitly say that requiring a registrant to update their address was ex post facto punishment. *Prosecutor's Brief*, 2, 18, 19, 21, 23, 24, 25, 27, 28, 32. This assertion is internally inconsistent: "While it is true that all pre-2011 registrants received relief, this Court did not rule that the SORA could not impose a duty to update one's address as a registrant as a part of a regulatory system of registration." *Prosecutor's Brief*, 19. So, on the one hand, the prosecutor

[1] *People v Betts*, 507 Mich 527 (2021).

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concedes that all pre-2011 registrants "received relief," but then insists that some may still be punished if their violation involved address reporting. This is not consistent in the least with *Betts*.

The prosecutor reads far too much into *Betts* and cherry picks certain parts of the *Betts* opinion to apparently suggest this Court adopted a complicated rule that it did not:

> The *Betts* Court ruled that Michigan's 2011 SORA was punitive, and thus ex post facto, but that ruling related primarily to other obligations the Legislature continued to add to the registrants, i.e., student safety zones and in-person report for minor changes, but they in the main had nothing to do with the basis of his charge and conviction here, i.e., failing to update his address. *Prosecutor's Brief*, 32.

By manufacturing nuances not found in *Betts*, the prosecutor effectively asks this Court to adopt an as-applied retroactivity analysis that has never existed in Michigan law.

Multiple times the prosecutor admits that an ex post facto punishment will usually be—or is by its nature—substantive:

- "While a ruling that a decision imposes an ex post facto punishment is ordinarily a substantive decision. . ." *Prosecutor's Brief*, 18.
- "Typically, an ex post facto ruling that a set of offenders had their punishment increased from one punishment to a higher one after their crime would invalidate all of the sentences that were imposed on those offenders and thus would be substantive." *Id.* at 20.
- "It is clear that the ex post facto decision bars the application of the 2011 SORA to the class of pre-2011 registrants." *Id.* at 25.

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But, alas, not for Mr. Shaver. Or, apparently for anyone else who violated SORA in a specific way—by failing to register their address. *Prosecutor's Brief*, 1, 2, 17, 18, 20, 22. ("For Shaver, the ruling in *Betts* was not a substantive change, because his conduct continues to be a requirement in the same way today as it did then.")

The prosecutor argues that because Mr. Shaver has always had to register his address, the *Betts* rule did not "alter the range of conduct or the class of persons that the law punishes," nor did it "place certain criminal laws and punishment altogether beyond the State's power to impose." *Prosecutor's Brief*, 18, quoting *Edwards v Vannoy* 592 US 255, 276 and *Poole*, __ Mich at __; slip op at 5. This is because, as the prosecutor believes, *Betts* did not eliminate the requirement that registrants have to update their addresses. *Prosecutor's Brief*, 22.

But that is not true. This Court struck down 2011 SORA in its entirety. People whose registerable convictions were before July 1, 2011, are entirely exempt from the requirements of 2011 SORA. No part of that statute, regardless of whether a provision existed in earlier or later versions, applies to them. That closed universe of people cannot lawfully be punished for any alleged violation of 2011 SORA.

It bears repeating that Mr. Betts was convicted of failure to register because, in part, he failed to update his address. *People v Betts*, 507 Mich 527, 536-537 (2021). Yet, nowhere in *Betts* did this Court hold what the prosecutor asserts here: that the address reporting part of 2011 SORA was purely regulatory, and thus not ex post facto punishment. Rather, this Court vacated Mr. Betts's conviction because his registerable offense occurred before the enactment of 2011 SORA and thus he could not be subject to any of it. *Id.* at 574.

That is the rule from *Betts*. The prosecutor cannot make the *Betts* rule something it is not. It is a substantive rule of constitutional law that must apply retroactively.

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Conclusion and Relief Requested

For the reasons stated above, Gary Shaver requests that this Honorable Court reverse the Court of Appeals, hold that *Betts* is retroactive, and vacate his conviction for failing to register under SORA.

Respectfully submitted,

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Certificate of Compliance
I hereby certify that this application contains 935 countable words.

Date: November 6, 2025