

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120416-U  
NO. 4-12-0416  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
August 14, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ROBERT CHARLES FRIZZELL,	)	No. 11CF873
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

---

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, holding the Sex Offender Registration Act was constitutional as applied to defendant.

In March 2012, the trial court convicted defendant, Robert Charles Frizzell, of violating the Sex Offender Registration Act (SORA) (730 ILCS 150/3(a) (West 2010)), for failing to complete his annual registration by September 28, 2011, as required by law. The court sentenced defendant to an agreed sentence of two years' conditional discharge and ordered to pay certain fees and costs assessed. On appeal, defendant challenges the constitutionality of SORA as it applies to him, asserting law enforcement engaged in arbitrary and subjective enforcement of the statute. We affirm.

¶ 2 I. BACKGROUND

¶ 3 In March 1990, defendant entered a plea of guilty in Livingston County to the

offense of aggravated criminal sexual abuse (Ill. Rev. Stat. 1988, ch. 38, ¶ 12-16(b)). In June 1990, the trial court sentenced defendant to three years of probation. In 1996, extensive amendments to SORA (730 ILCS 150/1 to 10.9 (West 1996)) enacted by Public Act 89-8 (Pub. Act 89-8 (eff. Jan. 1, 1996)), required defendant to register as a sex offender for 10 years, applying retroactively to the date of his conviction in 1990.

¶ 4 On October 12, 2011, the State charged defendant by indictment in McLean County with a violation of his sex offender registration under section 3(a) of SORA (730 ILCS 150/3(a) (West 2010)), alleging defendant failed to complete his annual registration by September 28, 2011, as required by law. The case proceeded to trial in March 2012.

¶ 5 Tracie Newton testified she had been the supervisor of the sex offender registration unit for the Department of the Illinois State Police (Department) for approximately seven years. Her duties included communicating with local law enforcement agencies to verify the records and registration of sex offenders as reflected in the Law Enforcement Agencies Data System (LEADS) computer system. Newton explained, when a sex offender registers with a local law enforcement agency, the local agency is required to update LEADS within three days so that all law enforcement agencies can access, among other information, the registration status of a sex offender. Additionally, LEADS automatically flags those individuals who are noncompliant with SORA.

¶ 6 Newton further testified regarding a 1999 amendment to SORA, which allowed for administrative extension of an offender's 10-year registration period for noncompliance with any provision of the act. With respect to noncompliant offenders who were mandated to register for 10 years, LEADS automatically calculated, from the date the offender became compliant, a

new 10-year registration period. At the time, SORA did not require administrative hearings prior to extending registration, nor did it require law enforcement agencies to notify individuals about an extended registration period. However, Newton added, the registration forms always indicated the individuals' next registration dates. If an individual inquired about the status of his or her registration, Newton testified her office would personally review that individual's file by gathering registration materials and other relevant documentation from local law enforcement agencies. Since 2006, Newton explained, law enforcement policy required registration officers to explain to offenders the actions that constituted violations of SORA, but she could not verify whether that same practice was in effect prior to 2006.

¶ 7 Defendant's file contained the following information. Defendant has resided in Bloomington, Illinois, since he began registering in 1996; therefore, SORA required him to register through the Bloomington police department. Defendant registered as required by law from 1996 through 1999. On the February 1999 registration form, defendant placed his initials next to the provision that notified him to register "one year from the date of [his] initial registration and every year thereafter for a period of 10 years." The registration form did not contain a warning that failure to report as required would automatically extend his registration for 10 years. However, SORA contained a provision stating, "The Director of State Police, consistent with administrative rules, shall extend for 10 years the registration period of any sex offender who fails to comply with the provisions of the Article." 730 ILCS 150/7 (West 2000) (added by Pub. Act 91-48, § 5 (eff. July 1, 1999)).

¶ 8 Defendant failed to complete his annual registration in February 2000. When defendant regained compliance by registering in September 2000, his registration period was

administratively extended until September 2010. Consistent with the law at the time, defendant received no notice of the extension. See 730 ILCS 150/7 (West 2000). On the September 2000 registration form, defendant initialed next to the provisions notifying him that (1) failure to comply with any portion of SORA would require an automatic extension of registration for a period of 10 years and (2) he must register "within one year from the date of [his] most recent registration until [his] expungement date." Defendant failed to register in September 2001.

¶ 9 Defendant registered again in August 2002, at which time his registration was administratively extended until August 2012. Again, defendant received no notice of the extension. Defendant then registered as required through January 2003. On the January 2003 registration form, defendant again initialed next to the provisions notifying him that (1) failure to comply with any portion of SORA would require an automatic extension of registration for a period of 10 years and (2) he must register "within one year from the date of [his] most recent registration until [his] expungement date." Defendant then failed to register annually in January 2004. He registered in March 2004, at which time his registration was again administratively extended, this time until March 2014.

¶ 10 Newton testified, in 2005, the Department began sending registration reminders to all registering sex offenders approximately one month before each offender's due date for annual registration. In that letter, the Department notified offenders of their registration date from the year before and reminded them to register on or before that date to remain compliant. The letters did not contain the offenders' final registration dates, but encouraged offenders to call the Department with any questions.

¶ 11 Following his registration in 2004, defendant registered as required through

September 28, 2010. Newton stated defendant registered five times in August and September 2010, but she could not explain the reason behind defendant's multiple registrations after reviewing defendant's registration forms. On the September 28, 2010, form, defendant initialed the provisions explaining (1) failure to comply with SORA would result in his registration term being administratively extended by 10 years and (2) he was required to register within one year following the date of his previous registration date. The registration form also indicated defendant's next registration date of September 28, 2011. Defendant failed to register by September 28, 2011, at which time the State filed charges. He registered again on October 14, 2011.

¶ 12           Officer Shawn Albert with the Bloomington police department testified his duties included supervising sex offender registrations, maintaining registration records, training staff, answering questions from registering sex offenders, and ensuring offenders read and completed the registration form. Prior to September 28, 2011, defendant complained to Albert about the length of his registration term. Albert testified he told defendant to continue registering until the Department notified him otherwise. When defendant failed to register as required in September 2011, defendant explained it was due to his belief that his registration period had ended, though he had not received any verification of completion from the Department.

¶ 13           Defendant testified he signed the registration form on September 28, 2010, notifying him that (1) failure to comply with SORA would lead to a 10-year administrative extension of his registration, (2) SORA required annual registration, and (3) his next registration date was September 28, 2011. Defendant also acknowledged he had received no notification that he had finished his registration period. To the contrary, defendant's file contained a letter from

the Department to defendant reminding defendant to register on or before September 28, 2011.

¶ 14 In his closing argument, defendant asserted the State could not prove defendant "knowingly" failed to register because the Department failed to notify defendant his registration had been extended. The State countered notification was not required under *People v. Molnar*, 222 Ill. 2d 495, 857 N.E.2d 209 (2006). The trial court found defendant guilty of failing to register as a sex offender and imposed an agreed sentence of conditional discharge upon defendant.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant does not challenge his conviction. Rather, defendant argues SORA is unconstitutionally vague and a violation of due process as applied to him because law enforcement was "confused" and "uncertain" about how to apply certain provisions to defendant. We disagree.

¶ 18 The constitutionality of a statute is subject to *de novo* review. *People v. Malchow*, 193 Ill. 2d 413, 418, 739 N.E.2d 433, 437 (2000). We begin with the presumption that a statute is constitutional, and the burden is on the party challenging the statute to demonstrate its invalidity. *Malchow*, 193 Ill. 2d at 418, 739 N.E.2d at 437. "A defendant can challenge a statute as unconstitutionally vague in two ways: (1) on the statute's face, or (2) as the statute is applied to defendant's actions." *People v. Einoder*, 209 Ill. 2d 443, 448, 808 N.E.2d 517, 521 (2004). In this case, defendant does not challenge the constitutionality of SORA on its face, an issue previously resolved by *People v. Molnar*, 222 Ill. 2d 495, 857 N.E.2d 209 (2006), but instead challenges the constitutionality of SORA as it applies to him.

¶ 19

A. The Illinois Supreme Court's Decision in *Molnar*

¶ 20

In *Molnar*, a case factually similar to the present case, the defendant was convicted of a sex offense that required him to register as a sex offender until 2002. *Molnar*, 222 Ill. 2d at 501, 857 N.E.2d at 213. In 2000, the defendant failed to register pursuant to SORA. *Molnar*, 222 Ill. 2d at 503, 857 N.E.2d at 214. When the defendant registered again in 2002, becoming compliant once more, his registration period was administratively extended for 10 years without notice to defendant. *Molnar*, 222 Ill. 2d at 504, 857 N.E.2d at 214.

¶ 21

The defendant challenged the constitutionality of SORA, arguing the lack of notice regarding his extension deprived him of due process. *Molnar*, 222 Ill. 2d at 505-06, 857 N.E.2d at 215. In support, the defendant argued a 2006 amendment to SORA requiring the Department to provide notice to sex offenders of any registration extension demonstrated the prior version was unconstitutional as applied to the defendant. *Molnar*, 222 Ill. 2d at 515, 857 N.E.2d at 221. The supreme court disagreed, noting the purpose of the bill was to require more extensive reporting, not to provide additional safeguards to sex offenders. *Molnar*, 222 Ill. 2d at 516-17, 857 N.E.2d at 221-22. The supreme court held SORA did not violate defendant's right to due process because SORA's provisions provided "sufficiently definite standards" for law enforcement to follow with "virtually no discretion" and clearly set forth the penalties for failing to comply with SORA, including a 10-year administrative extension of registration. *Molnar*, 222 Ill. 2d at 514, 525-26, 857 N.E.2d at 220, 226-27.

¶ 22

B. "As-Applied" Constitutionality

¶ 23

Defendant contends SORA is unconstitutional as it applies to him, asserting his case is distinguishable from *Molnar* because, in the present case, defendant posits law

enforcement officers failed to follow the "sufficiently definite standards" set forth in SORA and instead exercised their own discretion in determining which provisions to follow, a situation not present in *Molnar*.

¶ 24 In support of his arguments, defendant relies heavily on the definition of an unconstitutionally vague statute as discussed in *Grayned v. City of Rockford*, 408 U.S. 104 (1972). *Grayned* describes a vague statute as one that "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned*, 408 U.S. at 108-09.

¶ 25 Defendant asserts law enforcement's arbitrary and subjective application of the law, as discussed in *Grayned*, violated his right to due process. According to defendant, law enforcement acted arbitrarily when (1) the Department failed to send defendant notice that his registration had been extended pursuant to section 7 of SORA (730 ILCS 150/7 (West 2010)), and (2) the Bloomington police department compelled defendant to register more than four times in one year in violation of section 6 of SORA (730 ILCS 150/6 (West 2010)). We will address these assertions in turn.

¶ 26 1. *The Department's Failure To Send Defendant Notice of His Extended Registration Period*

¶ 27 Defendant does not challenge SORA on the grounds that he lacked notice of his extended registration period. Rather, defendant asserts the Department's noncompliance with the registered letter provision of SORA demonstrates subjective, arbitrary enforcement that renders SORA unconstitutional as applied to defendant. The provision, in relevant part, states as follows:

"The registration period for any sex offender who fails to comply with any provision of the Act shall extend the period of registration by 10 years beginning from the first date of registration after the violation. If the registration period is extended, the Department of State Police shall send a registered letter to the law enforcement agency where the sex offender resides within 3 days after the extension of the registration period." 730 ILCS 150/7 (West 2010).

¶ 28 We begin by noting this provision came into effect in 2006. Pub. Act 94-166, §5, eff. Jan. 1, 2006. Prior to 2006, SORA's provisions did not require the Department to send any sort of notification when an individual violated SORA. Defendant points to Newton's testimony as evidence that the Department chose not to follow the notification provision with regard to defendant:

"Q. [DEFENSE COUNSEL:] Ms. Newton, in 2005 you started sending reminder letters?

A. Correct.

Q. So there is no adjudication, there's just an automatic extension?

A. Correct.

Q. But there is no notice to him either?

A. At the time, we weren't required to."

Defendant argues the statements by Newton demonstrate the Department never sent notice of

administrative extensions to sex offenders, thus showing an arbitrary application of SORA's provisions. A complete reading of this exchange, however, shows defense counsel was asking Newton about the Department's policies in 2005, *before* the 2006 amendment requiring the Department to give notice took effect. Defendant's assertion that the Department failed to provide notice as required by section 6 of SORA is further belied by defendant's own admission that he received notice of his most recent extension in October 2011. Nothing in the record supports defendant's contention the Department failed to send the registered letter regarding extensions required by section 7 of SORA for acts of noncompliance occurring on or after January 1, 2006. Defendant cites no case law or evidence in support of his argument that the Department arbitrarily and subjectively applied the statute with regard to him but merely refers us back to *Grayned*.

¶ 29 Defendant also asserts the inability of local law enforcement agencies to explain the reason behind the Department's administrative extension of defendant's registration demonstrates the arbitrary and subjective nature of the law. In support, he cites Albert's statement, "I don't have any specific knowledge of his specific reasons for his extensions." However, before that, Albert explained, "The state police notify me of why he's extended, I would have to review his entire file to see if there is an extension notice in there." Neither the State nor defendant asked Officer Albert to review his file. The record does not reveal whether the Department did, in fact, send the Bloomington police department an explanation for any of defendant's extensions. This court will not engage in speculation as to whether certain contents are contained within a file. *People v. Patterson*, 163 Ill. App. 3d 370, 374, 516 N.E.2d 642, 645 (1987) ("It is not the function of a reviewing court to search beyond the record and to engage in

speculation."). Thus, we find defendant's argument unpersuasive. We conclude law enforcement did not arbitrarily and subjectively apply the notice provisions of SORA in such a way that rendered the statute vague under *Grayned* standards; therefore, we find SORA was not unconstitutionally applied to defendant on those grounds.

¶ 30      2. *Law Enforcement's Failure To Explain Defendant's Multiple Registrations*

¶ 31            Defendant next asserts defendant's five different registrations between August and September 2010 demonstrated law enforcement's arbitrary and subjective application of SORA provisions. At trial, Newton testified defendant registered five times between August and September 2010, but she was unable to provide an explanation for the multiple registrations. Defendant contends Newton's uncertainty demonstrates law enforcement acted arbitrarily by compelling more than four registrations in one year in violation of section 6 of SORA (730 ILCS 150/6 (West 2010)); therefore, he asserts SORA was unconstitutionally applied to him under *Grayned* standards. Section 6 of SORA, in relevant part, states as follows:

"Any other person who is required to register under this Article shall report in person to the appropriate law enforcement agency with whom he or she last registered within one year from the date of last registration and every year thereafter and at such other times at the request of the law enforcement agency *not to exceed 4 times a year.*" (Emphasis added.) 730 ILCS 150/6 (West 2010).

¶ 32            Defendant argues a "plausible explanation" for the multiple registrations is the Bloomington police department compelled him to continuously register, which would be a violation of section 6 of SORA, which only allows law enforcement to compel registration up to

four times per year. Defendant points to Newton's inability to explain why defendant registered multiple times in August and September 2010 as evidence that law enforcement engaged in arbitrary or subjective enforcement of SORA. We note neither the State nor defendant asked Officer Albert, who would be in the best position to answer any questions regarding defendant's registration, about defendant's multiple registrations between August and September 2010. Defendant also failed to address this issue during his testimony. Following a review of the record, we conclude defendant's "plausible explanation" is not supported by the record and, again, is mere speculation this court will not consider. *Patterson*, 163 Ill. App. 3d at 374, 516 N.E.2d at 645. Thus, we conclude law enforcement did not arbitrarily and subjectively apply section 6 of SORA so as to make it unconstitutional as applied to defendant. Based on the foregoing, we conclude SORA is constitutional as applied to defendant.

¶ 33

### III. CONCLUSION

¶ 34

For the reasons stated, we affirm the trial court's judgment.

¶ 35

Affirmed.