

NOTICE

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FILED

November 6, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150400-U
NOS. 4-15-0400, 4-15-0401 cons.
IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
KEVIN A. CRIPE,)	Nos. 13CF284
Defendant-Appellant.)	13CF305
)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court accepted the State’s concessions on appeal that (1) defendant’s conviction for presence within a school zone by a child sex offender should be reversed because the evidence was insufficient to prove defendant guilty beyond a reasonable doubt and (2) his conviction for failing to register as a sex offender must be reversed because defendant was no longer required to register at the time of the alleged offense.

¶ 2 In February 1997, defendant, Kevin A. Cripe, was convicted of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 1996)) and sentenced to prison. In October 2003, he was released from prison, triggering a 10-year period during which he was required to register as a sex offender under the Sex Offender Registration Act (Act) (730 ILCS 150/7 (West 1996)). In March 2011, a police officer determined that defendant had violated his reporting requirements by failing to report a change of address. See 730 ILCS 150/3(a) (West 2010) (eff. until July 1, 2011). As a result, defendant was subjected to a new 10-year reporting period. See 730 ILCS

150/7 (West 2010) (“The registration period of 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.”).

¶ 3 In November 2013, the State charged defendant with presence within a school zone by a child sex offender (720 ILCS 5/11-9.3(b-10) (West 2012)) (case No. 13-CF-284), alleging that he was living within 500 feet of a playground. In December 2013, the State charged defendant with failing to register as a sex offender, a Class 3 felony (730 ILCS 150/3(a), 10(a) (West 2012)) (case No. 13-CF-305).

¶ 4 In December 2014, defendant filed an identical motion to dismiss in each case. In those motions, he argued that the March 2011 extension of his sex-offender registration requirements was erroneous. Further, he argued that his constitutional right to procedural due process had been violated because he was denied the right to any administrative review of the extension. Defendant therefore argued that section 7 of the Act, which contained the 10-year extension provision, was unconstitutional. The trial court denied the motions.

¶ 5 In April 2015, the cases proceeded to a stipulated bench trial, after which the trial court found defendant guilty of both charges. The court sentenced defendant to 180 days in jail.

¶ 6 Defendant appeals, arguing that (1) the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt of presence within a school zone by a child sex offender and (2) his conviction for failing to register must be vacated because the 10-year extension of his sex-offender reporting obligations violated his right to procedural due process.

¶ 7 The State concedes that both convictions must be reversed. We accept the State’s concessions.

¶ 8

I. BACKGROUND

¶ 9

A. The Charges at Issue in This Case

¶ 10

1. *Case No. 13-CF-284*

¶ 11 In November 2013, the State charged defendant in case No. 13-CF-284 with presence within a school zone by a child sex offender. 720 ILCS 5/11-9.3(b-10) (West 2012). The charge alleged that defendant had previously been convicted of a child sex offense and was residing within 500 feet of a playground.

¶ 12

2. *Case No. 13-CF-305*

¶ 13 In December 2013, the State charged defendant in case No. 13-CF-305 with failing to register as a sex offender (730 ILCS 150/3(a), 10(a) (West 2012)), alleging that defendant was homeless and failed to register weekly, as required by the Act.

¶ 14

B. Defendant's Motions To Dismiss

¶ 15

In December 2014, defendant filed an identical motion to dismiss in each case. The motions argued that at the relevant time periods alleged in the charging instruments, defendant was not subject to the reporting requirements of the Act. He argued further that his alleged status as a sex offender resulted from an unconstitutional extension of his duty to register as a sex offender. Defendant argued that the statute authorizing the extension of his sex offender registration—section 7 of the Act (730 ILCS 150/7 (West 2012))—was unconstitutional because it denied defendant his right to procedural due process.

¶ 16

In February 2015, the State filed a response. The State alleged that in February 1997, defendant was convicted of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 1996)), for which he was required to register as a sex offender for a minimum of 10 years after his release from prison (730 ILCS 150/7 (West 1996)). In addition to the 10-year minimum registra-

tion period, section 7 of the Act provided that “[t]he 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 Act. 730 ILCS 150/7 (West Supp. 1999) (eff. July 1, 1999). The State alleged further that defendant was released from prison for criminal sexual assault on October 23, 2003, then triggering his 10-year minimum registration period. In March 2011, a police officer determined that defendant had failed to register a change of address in violation of the Act. As a result, defendant’s duty to register was extended until March 2021.

¶ 17 The State alleged further that on October 31, 2013, defendant reported that he was homeless, which triggered the Act’s duty to register weekly. 730 ILCS 150/3(a) (West 2012). Defendant registered on November 7, 2013. The next day he was arrested and charged for residing within 500 feet of a playground (720 ILCS 5/11-9.3(b-10) (West 2012)). He was released from custody on November 12, 2013. On November 14, 2013, defendant did not register. As a result, in December 2013, the State charged him in No. 13-CF-305 with failure to register as a sex offender, a Class 3 felony (730 ILCS 150/3(a), 10(a) (West 2012)).

¶ 18 C. The February 2015 Hearing on Defendant’s Motions To Dismiss

¶ 19 In February 2015, the trial court conducted an evidentiary hearing on defendant’s motions to dismiss in both cases.

¶ 20 Defendant testified that on March 11, 2011, he moved out of his niece’s home, located at 77 Camelot Drive in Gardner, Illinois. On March 12, 2011, he reported to jail for the weekend on an offense for which he was eventually acquitted. He was released from jail on March 14, 2011. That same day, he reported to police that he was homeless, in compliance with the three-day time limit for reporting a change of address.

¶ 21 Defendant claims he never received notice from the state police that his duty to

register had been extended in March 2011. He believed that his duty to report had ended in October 2013. He did not become aware of the extension until he was arrested on the charges involved in these cases. He had remained in jail on the present charges since December 2013.

¶ 22 In August 2014, defendant mailed a petition for relief from the 10-year extension to Tracie Newton, who worked in the sex offender registration unit of the Illinois State Police (ISP). Defendant never received a response to that petition. Since sending the petition, defendant had written to ISP once or twice per week requesting an administrative review of his 10-year extension. Defendant never received a response to those letters.

¶ 23 Newton testified that she supervised the sex-offender registration unit of ISP. She testified that she had received multiple requests from defendant for an administrative review of his sex-offender registration extension. In late 2014, she forwarded defendant's requests to ISP's legal department. In addition, someone from the sex-offender registration unit requested and obtained the police report from the Grundy County sheriff's office, which was dated March 11, 2011, and confirmed that the officer had reported defendant as noncompliant with his registration requirements. Newton explained that an administrative review hearing of the kind requested by defendant had not been held since 2013 and that no hearings were planned for the future.

¶ 24 Newton explained that when local police officers conduct sex-offender checks in the field, those officers then enter a report describing their findings in the Law Enforcement Agencies Data System (LEADS). If, for example, an officer discovered that a sex offender was no longer living at his registered address, that officer would change the offender's address to "location unknown," and the offender would become listed as "noncompliant" in LEADS. Local law enforcement also was required to update offenders' information in LEADS any time those offenders registered at local police stations. The LEADS system imposed an automatic 10-year

extension if, based on the information entered, the system determined that a registration violation had occurred. If an offender wanted to contest the 10-year extension, the offender could contact the sex-offender registration unit and explain why the extension was in error. Newton testified that her office had reviewed defendant's file and determined that the March 2011 extension of his registration requirements was valid.

¶ 25 Suzanne Yokley Bond, chief legal counsel for ISP, testified that since she became chief legal counsel four years ago, no administrative hearings had been conducted to review extensions of sex-offender registration periods. Bond instructed her staff not to schedule such hearings. Bond did not believe that the Act or the Illinois Administrative Code required ISP to conduct review hearings.

¶ 26 Defendant objected to the testimony of a Grundy County sheriff's deputy about whether defendant properly registered in March 2011. Defendant argued, "We're not having a hearing here to determine *** whether or not [defendant] properly registered on that date. That's not the basis of my motion. Of course we don't think he did. The State thinks he did not. But that's not the issue today." The trial court agreed that the issue at the hearing was not whether the March 2011 extension was valid. Instead, the issue was whether the Act was unconstitutional for denying defendant administrative review of the extension. The court sustained defendant's objection.

¶ 27 Later in February 2015, defendant filed another motion to dismiss in each case, essentially repeating the arguments raised in his previous motions and supporting those arguments with evidence presented at the February 9, 2015, hearing.

¶ 28 In March 2015, the trial court entered an order denying defendant's motions to dismiss. The court described defendant's challenge to section 7 of the Act as an as-applied chal-

lenge claiming a denial of procedural due process. The court found that defendant made “several requests in writing and orally” to ISP for an administrative hearing to review the extension of his sex-offender reporting period.

¶ 29 The trial court found further that defendant did not receive a review hearing and that ISP had not scheduled any such hearings for anyone in at least four years. The court determined that the ISP “may not be following” the applicable administrative procedures. The court reasoned however, that declaring section 7 unconstitutional was not the appropriate remedy to address the failure of ISP. The court concluded that *People v. Molnar*, 222 Ill. 2d 495, 857 N.E.2d 209 (2006), controlled, in which the supreme court held that section 7 was not unconstitutionally vague and, therefore, did not violate due process. The trial court concluded, “The problem is not the law itself, but application of that law.” The court denied defendant’s motions to dismiss.

¶ 30 D. The April 2015 Bench Trial

¶ 31 In April 2015, the trial court conducted a single stipulated bench trial to resolve both cases. After trial, the court found defendant guilty of both charges.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Defendant argues that (1) the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt of presence within a school zone by a child sex offender and (2) his conviction for failing to register must be vacated because the 10-year extension of his sex-offender reporting obligations violated his right to procedural due process. We accept the State’s concessions that both of defendant’s convictions should be reversed.

¶ 35 A. Sufficiency of the Evidence in Case No. 13-CF-284

¶ 36 Defendant argues that the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt of presence within a school zone by a child sex offender. 720 ILCS 5/11-9.3(b-10) (West 2012).

¶ 37 As charged in this case, the offense made it illegal for “a child sex offender to knowingly reside within 500 feet of a playground.” 720 ILCS 5/11-9.3(b-10) (West 2012).

¶ 38 The State concedes that the evidence was insufficient because the State failed to prove that defendant resided within 500 feet of a playground—an essential element of the offense as charged in this case. The evidence showed that defendant resided approximately 438 feet from the “Saunemin City Park and Playground.” But the evidence did not establish which areas of the Saunemin City Park and Playground met the statutory definition of a “playground” or how far defendant resided from those particular areas. As a result, the evidence was insufficient to establish that defendant resided within 500 feet of a playground. We accept the State’s concession that the evidence was insufficient.

¶ 39 We reverse outright defendant’s conviction in case No. 13-CF-284 for presence within a school zone by a child sex offender (720 ILCS 5/11-9.3(b-10) (West 2012)).

¶ 40 B. Procedural Due Process in Case No. 13-CF-305

¶ 41 Defendant argues that section 7 of the Act is unconstitutional both on its face and as applied to him because it violates the due process protections of the Illinois and United States constitutions. Ill. Const. 1970, art. I, § 2; U.S. Const., amend. XIV.

¶ 42 The State argues that we need not determine whether section 7 violates due process. The State offers to accept defendant’s claim that he did not violate the registration requirements in March 2011 and, thus, should never have been subject to the 10-year extension.

¶ 43 1. *The Sex Offender Registration Act*

¶ 44 Section 3(a) of the Act requires that any “sex offender” shall register with the ISP. 730 ILCS 150/3(a) (West 2012). Section 2(A)(1)(a), (B)(1), defines a “sex offender” as, among other things, any person charged with and convicted of criminal sexual assault (730 ILCS 5/12-13 (West 2012)). 730 ILCS 5/2(A)(1)(a), (B)(1) (West 2012).

¶ 45 Section 7 of the Act provides that liability for registration ends “at the expiration of 10 years from the date of *** release from” prison, so long as the person does not during that 10-year period again become required to register. 730 ILCS 150/7 (West 2012). “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.” *Id.* “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.” *Id.*

¶ 46 *2. The Standard of Review*

¶ 47 The constitutionality of a statute is a question of law, which we review *de novo*. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 15, 54 N.E.3d 825. “[S]tatutes carry a strong presumption of constitutionality.” *Id.* ¶ 16, 54 N.E.3d 825. The party challenging the statute bears the burden of establishing that it is unconstitutional. *Id.*

¶ 48 *3. Procedural Due Process*

¶ 49 We interpret our constitution’s right to due process in limited lockstep with the right to due process contained in the fourteenth amendment to the United States Constitution. *People v. Kizer*, 365 Ill. App. 3d 949, 960-61, 851 N.E.2d 266, 275 (2006).

¶ 50 “Procedural due process claims challenge the constitutionality of the specific procedures used to deny a person’s life, liberty, or property.” *People ex rel. Birkett v. Konetski*, 233

Ill. 2d 185, 201, 909 N.E.2d 783, 796 (2009). When evaluating a procedural due process claim, courts should balance the following three factors: (1) the private interest at issue; (2) the risk of an erroneous deprivation of that interest under the procedures in effect and the value of additional procedural protections; and (3) the burden to the government that additional or substitute procedural protections would entail. *Konetski*, 233 Ill. 2d at 201, 909 N.E.2d at 796; see also *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). “The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections.” *Konetski*, 233 Ill. 2d at 201, 909 N.E.2d at 796.

¶ 51

4. *The State’s Concession*

¶ 52 The State concedes that defendant’s conviction should be reversed. The State offers to accept defendant’s contention that he complied with the Act’s reporting requirements in March 2011. Accordingly, the 10-year extension of his reporting duties was improper, and his reporting duties would have ended in October 2013. His conviction for violating those duties in November 2013, therefore, could not stand and would be reversed. Defendant responds that he accepts the State’s concession “with hesitation” because the factual issue of whether the 10-year extension was valid has not been litigated.

¶ 53

We accept the State’s concession that defendant’s conviction must be reversed. We therefore reverse defendant’s conviction for failing to register as a sex offender in case No. 13-CF-305.

¶ 54

Because we accept the State’s concession on this issue, we need not determine whether section 7 of the Act violated defendant’s constitutional rights to due process.

¶ 55

III. CONCLUSION

¶ 56

For the foregoing reasons, we reverse the trial court’s judgment in both cases.

¶ 57

Reversed.