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2014 IL App (3d) 110733-U

Order filed June 3, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-11-0733
REX FREDERICKSON,)	Circuit No. 11-CF-415
Defendant-Appellant.)	Honorable Sarah F. Jones, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The State adduced sufficient evidence at trial to prove defendant knowingly violated the Sex Offender Registration Act beyond a reasonable doubt. Defendant forfeited his claim that the Act is unconstitutional as applied to him by failing to raise it below. Defendant is entitled to a monetary credit for time served in presentence custody.

¶ 2 The State charged defendant, Rex Frederickson, with failing to register as a sex offender in violation of the Sex Offender Registration Act (the Act) (730 ILCS 150/3(b) (2010)).

Defendant waived jury trial, and the matter proceeded to a bench trial after which the circuit

court of Will County found defendant guilty. Defendant filed a posttrial motion, which the court denied. Following a sentencing hearing, the court sentenced defendant to two years and six months' incarceration in the Illinois Department of Corrections (DOC) and \$1,140 in fines and costs. Defendant filed a motion to reconsider sentence, which was also denied. He appeals, claiming the State failed to prove him guilty beyond a reasonable doubt, that the Act is unconstitutional as applied to him, and that \$500 of his fines were satisfied by a monetary credit for presentence incarceration.

¶ 3

BACKGROUND

¶ 4

Defendant is a homeless sex offender, who pled guilty to three counts of aggravated criminal sexual abuse, Class 2 felonies, in February of 2003. Defendant received a sentence of 48 months of probation for his convictions. The State sought to revoke defendant's probation in November of 2003, which resulted in defendant being resentenced to another 48-month term of probation on January 30, 2004.

¶ 5

On November 14, 2007, the State, again, moved to revoke defendant's probation. However, the State withdrew the petition to revoke on April 23, 2008, as defendant's probation terminated. Nevertheless, due to his convictions, defendant must continue to register as a sex offender under the Act.

¶ 6

On May 19, 2011, the State filed a first superseding bill of indictment alleging that on or about March 2, 2011, defendant, "a sex offender, who lacks a permanent residence, failed to register in accordance with the provisions of the Act as they apply to him, in that he knowingly failed to report on a weekly basis to the law enforcement agency in which he is located, the Joliet Chief of Police, and inform the police of his last place of residence." The matter proceeded to a bench trial.

¶ 7 At trial, the State called Detective Landeros of the Joliet police department. Detective Landeros testified that he handles the sex offender registrations for the city of Joliet and is familiar with defendant, having previously registered him 50 to 100 times. Defendant has been compliant with his registration requirements and was employed at Greg's Auto Body.

¶ 8 Landeros noted that Joliet registers homeless sex offenders, who are required to register weekly, every Wednesday to help facilitate registration. On February 23, Landeros learned that defendant had registered as a sex offender with the Bolingbrook police department between the dates of February 2 and February 16. Landeros denied that he initiated contact with the Bolingbrook police department, instead, stating that Bolingbrook initiated contact with him. Landeros advised Detective Talbot of Bolingbrook that defendant was homeless and employed in Joliet and, as such, defendant's LEADS (Law Enforcement Agencies Data System) file belonged in Joliet.

¶ 9 Landeros explained that had defendant registered in another jurisdiction, Landeros would be notified of that registration through LEADS. He explained the LEADS file is "owned by a police department until the sex offender moves to another jurisdiction." When that happens, "that agency will then have to call our police department and request a sex offender to be put in moving status where they would be allowed to take control of that LEADS file." Landeros noted this procedure applies to all registered sex offenders whether they have a permanent address or are homeless.

¶ 10 At approximately noon on Thursday, March 3, 2011, Landeros was outside the police station when he saw defendant and inquired as to whether defendant was registered. Detective Ross was present when Landeros asked defendant if he had registered with Joliet on March 2, 2011. Defendant replied that he had not registered with Joliet on March 2. Landeros then

confirmed through a conversation with Detective Avila that defendant refused to register with Joliet on March 2, 2011. Landeros searched the LEADS system and confirmed that defendant had not registered anywhere on March 2. Landeros' search of LEADS revealed that the last time defendant had registered anywhere was February 23, 2011.

¶ 11 On cross-examination, Landeros noted he has known defendant for many years. He knew defendant had asked to speak with a supervisor about him, but did not know if defendant actually filed a formal complaint. Landeros had never been approached or disciplined for any interaction with defendant and was neither annoyed nor resentful toward defendant.

¶ 12 Landeros denied telling Bolingbrook not to register defendant as a sex offender. He merely stated that he informed Bolingbrook that defendant had no driver's license, resided in Joliet without a mode of transport to Bolingbrook, and that "he's one of my sex offenders in Joliet."

¶ 13 The trial court admitted into evidence the State's exhibits one through four, which included a "Duty to Register" form signed by defendant at the Joliet police department on February 2, 2011; defendant's handwritten Bolingbrook registration form dated February 9, 2011; the printed Joliet registration form dated February 16, 2011; and defendant's certified statement of conviction.

¶ 14 The February 2 form indicates that defendant was homeless and working at Greg's Auto Body in Joliet. The February 16 form lists substantially the same information as the February 2 form.

¶ 15 Officer Nicholas Schmidt from the Bolingbrook police department testified that defendant came to register in Bolingbrook on February 9, 2011. Schmidt identified People's exhibit No. 3 as the form defendant filled out on February 9. Defendant wrote the word

"contractor" on the form in the space designated to identify defendant's employer. Defendant listed his address on the form for mailing purposes as "2221 Oak Leaf in Joliet." That is the address of Greg's Body Shop.

¶ 16 Schmidt noted that he had a conversation with defendant on February 9 during which defendant stated he "was originally registered in Joliet. He was trying to make his way up to Bolingbrook but he may be staying in Bolingbrook because he may get a job in Bolingbrook." Schmidt had no more contact with defendant after he left the station that day.

¶ 17 Detective Sean Talbot testified that he is employed by Bolingbrook police department and knows the defendant. Talbot stated that after defendant registered in Bolingbrook, the Joliet police department notified Talbot that there was "a good possibility" that defendant was not homeless in Bolingbrook and that "we should look into it."

¶ 18 Defendant returned to register in Bolingbrook on February 23, 2011, after Talbot was notified by the Joliet police department regarding issues with defendant's registration. Talbot met him in the lobby. Talbot had never seen defendant on the streets of Bolingbrook and, given his familiarity with the Bolingbrook homeless, he did not believe defendant to be honest when defendant indicated he lived in Bolingbrook. Talbot stated that he informed defendant he would register him on February 23 in Bolingbrook, but that he needed to know the area around which defendant would be so the police could verify his presence in Bolingbrook. When defendant refused to indicate where in Bolingbrook he would be staying, Talbot informed defendant that he needed to go back to Joliet to register.

¶ 19 Talbot acknowledged speaking to Landeros regarding the defendant and further acknowledged receiving an e-mail from Bolingbrook Sergeant Gunty, which stated that Talbot was not to register defendant if he returned, as defendant was not homeless in Bolingbrook.

¶ 20 Joliet Detective Avila testified that he received a call from the defendant on March 2, 2011. Defendant informed Avila that he was at the police station's front desk to turn himself in for being out of compliance with the Act. Detective Avila informed defendant that he would not enforce the noncompliance issue but, instead, would register defendant to bring him into compliance. Defendant became upset, refused to allow Avila to register him and hung up the phone. Avila went to the lobby to see defendant, but defendant had already left the building.

¶ 21 Avila noted that defendant returned later in the day on March 2. Defendant demanded Avila switch defendant's online status from noncompliant to compliant. Avila stated he could not do so until defendant registered. Defendant stated he was refusing to register "because the State of Illinois was in default with him." Avila confirmed that the last time defendant had registered in Joliet was on February 16, 2011, and that defendant had not registered with any other police department after February 16.

¶ 22 Following Avila's testimony, the State moved to admit various exhibits, which the trial court did without objection. Defendant moved for a directed verdict, which the trial court denied.

¶ 23 The defense called James Scarpetta of the Internal Affairs division of the Joliet police department. Scarpetta stated that defendant complained that Landeros changed the registration day for homeless sex offenders from Tuesday to Wednesday just to harass defendant. Defendant's complaints about Landeros date back to 2008. Scarpetta and Landeros' commander determined the complaints to be unfounded. On March 3, 2011, defendant filed a 24-page complaint against Landeros. Scarpetta never discussed the complaint with Landeros as Scarpetta never formally investigated the complaint.

¶ 24 Defendant testified on his own behalf. He registered in Bolingbrook on February 9, 2011, since he was doing some contracting work there. On February 16, 2011, he tried to register in Bolingbrook and Joliet as he was going to be in both places. When he tried to register in Bolingbrook on February 23, 2011, the police refused to allow him to register. The next day, he contacted the mayor of Bolingbrook who told him to register in Joliet. He did not register in Joliet on February 23, as he had no way to get back to Joliet in time to do so. Defendant stated he was not allowed to register in Bolingbrook on February 23, as he "could not provide adequate proof of homelessness."

¶ 25 Defendant noted he attempted to see the Joliet Chief of Police on March 1, March 2, and March 3 of 2011 to register, but the chief was unavailable. Defendant was upset with Landeros on those days as Landeros would not update defendant's work information on the registration form. Defendant did not know he was talking to Avila from the lobby phone, he thought he was talking to Landeros. Defendant acknowledged telling the person on the phone that the State was in default with him.

¶ 26 The trial court found defendant guilty of failure to register as a sex offender as charged in the criminal complaint. The complaint alleged that defendant failed to register as a sex offender on March, 3, 2011, as required by the Act (730 ILCS 150/3(b) (West 2010)). Defendant filed a posttrial motion, which the trial court denied. The trial court sentenced defendant to 2 years and 6 months' incarceration in the DOC, giving him 203 days of presentence incarceration credit. Defendant filed a motion to reconsider sentence, which was also denied. This appeal followed.

¶ 27 ANALYSIS

¶ 28 Defendant makes three claims on appeal. Initially, defendant asserts a sufficiency of the evidence claim, arguing the State failed to adduce sufficient evidence to prove each and every

element of the offense beyond a reasonable doubt. Defendant further claims that the Act is unconstitutional as applied to him. Finally, defendant argues that his \$500 sex crimes fine should be satisfied by his \$5-per-day presentencing custody credit.

¶ 29 I. Sufficiency of the Evidence

¶ 30 The defendant challenges the sufficiency of the evidence supporting his conviction, claiming the State failed to prove each and every element of the offense beyond a reasonable doubt. In reviewing such a claim, we determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the offense proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985); *People v. McCoy*, 378 Ill. App. 3d 954, 962 (2008).

¶ 31 As a convicted sex offender, the defendant was obligated to comply with the registration requirements of the Act. 730 ILCS 150/3 (West 2010). The Act states:

“Any person who lacks a fixed residence must report weekly, in person, with the sheriff’s office of the county in which he or she is located in an unincorporated area, or with the chief of police in the municipality in which he or she is located. The agency of jurisdiction will document each weekly registration to include all the locations where the person has stayed during the past 7 days.

The sex offender or sexual predator shall provide accurate information as required by the Department of State Police. That information shall include the sex offender’s or sexual predator’s current place of employment.” 730 ILCS 150/3(a) (West 2010).

¶ 32 The Act continues, noting that any offender “shall, within 3 days of *** establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) or (a–5).” 730 ILCS 150/3(b) (West 2010).

¶ 33 Finally, the Act states:

"(d) Within 3 days after obtaining or changing employment *** a person required to register under this Section must report, in person to the law enforcement agency having jurisdiction, the business name and address where he or she is employed. If the person has multiple businesses or work locations, every business and work location must be reported to the law enforcement agency having jurisdiction." 730 ILCS 150/3(d) (West 2010).

¶ 34 Summarizing the aforementioned parts of the Act, Illinois Pattern Jury Instruction No. 9.43H states:

"To sustain the charge of failure to register as a sex offender the State must prove the following propositions:

First Proposition: That the defendant is a (sex offender) (sexual predator) [(out-of-state (student)(employee)], and

Second Proposition: That the defendant (knowingly failed to register) ***." Illinois Pattern Jury Instructions, Criminal, No. 9.43H (4th ed. 2000).

¶ 35 Defendant does not deny that the State proved he was required to register weekly or that he is a convicted sex offender within the meaning of the Act. Defendant argues that the State did not satisfy its burden of proving he "knowingly" failed to register with the proper agency.

Defendant reaches this conclusion claiming he attempted to register in Bolingbrook, but Talbot refused to allow him to do so. Moreover, defendant claims the State failed to prove he did not have a job in Bolingbrook or prove he was living on the streets of Bolingbrook.

¶ 36 The State responds, noting that defendant did not face charges of failing to register in Bolingbrook. Again, the indictment alleged that on or about March 3, 2011, defendant, "a sex offender, who lacks a permanent residence, failed to register in accordance with the provisions of the Sex Offender Registration Act as they apply to him, in that he knowingly failed to report on a weekly basis to the law enforcement agency in which he is located, the Joliet Chief of Police, and inform the police of his last place of residence."

¶ 37 Detective Avila testified that defendant came to the Joliet police department on March 2, 2011. On that day, defendant stated he was there to turn himself in for being noncompliant. Avila attempted to bring defendant into compliance that day but defendant refused, stating the State was "in default" with him. Defendant acknowledged this conversation in his own testimony.

¶ 38 Avila performed a LEADS search that day which indicated that February 16, 2011, was the last time defendant registered as sex offender anywhere. Even assuming defendant's attempts to register in Bolingbrook on February 23 were improperly rebuked, it is undisputed that as of March 3, 2011, defendant had not registered as required by the Act. Defendant's statements indicating he was turning himself in for noncompliance are more than sufficient to show knowing conduct.

¶ 39 Accordingly, we hold that the State adduced sufficient evidence upon which a rational trier of fact could conclude that each and every element of the offense was proven beyond a reasonable doubt.

¶ 40

II. As-Applied Constitutional Challenge

¶ 41

Whether a statute is constitutional is a question of law we review *de novo*. *People v. Malchow*, 193 Ill. 2d 413 (2000).

¶ 42

While the defendant cites to the maxim that the constitutionality of a statute may be challenged at any time, ("a party may challenge the constitutionality of a statute at any time" *People v. Wagener*, 196 Ill. 2d 269, 279 (2001)), our supreme court has noted that a "court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. [Citation.] *** Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature." *In re Parentage of John M.*, 212 Ill. 2d 253, 268 (2004) (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)) ("when there are no findings or evidentiary record, the constitutional challenge must be facial").

¶ 43

As defendant does not challenge the constitutionality of the statute on its face, and made no "as applied" challenge below that would allow the trial court to explore the issue, we must decline defendant's invitation to consider his "as applied" challenge for the first time on appeal. *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 57. As the *Brisco* court noted, "it is well established that a court is not capable of making an 'as applied' determination of a statute's constitutionality where there has been neither an evidentiary hearing nor any findings of fact in the lower court. [Citations.] Therefore, we decline to consider defendant's 'as applied' challenge to the statute due to the fact that defendant failed to litigate this issue in the trial court." *Id.*

¶ 44

We find the issue forfeited. We also note that while the State identifies the fact that defendant forfeited the issue by not raising it below, defendant does not argue, in his reply brief, that his trial counsel was ineffective for failing to assert the claim below.

¶ 45

III. \$500 Sex Crimes Fine

¶ 46 Defendant argues he is entitled to a monetary credit for his time spent in presentence custody and that such credit should be used to satisfy or offset the fines associated with his conviction and sentence. We agree.

¶ 47 Section 10 of the Act states that the court shall impose a mandatory minimum fine of \$500 for failure to comply with the Act. 730 ILCS 150/10 (West 2010). A defendant who is incarcerated on a bailable offense and who is later fined as part of the sentence for that offense may have the fine reduced by \$5 for every day spent in custody following his arrest and prior to being sentenced. *People v. Brown*, 2012 IL App (2d) 110640 (citing 725 ILCS 5/110-14(a) (West 2010)).

¶ 48 The defendant was taken into custody on March 3, 2011. The trial court originally sentenced defendant on September 21, 2011. As such, defendant is entitled to a total of 202 days of presentencing custody credit at \$5-per-day for a total credit of \$1,010. 725 ILCS 5/110-149(a) (West 2010). The record reflects that the "Criminal Cost Sheet" leaves blank the entry of "Credit for time served: ___ days at \$5.00 per day." We hold that document should be modified as detailed above.

¶ 49 **CONCLUSION**

¶ 50 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed as modified.

¶ 51 Affirmed as modified.