

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

In the Matter of:)
)
 JAMES R. JUST,) I.D. No. 9901008137
)
 Petitioner.)

Date Submitted: August 6, 2012
Date Decided: November 21, 2012

ORDER

On this 21st day of November, 2012, upon consideration of Petitioner's Request for a Modification of Tier Level for the Sex Offender Registry and the record of the case, it appears that:

1) On April 12, 1999, Petitioner James R. Just, ("Petitioner"), pled guilty to Unlawful Sexual Conduct Second Degree. Petitioner, who was 40 years old and college educated, sexually assaulted his 14-year-old stepdaughter after harassing her again and again regarding her clothing and telling her that he desperately needed something from her.

2) On June 11, 1999, the Court sentenced Petitioner to two years at Level V, suspended for two years of probation at supervision Level III. As a result of the

conviction, Petitioner was designated as a Tier II Sex Offender and was required to register on the Delaware Sex Offender Registry pursuant to 11 *Del.C.* § 4121.

3) On July 19, 2012, Petitioner requested modification of his Tier Level for the Sex Offender Registry on the grounds that he served his probation without incident, sought counseling for his behavior, and began attending church.

Petitioner also contends that he faces barriers to employment and housing as well as embarrassment due to his sex offender classification.

4) The Court must assign a defendant designated as a sex offender to one of three Risk Assessment Tier Levels.¹ The Court does not exercise discretion as to the Tier Level.² Tier designation is governed by Delaware statute based on the offense.³ Assignment of a sex offender to Tier Levels II and III results in community notification for the protection of the public.⁴ Such an assignment, or placement, on Delaware's sex offender registry does not trigger a protected constitutional interest.⁵

5) Furthermore, assignment to a Tier Level “shall be retroactively applicable to any person convicted of a registering offense.”⁶ Since “the sex offender registration and community notification requirements of 11 *Del. C.* §§ 4120 and 4121 are not punitive in nature, . . . the retroactive application of those

¹ *Helman v. State*, 784 A.2d 1058, 1066 (Del. 2001).

² 11 *Del.C.* § 4121(d); *Helman* at 1066, 69.

³ 11 *Del.C.* § 4121(d); *Helman* at 1066, 69.

⁴ *Id.*

⁵ *Id.* at 1070-75.

⁶ 11 *Del.C.* § 4122(a).

requirements does not implicate the ex post facto clause.”⁷ However, the statute provides that “[a]ny sex offender designated to Risk Assessment Tier II may petition the Superior Court for redesignation to Risk Assessment Tier I if the victim was not a child under 18 years of age”⁸

6) In this matter, Petitioner contends that he is eligible to petition the Court for redesignation from Tier II to Tier I, even though his victim was under age 18. He argues that 11 *Del.C.* 4121(e)(2)(b) should not apply to him because he was convicted in 1999 and the version of the law placing limitations on an offender’s ability to petition for redesignation where the victim was under the age of 18 (as amended in 2001) did not include any language making the limitation retroactive. Petitioner relies on *State v. Paten*⁹ for his assertion that the absence of retroactive language restricts the limitation from being applied retroactively since the limitation affects substantive rights. Petitioner’s argument fails because the Supreme Court, in *Helman v. State*, a subsequent case, determined that the sex offender registration statute is not punitive and does not affect substantive rights.¹⁰ Furthermore, retroactive application of statutes without specific language demonstrating legislative intent to do so is not prohibited where substantive rights

⁷ *Hassett v. State*, 12 A.3d 1154 (Del. 2011).

⁸ 11 *Del.C.* § 4121(e)(2)(b) (as amended on July 9, 2001, by 73 Del. Laws, c. 122 (formerly Senate Bill No. 116)).

⁹ 1999 WL 1227612 (Del. Super 1999).

¹⁰ See *Helman* at 1070-75.

are not affected.¹¹ Thus, since Petitioner's substantive rights are not affected, the statute limiting applications for redesignation to those petitioners whose victims were of age is constitutionally sound and will be applied to Petitioner's conviction in 1999. Therefore, Petitioner is not eligible to seek redesignation of his sex offender Tier Level because his victim was less than 18 years old. As such, the Court does not reach the merits of his petition.

7) It should be noted, however, that the Court shall not grant a petition for redesignation of Tier Level unless a "sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation."¹² Moreover, compliance with probationary rules and receiving appropriate treatment are not grounds for redesignation of a Tier Level but are simply conditions that, if adhered to, permit an offender to petition the Court for redesignation under certain circumstances.¹³ Thus, even if the Court did reach the merits of the petition, Petitioner's contention that his request should be granted because he has complied with the strictures of probation and has sought counseling for his behavior does not provide sufficient

¹¹ *Gen. Motors Corp. v. Wolhar*, 686 A.2d 170, 172 (Del. 1996) (finding that a "statute will not be given retroactive application if it affects substantive rights" absent legislative intent to the contrary); see *Smith v. State*, 919 A.2d 539, 541 (Del. 2006) (finding that "retroactive application of the Delaware sex offender registration statute does not constitute an *ex post facto* violation").

¹² 11 *Del.C.* § 4121(e)(2)(d)(1).

¹³ See 11 *Del.C.* § 4121(e) (stating that an offender must successfully complete an appropriate sex offender treatment program).

grounds to grant his request for redesignation of Tier Level. These compliances are conditions of his probation, not grounds for redesignation.

8) Petitioner's remaining grounds consist of his attendance at church and the various inconveniences and family stress associated with having his name on the sex offender registry. In order for a petition to be granted, a petitioner must establish that public safety no longer requires his name to be on the sex offender registry. Simply attending church and discussing the consequences of being listed on a sex offender registry do not demonstrate that the public is now safe from Petitioner.

ACCORDINGLY, Petitioner's request for modification of Tier Level is ***DENIED***.

IT IS SO ORDERED.

J. Streett

Original to Prothonotary

cc: John S. Malik, Esquire, Attorney for Petitioner
James T. Wakley, Deputy Attorney General