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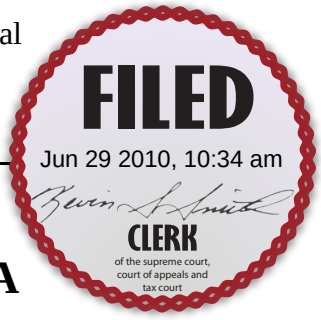

IN THE COURT OF APPEALS OF INDIANA

ALVINO PIZANO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-1002-CR-128
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0505-FC-66

June 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Alvino Pizano appeals the trial court's denial of his Motion to Remove Defendant from Indiana's Sex Offender Registry Act's Residency Restriction Portion. We address a single dispositive issue, namely, whether Pizano presents an issue ripe for judicial review.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 4, 2007, Pizano pleaded guilty to child molesting, as a Class B felony. That conviction stemmed from criminal conduct that occurred in April 2005. The trial court accepted the plea agreement and sentenced Pizano to ten years.

Effective July 1, 2006, the legislature enacted Indiana Code Section 35-42-4-11 ("the residency restriction statute"), which provides in relevant part that a sex offender who has been convicted of child molesting commits a sex offender residency offense, a Class D felony, if he knowingly or intentionally resides within 1000 feet of school property, a youth program center, or a public park, or if he establishes a residence within one mile of the residence of the victim of his sex offense. No such statutory restrictions existed at the time that Pizano committed his sex offense in this case.[1]

Pizano is still incarcerated, and the record does not reveal his anticipated date of release. Nonetheless, on January 21, 2010, Pizano filed his Motion to Remove Defendant

[1] Of course, at the time of Pizano's offense, a trial court had discretion to impose such residency restrictions as a condition of probation. See Hevner v. State, 919 N.E.2d 109, 113 (Ind. 2010). And, as we address herein, the trial court still has that discretion. See id.

from Indiana's Sex Offender Registry Act's Residency Restriction Portion.[2] Pizano asserted that the residency restriction statute violated the prohibition against ex post facto laws as applied to him, and he asked the court to also "protect[him] from any special stipulations of residency restriction for sex offenders imposed by the parole board" upon his release. Appellant's App. at 19. In its response, the State argued that, because Pizano is incarcerated and has not been charged with violating the residency restriction statute, his motion "is premature and therefore should be denied." Appellant's App. at 22. The trial court denied the motion. This appeal ensued.

DISCUSSION AND DECISION

Again, Indiana Code Section 35-42-4-11 restricts the places where sex offenders convicted of child molesting may reside. Although our Supreme Court has ruled that the residency restriction statute violates the ex post facto clause of the Indiana Constitution under some circumstances, State v. Pollard, 908 N.E.2d 1145, 1154 (Ind. 2009), Pizano's claim is not yet ripe for review. Pizano is incarcerated, serving a ten-year sentence that began in 2007, and the record does not reveal his anticipated date of release. As yet, there is no evidence that Pizano has been subjected to the constraints of the residency restriction statute or that he has been notified that he will be subjected to the statute upon his release. There is no evidence, for instance, that Pizano owns real estate or otherwise has any possessory interest in a specific residence where he intends to live in the future.

[2] In his motion, Pizano asks that his name be "purged from the residency restriction portion of the registry." Appellant's App. at 19. To the extent that Pizano suggests that the statute creates a specific registry of offenders subject to the residency restrictions, that contention is not supported by the language of the statute nor any evidence in the record. To the contrary, the statute merely enumerates certain offenders who are subject to the residency restriction. And Pizano has not requested that his name be removed from the sex offender registry itself.

At this point, it is a matter of speculation as to whether the residency restrictions will be imposed on Pizano upon his release from prison.[3] Consequently, Pizano raises no issue ripe for appellate review. See In re Paternity of M.G.S., 756 N.E.2d 990, 1004 (Ind. Ct. App. 2001) ("The doctrine of ripeness involves the timing of judicial review and the principle that judicial machinery should be conserved for problems that are real and present or imminent, not squandered on problems that are abstract or hypothetical or remote."), trans. denied; see also Gardner v. State, 923 N.E.2d 959, 960 (Ind. Ct. App. 2009), trans. denied.

Affirmed.

VAIDIK, J., and BROWN, J., concur.

[3] The trial court is permitted to impose as a condition of Pizano's probation upon his release that he not live within 1000 feet of a school, youth program, public park, or his victim's residence. See Hevner, 919 N.E.2d at 113. Accordingly, Pizano's contention that the trial court erred when it denied his request for a permanent injunction precluding the "parole board" from imposing such a condition of probation is entirely without merit. See id.