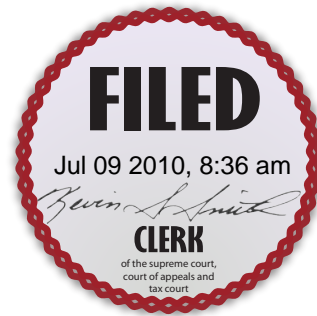


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT TOWNSEND,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0911-CR-1120

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0808-FA-184786

July 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Robert Townsend appeals his classification as a Sexually Violent Predator (“SVP”). We consider the following issue: whether the trial court erred by classifying Townsend as an SVP as a matter of law under Indiana Code section 35-38-1-7.5(b) without evidence of a “mental abnormality or personality disorder” as required for an SVP classification under subsections (a) and (e).

We affirm.

FACTS AND PROCEDURAL HISTORY

Townsend was charged with numerous counts of battery and sexual misconduct stemming from an incident on May 24, 2008. Pursuant to a plea agreement, Townsend pleaded guilty to two counts of criminal deviate conduct,¹ a Class A felony, in order to have the other charges dismissed. The trial court gave him a fifty-year executed sentence. The court also found “as a matter of law, operation of law, he [Townsend] is a sexually violent predator and is required to register as a sex offender, at least under Indiana law, for the rest of his life.” *Tr.* at 74. Townsend appeals his SVP classification.

DISCUSSION AND DECISION

Indiana Code section 35-38-1-7.5(a) defines an SVP as “a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense.” Subsection (b) states that an individual is a “sexually violent predator” if he is convicted of violating a number of specific statutes, including Indiana Code section 35-42-4-2, under which Townsend was convicted. Ind. Code § 35-

¹ See Ind. Code § 35-42-4-2.

38-1-7.5(b)(1)(B).² Indiana Code section 35-38-1-7.5(e) provides, “If a person is not a sexually violent predator under subsection (b),” a hearing may be requested by the prosecutor where evidence must be presented and the testimony of experts admitted for the court to make an SVP classification under subsection (a).

Townsend concedes that he “qualified [under Indiana Code section 35-38-1-7.5(b)(1)(B) and (b)(2)] as an ‘automatic’ SVP because he was convicted of two counts of criminal deviate conduct and because he had previously been convicted of a sex offense in Kentucky.” *Appellant Br.* at 8. He contends, however, even when the person has met the criteria of Indiana Code section 35-38-1-7.5(b), subsection (a) requires evidence of a “mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense” before an individual may be classified as an SVP.

In 2006, the Indiana General Assembly amended Indiana Code section 35-38-1-7.5 by adding current subsections (b) and (e). *See* P.L. 6-2006, § 5; P.L. 173-2006, § 21. Prior to these amendments, subsection (a) served as the standard for all SVP classifications. However, by adding subsections (b) and (e), the legislature determined that once convicted of certain crimes a person is automatically an SVP and evidence of a mental abnormality or personality disorder is not required. *See Scott v. State*, 895 N.E.2d 369, 374 (Ind. Ct. App. 2008) (“[I]n addition to the provision for a hearing in some situations, the 2006 and 2007 amendments also provide for automatic SVP determinations in certain circumstances....”). The current subsection (e), which

² Townsend also satisfied Indiana Code section 35-38-1-7.5(b)(2) because of a prior conviction for a sex offense in Kentucky.

describes the process for making an SVP classification under subsection (a), clearly only applies when an individual does not satisfy the requirements of subsection (b). *See Williams v. State*, 895 N.E.2d 377, 384 (Ind. Ct. App. 2008) (citing subsection (e) to demonstrate that subsections (e) and (a) only apply if requirements of subsection (b) are not met).

Subsections (a) and (b) provide independent methods for classifying a person as an SVP. A person need only meet the criteria of one or the other to qualify as an SVP. When a person has satisfied the requirements of subsection (b), as Townsend concedes he has, an SVP classification is automatic, and evidence of a “mental abnormality or personality disorder” need not be shown. We conclude that the trial court did not error in classifying Townsend as an SVP as a matter of law under Indiana Code section 35-38-1-7.5(b).

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.