STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 19, 2000
v	No. 217556 Ingham Circuit Court
WILLIAM JAMES SANTOS, Defendant-Appellant.	LC No. 98-073766

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of failing to register as a sex offender in violation of the Sex Offender Registration Act (SORA), MCL 28.721 *et seq*.; MSA 4.475(1) *et seq*., and sentenced to twenty-four to forty-eight months' imprisonment. Defendant appeals as of right. We affirm.

I. Facts and Procedural Background

In 1990, defendant was convicted of attempted first-degree criminal sexual conduct and being a second habitual offender and was sentenced to five to seven and a half years' imprisonment. While serving his sentence, defendant was incarcerated at the Chippewa Temporary Correctional Facility from September 9, 1994 to November 11, 1994 and from March 24, 1997 until his discharge on May 20, 1997. The SORA, which requires persons convicted of certain offenses to register with a law enforcement agency, was enacted while defendant was incarcerated and became effective October 1, 1995.

The Department of Corrections initially registered defendant pursuant to the SORA on November 27, 1995, while defendant was still incarcerated. On May 19, 1997, the day before defendant's discharge, Stephen Gough, an assistant resident unit supervisor at the Chippewa Temporary Correctional Facility, met with defendant and registered him as residing at 507 South Hosmer Street, Lansing, MI 48912, his family's last known address. On both November 27, 1995 and May 19, 1997, defendant signed the registration forms and received copies of the forms for his records. Gough also specifically advised defendant that he must re-register whenever he moved. Shortly after defendant's discharge, he learned that his family no longer lived at the Hosmer Street address. Defendant was homeless for several months and eventually leased an

apartment at 1128 South Platt in Lansing on March 28, 1998 where he resided for over three months. Defendant received mail at this address and provided this address to his employers.

In June 1998, during an investigation of an unrelated case involving defendant, the police discovered that defendant was not residing at the Hosmer Street address reported in the Lansing Police Department Sex Offender Book, but was residing at 1128 South Platt Street, an address which defendant had never registered. Defendant was arrested and, at the arraignment, defendant told the district court that he lived at 1128 South Platt in Lansing. At the judge's request, defendant subsequently filed a new registration form at the Lansing Police Department, representing that he resided at 914 Cavanagh Street, Apartment 3, in Lansing. On September 8, 1998, defendant again appeared at the Lansing Police Department and submitted another form indicating that he moved to 6753 Bickett in Lansing.

Following a bench trial, the trial court found that defendant was a person required to register under the SORA, he moved to 1128 South Platt Street on or about March 28, 1998, and he never reported this address to any law enforcement agency. The trial court found that defendant knew that he was required to register any address change and was capable of following this instruction as evidenced by his registering two other changes of addresses, notifying the post office of a change of address, obtaining and holding jobs, and leasing real estate. The trial court concluded that defendant's failure to register his address was willful and it found defendant guilty of the charged offense.

II. Analysis

A. Sufficiency of the Evidence

Defendant argues that the prosecution failed to present sufficient evidence to allow a rational trier of fact to conclude beyond a reasonable doubt that he violated the SORA. Defendant does not dispute that he was a person required to register under the act or that he changed his address from 507 Hosmer Street to 1128 South Platt Street in March 1998 and never registered that address. Rather, defendant contends that his conviction should be reversed because he did not "willfully" fail to register his address as required under the statute. Defendant argues that he did not believe he had to report an intra-city change of domicile and thought he only had to register a change of address if he moved outside of the Lansing area or to another state. Thus, defendant argues that the prosecution failed to establish the willfulness element of the offense necessary to sustain a conviction. We disagree.

This Court resolves a challenge to the sufficiency of the evidence by reviewing the evidence presented in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999), citing *People v Wolfe* 440 Mich 508, 515; 489 NW2d 748, modified on other grounds 441 Mich 1201 (1992); *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court should not interfere with the trier of fact's assessment of the weight of the evidence or the credibility of witnesses. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Circumstantial evidence and the reasonable inferences drawn therefrom can constitute sufficient proof of the elements of the offense. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Further, statutory

interpretation is a question of law reviewed de novo. *People v Rodriguez*, 236 Mich App 568, 570; 601 NW2d 134 (1999).

Defendant was convicted under MCL 28.725(1)(a); MSA 4.475(5)(1)(a), which at the time of his conviction provided in relevant part:

> (1) Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency in which his or her new address is located, or the state police or the sheriff's department of the individual's new address:
>
> (a) The individual changes his or her address.[1]

Under MCL 28.729(1); MSA 4.475(9)(1), a willful violation of MCL 28.725(1)(a); MSA 4.475(1)(a) is a felony punishable by no more than four years' imprisonment or a fine of not more than $2,000 or both.[2]

Although the SORA contains a definition section, MCL 28.722; MSA 4.475(2), the act does not define the term "willful." If a word is not defined in a statute, we accord that word its plain and ordinary meaning, taking into account the context in which the word is used. MCL 8.3a; MSA 2.212(1); *People v Lee*, 447 Mich 552, 557-558; 526 NW2d 882 (1994); *People v Tracy*, 186 Mich App 171, 176; 463 NW2d 457 (1990). Where a statute is silent on the definition of a term, a court may consult dictionary definitions. *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999).

This Court has previously defined the term "willful" as actions that are voluntarily, consciously, and intentionally undertaken. *People v Medlyn*, 215 Mich App 338, 342, 344-345; 544 NW2d 759 (1996); (defined "willful" in the context of MCL 750.748; MSA 28.746, public officer's willful neglect to perform a duty imposed by law); *People v Harrell*, 54 Mich App 554, 561; 221 NW2d 411 (1974), affirmed 398 Mich 384; 247 NW2d 829 (1976) (defined "willful" in the context of MCL 750.479(a); MSA 28.747 (1), the fleeing and eluding a police officer statute). A trier of fact may infer a failure to act by one under a duty to act from any evidence that fairly

[1] MCL 28.725(1)(a); MSA 4.475(5)(1)(a) was amended by 1999 PA 85, effective September 1, 1999, and now states as follows:

> (1) Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located or the department of the individual's new residence or domicile:
>
> (a) The individual changes his or her residence, domicile, or place of work or education.

[2] 1999 PA 85 rewrote MCL 28.729; MSA 4.475(9) to provide increased penalties for subsequent violations of the registration requirement.

proves a willful failure, or knowledge of the duty and the failure to fulfill it. *Medlyn, supra*. Further, Random House Webster's College Dictionary (2nd ed), p 1470, defines "willful" as deliberate, voluntary, or intentional."

The prosecution presented evidence that defendant filled out and signed registration forms in November 1995 after the SORA went into effect, and again in May 1997 just before his release from prison, that plainly stated the obligation to register *any* change of address within ten days after moving. Defendant's assistant resident unit supervisor at the Chippewa Temporary Correctional Facility testified that he explained the change of address requirements to defendant in 1995 and again in 1997, stating that defendant had to notify the Michigan State Police of any change in his address. Defendant does not dispute that he signed both registration forms and received a copy of each.

Further, although defendant testified that he did not read the "fine print" on the forms and argued that his below average intelligence level prevented him from understanding the registration requirement stated on the form, according to defendant's own testimony, he was capable of performing basic functions such as repeatedly applying for social security benefits until he succeeded in obtaining them, signing and initialing a five-page lease agreement for an apartment in March 1998, obtaining a Michigan identification card, holding jobs, and filing at least one change of address with the postal service. On this record, the trial court reasonably rejected defendant's claim that he did not know he was required to register each change of address. This Court will not interfere with the trier of fact's determination of witness credibility. *Wolfe, supra* at 514. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant knew he had to register each change of address within ten days of moving, but willfully failed to comply with the act. Accordingly, we reject defendant's argument.

B. Victim's Right Act

Next, defendant argues that the trial court abused its discretion by permitting Barbara Prentler, a former neighbor of defendant at his unregistered residence, to address the trial court at sentencing. We disagree.

Michigan's sentencing system promotes informed, conscientious decision-making by providing the parties an almost unlimited opportunity to submit pertinent information before sentencing. *People v Wybrecht*, 222 Mich App 160, 171; 564 NW2d 903 (1997). Provided that the sentencing court considered permissible factors in imposing sentence, we review the sentencing decision, including the court's determination regarding the information it will consider, for an abuse of discretion. *People v Albert*, 207 Mich App 73, 74-75; 523 NW2d 825 (1994); *People v Poppa*, 193 Mich App 184, 187; 483 NW2d 667 (1992).

At sentencing, Ms. Prentler stated that defendant engaged in disorderly conduct and was disrespectful to the neighborhood and the police department while he living on Platt Street. She also stated that defendant's conduct scared the children in the neighborhood and his violation of the SORA placed the community in danger. Although Ms. Prentler did not constitute a "victim"

as defined in the Crime Victim's Rights Act, MCL 780.752(1)(i); MSA 28.1287(752)(1)(i),[3] we note that a sentencing court has broad discretion to consider various sources and types of information when imposing sentence, including relevant information regarding the defendant's life and personal characteristics. *People v Adams*, 430 Mich 679, 686; 425 NW2d 437 (1988); *Albert, supra* at 74-75. The sentencing court is free to weigh the facts it deems relevant to the sentencing decision within the framework of the core sentencing goals, which include reformation of the offender, protection of society, disciplining the wrongdoer, and deterrence of others from committing like offenses. *Adams, supra* at 686-687; *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972). We find no bias or prejudice on the part of the trial court as a result of Ms. Prentler's statements. *Albert, supra*; *People v Jones*, 179 Mich App 339, 343; 445 NW2d 518 (1989). To the contrary, Ms. Prentler's remarks were relevant to the valid objective of protecting society, *Snow, supra* at 592; *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999), and the valid consideration of defendant's criminal and social history. *People v Ross*, 145 Mich App 483, 495; 378 NW2d 517 (1985). See also *People v Lawson*, 172 Mich App 498, 500-501; 432 NW2d 354 (1988) (defendant's minister was permitted to address the trial court at sentencing). Therefore, we conclude that the trial court did not abuse its discretion in permitting Ms. Prentler to speak at sentencing. *Albert, supra.*

C. Sentencing

Finally, defendant argues that his sentence is disproportionate. We disagree. This Court reviews a trial court's imposition of sentence for an abuse of discretion. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999). An abuse of discretion occurs when a sentence is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Paquette*, 214 Mich App 336, 345; 543 NW2d 342 (1995).

Where an habitual offender's criminal history, in conjunction with the offense for which he was sentenced, demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limit is proportionate. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Although defendant was not sentenced under the habitual offender statute, the trial court considered his two prior felony and four misdemeanor convictions[4] and expressly found that defendant had the cognitive ability to understand the requirements of the law, but was "a tester and a manipulator" who failed to conform his conduct to the law after previous unsuccessful attempts at rehabilitation. After reviewing the record, we agree with the trial court's conclusion that the two to four year sentence was necessary to protect society and was proportionate to the circumstances surrounding the offense and the offender.

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[3] The statute was amended by 1999 PA 85 and this statutory citation is now MCL 780.752(i); MSA 28.1287(752)(i).

[4] Defendant had prior convictions for sodomy in 1974, trespassing in 1977, OUIL in 1983 and 1987, attempted first-degree criminal sexual conduct in 1990, and disturbing the peace in 1998. There was also a charge of driving with a suspended license pending against defendant which arose about two months after he was arraigned for the SORA violation.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder