

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAY ANTHONY REA,

Defendant-Appellee.

UNPUBLISHED

November 30, 2001

No. 230604

Macomb Circuit Court

LC No. 00-001693-FH

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

The prosecutor appeals by delayed leave granted from an order exempting defendant Jay Anthony Rea from registering under the Sex Offenders Registration Act (SORA).¹ This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse and remand.

I. Basic Facts And Procedural History

The prosecutor charged Rea with five counts of fourth-degree criminal sexual conduct² (CSC IV) for committing sexual contact against a college classmate. Rea subsequently entered into a plea agreement with the prosecutor, agreeing to plead guilty of two counts of attempted CSC IV³ under the Holmes Youthful Trainee Act⁴ (YTA). In exchange, the prosecutor agreed to drop the five original counts of CSC IV. The trial court entered an order of probation at the plea hearing. According to a hearing disposition form, the court denied the prosecutor's motion to require defendant to register as a sex offender under SORA.

On August 25, 2000, the prosecutor filed a motion requesting that the trial court order Rea to register as a sex offender. The prosecutor noted that the judge presiding in the case had

¹ MCL 28.721 *et seq.*

² MCL 750.520e(1)(b).

³ See MCL 750.92.

⁴ MCL 762.11.

recently been reversed by this Court in *People v Stanley*⁵ when he refused to order a defendant to register. As this Court explained in *Stanley*:

The circuit court erred in ordering that defendant not be registered under the Sex Offenders Registration Act, MCL 28.721 *et seq.*; MSA 4.475(1) *et seq.* The Holmes Youthful Trainee Act expressly requires registration for a “listed offense” enumerated in § 2 of the SORA. MCL 762.13(6); MSA 28.853(13)(6), MCL 762.14(3); MSA 28.853(14)(3). It is the Legislature’s prerogative to limit the scope and applicability of the Youthful Trainee Act.^[6]

Rea responded to the prosecutor’s argument, contending that the trial court lacked the authority to modify the sentence, which was valid, and there was no applicable court rule under which it could consider the motion. Rea asserted that if the prosecutor was dissatisfied with the sentence, he should appeal.

At the hearing on the motion, the trial court indicated as a preliminary matter that it intended to grant the prosecutor’s motion, saying, “I think I’ve pretty well concluded I can no longer fight on the failure to register. I’ve been fighting it and not doing it, and I was appealed and reversed, and so I’m pretty much decided I have to require that, but go ahead.” Rea again argued that there was no valid procedural basis for bringing a post-judgment motion before the trial court and the prosecutor had to seek relief on appeal. He also contended that the trial court did not need to follow *Stanley* because it had not been published. The trial court responded, “Well, then I’ll deny the motion. Okay. Let the Attorney General take it to the Court of Appeals.”

II. Registration

A. Standard Of Review

The prosecutor now contends that the trial court erred when it refused to require Rea to register as a sex offender under SORA. Review de novo is appropriate for this question of law.⁷

B. Youthful Trainee Status And SORA

If a person commits an offense between his seventeenth and twenty-first birthdays and pleads guilty of that offense, the YTA permits the trial court to assign that person to youthful trainee status *without entering a conviction*.⁸ SORA, however, requires individuals *convicted* of

⁵ *People v Stanley*, unpublished order of the Court of Appeals, entered August 21, 2000 (Docket No. 226348).

⁶ *Id.*

⁷ See *Saginaw Co v John Sexton Corp of Michigan*, 232 Mich App 202, 214; 591 NW2d 52 (1998).

⁸ MCL 762.11.

a listed offense to register as a sex offender.⁹ At first glance, the conviction requirement in SORA appears incompatible with the YTA, which avoids a judgment of conviction. However, the Legislature harmonized the YTA and SORA, providing in the YTA:

If the individual is assigned to youthful trainee status for a listed offense enumerated in section 2 of the sex offenders registration act, the department of corrections, sheriff or his or her designee, or the individual's probation officer shall register the individual or accept the individual's registration as provided under the sex offenders registration act.^[10]

Although not an exact mirror of the language in the YTA, SORA also requires individuals assigned to youthful trainee status to register by defining the term “conviction” to include “[b]eing assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.12 to 762.15.”¹¹ Thus, youthful trainees assigned their status for an offense listed under SORA, MCL 28.722, *must* register as a sex offender.¹²

There is no doubt that Rea was assigned to youthful trainee status for an offense listed in SORA. SORA defines a “listed offense” to include CSC IV,¹³ as well as an attempt to commit CSC IV.¹⁴ Further, case law confirms that being assigned to youthful trainee status for CSC IV requires registration.¹⁵ Rea had no choice but to register as a sex offender. The trial court erred in not requiring him to do so.

Nevertheless, Rea contends that alternative, constitutional grounds exist to affirm the trial court's decision because SORA violates due process¹⁶ and imposes cruel and unusual punishment.¹⁷ We need not give these arguments much consideration because they are patently meritless.¹⁸

⁹ MCL 28.723.

¹⁰ MCL 762.13(6) (emphasis added).

¹¹ MCL 28.722(a)(ii).

¹² See *People v Rahilly*, 247 Mich App 108; ___ NW2d ___ (2001).

¹³ See MCL 28.722(d)(ix) (listing MCL 750.520e, which is CSC IV).

¹⁴ MCL 28.722(d)(xii) (attempt or conspiracy to commit an offense enumerated in subsections [d][i] through [d][x]).

¹⁵ See *Rahilly*, *supra*.

¹⁶ US Const, Am IV.

¹⁷ US Const, Am VIII.

¹⁸ See, e.g., *Akella v Michigan Dep't of State Police*, 67 Fed Supp 2d 716, 732-733 (ED Mich, 1999) (SORA does not violate due process and is not punitive); *Lanni v Engler*, 994 Fed Supp 849, 854-856 (ED Mich, 1998) (SORA does not violate Eighth or Fourteenth Amendment); *Doe v Kelley*, 961 F Supp 1105, 1109-1112 (WD Mich, 1997) (registration is not punishment); see (continued...)

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra

(...continued)

also *People v Pennington*, 240 Mich App 188, 193, 197, n 4; 610 NW2d 608 (2000) (adopting *Lanni* and *Kelley* for adult offenders); *In re Ayres*, 239 Mich App 8, 18; 608 NW2d 132 (1999) (adopting *Lanni* and *Kelley* in juvenile context).