STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 15, 2005
v	No. 255744 Genesee Circuit Court
RODNEY T. McLAURIN, Defendant-Appellee.	LC No. 03-012281-FH

Before: Meter, P.J., and Murray and Schuette, JJ.

SCHUETTE, J. (*dissenting*).

I respectfully dissent from the majority opinion and would deny defendant's motion to withdraw his guilty plea for failure to register a change of address as a convicted sex offender pursuant to MCL 28.729(1)(a).

Defendant was convicted of first-degree criminal sexual conduct (CSC) in July of 1985, receiving a prison sentence of two to five years, with credit for 117 days served. In 1987, while still in prison, defendant committed an assault on a prison guard in violation of MCL 768.7a(1). As a result, defendant was sentenced to a consecutive prison term of two to four years. In 1990, while on parole for the CSC offense, defendant was convicted yet again for possession of cocaine, in violation of MCL 333.7403(2)(a)(v) and received another prison term of two and a half to five years, to be served consecutively to the existing CSC offense. Defendant was paroled for the CSC offense in 1994, but violated the terms of his parole and remained in prison until September 1996.

MCL 28.725(1)(a) requires that registered sex offenders must provide a change of address within ten days of a change in residence. It is unchallenged that defendant failed to comply with the statutory requirement of providing a new address given his new place of residence.

The precise issue presented to this Court is the application of MCL 28.723(3) which establishes October 1, 1995 as the time frame for requiring a convicted sex offender to provide a new address if residency is changed. MCL 28.723(3) states that the following individuals must register under the act:

(a) An individual who is convicted of a listed offense after October 1, 1995.

> (b) An individual convicted of a listed offense on or before October 1, 1995 [1] who on October 1, 1995 is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of social services for that offense or who [2] is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or placed under the jurisdiction of the juvenile division of the probate court or the department of social services after October 1, 1995 for that offense. [numeration added.]

Without question, MCL 28.723.(3)(a) does not apply because here defendant was not convicted for a CSC offense after October 1, 1995. However, in my opinion, MCL 28.723(3)(b) does indeed apply to the facts and circumstances surrounding the incarceration of defendant who was indeed convicted of a listed offense before October 1, 1995 and was committed to the jurisdiction of the department of corrections consistent with the above mentioned statute.

In my opinion, MCL 28.723(3)(b) is comprised of two sections or clauses. MCL 28.723(3)(b) commences with the phrase, "An individual convicted of a listed offense on or before October 1, 1995." Then the first clause begins, "who on October 1, 1995 is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of social services for that offense."

Subsequently, the second section or clause contains language referring to jail time, parole or otherwise being committed to the jurisdiction of the department of corrections for offenses committed after October 1, 1995. It is this second clause that the trial court incorrectly applied and that is the focus of the majority's ruling. However, the trial court's analysis and the majority opinion did not apply the first clause of MCL 28.723(3)(b) which plainly fits the circumstances of this case.

The trial court agreed with defendant that while he was incarcerated on October 1, 1995, the plain language of the MCL 28.723(b) requires that he was incarcerated for a sexual offence at that time to be placed on the sex offender registry. "An individual convicted of a listed offense on or before October 1, 1995 who on October 1, 1995 is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections . . . *for that offense*." MCL 28.723(3)(b) (emphasis added.)

The prosecutor argued that MCL 28.723(3)(b) should be read with MCL 791.234(3), which states:

> "If a prisoner is subject to disciplinary time is sentenced to consecutive terms . . . at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, ... The maximum term of the sentences shall be added to compute a new maximum term under this subsection and *discharge shall be issued only after the total of the maximum sentences has been served . . . .*" [emphasis added.]

Reading the two statutes together, it appears that while the maximum term of the CSC offense had passed, defendant had not been discharged from the jurisdiction of the DOC because of subsequent offenses. Due to the fact that defendant had not been discharged, he remained under the jurisdiction of the DOC for the CSC offense, and was properly registered as a sex offender.

For this reason, I would deny defendant's motion to withdraw his guilty plea for failure to register a change of address as a convicted sex offender.

/s/ Bill Schuette