

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSHUA JASON CONTRERAS,

Defendant-Appellant.

UNPUBLISHED

October 21, 2008

No. 275351

Oakland Circuit Court

LC No. 2005-206009-FH

Before: Servitto, P.J. and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his no contest plea to first-degree home invasion, MCL 750.110a(2)(b), challenging only the provision of the judgment of sentence requiring him to register as a sex offender. Because the particular facts leading to conviction are to be considered in determining whether defendant's conduct by its nature constitutes a sexual offense against an individual who is less than 18 years of age, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The construction and application of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, presents a question of law that is reviewed de novo on appeal. *People v Golba*, 273 Mich App 603, 605; 729 NW2d 916 (2007).

The SORA "requires an individual who is convicted of a listed offense after October 1, 1995, to register as a sex offender. MCL 28.723(1)(a)." *Golba, supra* at 605. The term "convicted" is defined in MCL 28.722(a)(i) as "[h]aving a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses[.]" The term "listed offense" is defined by MCL 28.722(e) to include violations of specific statutes; home invasion is not among them. However, the act also includes a "catch all" provision that requires registration for "[a]ny other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age." MCL 28.722(e)(xi). Under the catch all provision, a defendant must register as a sex offender when the following three conditions are met: (1) the defendant has been convicted of a state law or municipal ordinance violation, (2) the violation, by its nature, constitutes a sexual offense, and (3) the victim was under the age of 18. *People v Meyers*, 250 Mich App 637, 647; 649 NW2d 123 (2002). This Court recently held in *People v Althoff*, ___ Mich App ___, ___ NW2d ___ (Docket No. 274906, issued September 2, 2008), that the second condition is not to be determined with reference to the legal elements of the offense of which the defendant was

convicted. Rather, “the particular facts of a violation are to be considered in determining whether the violation ‘by its nature constitutes a sexual offense against an individual who is less than 18 years of age’ under MCL 28.722(e)(xi).” *Id.*, slip op at 5.

In this case, defendant pleaded no contest to first-degree home invasion, a state law violation. The crime was premised on the fact that he entered a home in which other individuals were lawfully present, after which defendant partially undressed and assaulted two minor children asleep in their bed. The assault involved pulling down the pants of one victim, spreading her legs, and defendant inserting himself between them. The nature of this conduct indicated that defendant was attempting to perform a sexual act on the victim and thus pertained to, or involved, sex and was inherently sexual in nature. Because the assault element of the home invasion conviction involved conduct that was inherently sexual in nature and was perpetrated against a person under the age of 18, the trial court did not err in finding that defendant was required to register as a sex offender.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood