

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL ALAN FARQUHARSON,

Defendant-Appellant.

UNPUBLISHED

July 22, 2010

No. 289071

Gladwin Circuit Court

LC No. 08-003915-FH

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals of right from his jury trial conviction of failing to report under the Sex Offender Registry Act (SORA), MCL 28.729. Defendant was sentenced as a third habitual offender, MCL 769.11, to serve a suspended twelve-month jail sentence, plus three years of probation. We vacate.

Defendant argues that the SORA is unconstitutional as vague and overbroad, and that it violates his due process rights. However, we conclude, for reasons not argued, that the SORA did not apply to defendant in the first instance. See *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999) (this Court is empowered, in the interests of justice, to go beyond the issues raised and address any issue that, in the court’s opinion, should be considered and resolved.).

This Court recently determined that the SORA does not apply to persons who are homeless. *People v Dowdy*, __ Mich App __; __ NW2d __ (Docket No. 287689, issued February 2, 2010), slip op pp 1-3. This Court reasoned that the Legislature chose to focus the SORA reporting requirements on persons who have a domicile or residence, as defined by the Act. *Id.* at slip op p 3. Because there was no argument that the defendant had a domicile or residence, the defendant was not subject to the statute. *Id.* at slip op p 2. This Court urged the Legislature to consider a change to the SORA to bring a homeless sex offender within its reach, but recognized that any change was “solely within the province of the legislative branch.” *Id.* at slip op p 3, citing *People v Gardner*, 482 Mich 41, 66; 753 NW2d 78 (2008).

As in *Dowdy*, there is no suggestion here that defendant was other than homeless at the time he was charged with failing to report under the SORA. Accordingly, defendant was not subject to the SORA, and his conviction must be reversed. We hereby vacate that conviction and attendant sentence, and remand this case to the trial court with instructions to dismiss the case. Our resolution of this case on that ground obviates our need to address defendant’s constitutional

challenges. See *Rinaldi v Civil Service Comm*, 69 Mich App 58, 69; 244 NW2d 609 (1976) (“We will not undertake a constitutional analysis when we can avoid it.”).

Defendant additionally argues that the SORA’s reporting requirements impose a punitive burden beyond what was contemplated in the plea bargain that resulted in his status as a sex offender. Defendant suggests that plaintiff appears determined to keep him under some type of incarceration permanently, and asks to withdraw his pleas dating to 1990. We decline to entertain this collateral attack on a conviction long in the books. See *People v Inghram*, 439 Mich 288, 295; 484 NW2d 241 (1992); *People v Howard*, 212 Mich App 366, 369-370; 538 NW2d 44 (1995).

Conviction and sentence vacated. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Stephen J. Borrello
/s/ Cynthia Diane Stephens