

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 31, 2012

v

No. 299261
Macomb Circuit Court
LC No. 2007-004555-FH

CEDRIC JAMES SIMPSON,
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

No. 299297
Macomb Circuit Court
LC No. 2007-005849-FH

CEDRIC JAMES SIMPSON,
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

No. 299308
Macomb Circuit Court
LC No. 2009-000546-FH

CEDRIC JAMES SIMPSON,
Defendant-Appellant.

Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.

PER CURIAM.

In Macomb Circuit Case No. 2009-000546-FH, defendant pleaded guilty to the offenses of surveilling an unclothed person, MCL 750.539j, and assault and battery, MCL 750.81. Defendant also pleaded guilty to probation violations in Macomb Circuit Case Nos. 2007-

004555-FH and 2007-005849-FH. He was sentenced to five years of probation and required to register under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.* Defendant appeals as on leave granted,¹ challenging the circuit court's order requiring him to register as a sex offender. We reverse the order requiring defendant to register as a sex offender and remand for further proceedings consistent with this opinion.

These three cases have been consolidated on appeal. In Macomb Circuit Case Nos. 2007-004555-FH and 2007-005849-FH, defendant pleaded guilty to surveilling an unclothed person, MCL 750.539j. He was on probation for his plea-based convictions in these two cases when he committed the offenses of surveilling an unclothed person and assault and battery that gave rise to his prosecution in Macomb Circuit Case No. 2009-000546-FH. When defendant was sentenced with respect to the crimes committed in Macomb Circuit Case No. 2009-000546-FH, as well as his probation violations in the other two cases, the circuit court found that he was a "sexually delinquent person" within the meaning of MCL 750.10a and the former MCL 28.722(e)(*xii*), and required him to register as a sex offender under SORA.

Defendant argues that the circuit court erred by requiring him to register as a sex offender because he did not commit a listed offense under SORA and the offense of surveilling an unclothed person in violation of MCL 750.539j did not otherwise fit into any of the catchall provisions of SORA that require registration. We agree.

We review de novo the circuit court's interpretation and application of SORA. *People v Anderson*, 284 Mich App 11, 13; 772 NW2d 792 (2009); *People v Golba*, 273 Mich App 603, 605; 729 NW2d 916 (2007). However, any underlying findings of fact are reviewed for clear error. *Anderson*, 284 Mich App at 13. We similarly review de novo all other questions of statutory interpretation. *People v Hrlic*, 277 Mich App 260, 262; 744 NW2d 221 (2007). When construing a statute, our primary goal is to ascertain and give effect to the intent of the Legislature. *People v Dowdy*, 489 Mich 373, 379; 802 NW2d 239 (2011). Courts must give full force and effect to all provisions of a statute. *Id.* "If the language of a statute is clear and unambiguous, this Court must enforce the statute as written." *Id.*

Under SORA, a defendant who is convicted of a listed offense must register as a sex offender. MCL 28.723(1)(a); *Dowdy*, 489 Mich at 379-380. The principal offense of which defendant was convicted in this case, surveilling an unclothed person in violation of MCL 750.539j, is not itself a listed offense within the meaning of SORA unless it is committed against a victim who is a minor. MCL 28.722(k); MCL 28.722(s)(v). None of the unclothed individuals who defendant surveilled was a minor. Accordingly, in order to require defendant to register as a sex offender, it was necessary for the circuit court to determine that his conduct fell within one of SORA's two applicable catchall provisions, either the former MCL 28.722(e)(*xi*), now codified at MCL 28.722(s)(*vi*), or the former MCL 28.722(e)(*xii*), now codified at MCL 28.722(s)(*vii*).²

¹ *People v Simpson*, 489 Mich 901 (2011).

² The Legislature enacted certain amendments to SORA, effective July 1, 2011. See 2011 PA 17. For example, before July 1, 2011, the language now set forth in MCL 28.722(s)(*vi*) was

Pursuant to the former MCL 28.722(e)(xi), now codified at MCL 28.722(s)(vi), “[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 [a minor]” constitutes a listed offense for purposes of SORA. As noted earlier, defendant’s victims were not minors. Therefore, the principal offense of which defendant was convicted could not have constituted a listed offense under the former MCL 28.722(e)(xi), now MCL 28.722(s)(vi).

However, the circuit court determined that defendant’s principal crime did constitute a listed offense under the language of the former MCL 28.722(e)(xii), now MCL 28.722(s)(vii), which provides that “[a]n offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in . . . MCL 750.10a” constitutes a listed offense for purposes of SORA. At the time of sentencing, the circuit court took note of defendant’s extensive history of surveilling unclothed women and made a finding that defendant was a “sexually delinquent person” within the meaning of MCL 750.10a and the former MCL 28.722(e)(xii). On the basis of this finding, the court ordered defendant to register a sex offender. This was erroneous.

The language of the former MCL 28.722(e)(xii), now codified at MCL 28.722(s)(vii), does not permit the circuit judge to merely find as a fact that a defendant was a “sexually delinquent person” at the time he or she committed an offense and then to require the defendant to register as a sex offender on that basis. Instead, the language of the former MCL 28.722(e)(xii), now MCL 28.722(s)(vii), specifically incorporates by reference the definition of “sexually delinquent person” set forth in MCL 750.10a, which defines a “sexually delinquent person” as “any person whose sexual behavior is characterized by repetitive or compulsive acts which indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sex relations of either a heterosexual or homosexual nature, or by the commission of sexual aggressions against children under the age of 16.” In turn, MCL 767.61a delineates the procedures that must be followed before a defendant may be convicted of being a “sexually delinquent person” under MCL 750.10a. Specifically, before a defendant may be convicted as a sexual delinquent within the meaning of MCL 750.10a, he or she must be charged as a sexually delinquent person, MCL 767.61a; *People v Winford*, 404 Mich 400, 407-408; 273 NW2d 54 (1978), and the trier of fact must conclude beyond a reasonable doubt that the defendant’s conduct falls within the scope of MCL 750.10a, *People v Helzer*, 404 Mich 410, 417, 419 n 11; 273 NW2d 44 (1978), overruled in part on other grounds by *People v Breidenbach*, 489 Mich 1 (2011).

MCL 750.10a, MCL 767.61a, and the former MCL 28.722(e)(xii), now codified at MCL 28.722(s)(vii), are all “necessary part[s] of the integrated statutory structure” that the Legislature has enacted to address the ongoing concerns posed by sexually delinquent persons. *Winford*, 404 Mich at 407. In other words, MCL 750.10a, MCL 767.61a, and the former MCL 28.722(e)(xii), now MCL 28.722(s)(vii), are *in pari materia* and must be read together as one statutory whole. See *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007); *People v Kern*, 288 Mich App

codified at MCL 28.722(e)(xi), and the language now set forth in MCL 28.722(s)(vii) was codified at MCL 28.722(e)(xii). However, these statutory revisions have not affected the substantive law as it relates to these consolidated cases.

513, 517; 794 NW2d 362 (2010). We conclude that the language of the former MCL 28.722(e)(xii), now codified at MCL 28.722(s)(vii), plainly encompasses only those offenses that have been committed by individuals who have been charged and convicted as sexually delinquent persons in accordance with MCL 750.10a and MCL 767.61a.

In the present case, defendant was never charged as a sexual delinquent in accordance with MCL 767.61a and no trier of fact was ever asked to determine beyond a reasonable doubt that defendant was a sexually delinquent person within the meaning of MCL 750.10a. Instead, the circuit judge merely found as a fact at the time of sentencing that defendant was a sexually delinquent person, and then relied on this finding to require defendant to register as a sex offender under SORA. Because defendant was never charged or convicted as a sexually delinquent person in accordance with MCL 750.10a and MCL 767.61a, it necessarily follows that the principal offense of which he was convicted in this case was not “committed by a person who was, at the time of the offense, a sexually delinquent person as defined in . . . MCL 750.10a.” The circuit court legally erred by relying on the language of the former MCL 28.722(e)(xii), now codified at MCL 28.722(s)(vii), to order defendant to register as a sex offender.

Even more importantly, we note that defendant could not have been charged and convicted as a sexually delinquent person in this case. A person may only be charged and convicted as a sexually delinquent person if the principal offense with which he or she is charged statutorily contemplates it. *People v Seaman*, 75 Mich App 546, 549; 255 NW2d 680 (1977). For instance, because Michigan’s criminal sexual conduct statutes do not specifically permit a charge of sexual delinquency, a person charged with the principal offense of third-degree criminal sexual conduct, MCL 750.520d, may not be additionally charged and convicted as a sexually delinquent person under MCL 750.10a. *Seaman*, 75 Mich App at 549. Only Michigan’s sodomy statute, MCL 750.158, indecent exposure statute, MCL 750.335a, and gross indecency statutes, MCL 750.338; MCL 750.338a; MCL 750.338b, currently specify that a defendant may be additionally charged and convicted as a sexually delinquent person. *Helzer*, 404 Mich at 416-417; *Seaman*, 75 Mich App at 549. However, defendant was not charged with or convicted of sodomy, indecent exposure, or gross indecency. Instead, as explained earlier, he pleaded guilty to surveilling an unclothed person in violation of MCL 750.539j, a statute which does not allow for conviction as a sexually delinquent person under MCL 750.10a. Accordingly, even if the proper procedures had been otherwise followed in this case, the prosecution would not have been legally entitled to charge defendant as a sexually delinquent person in the first instance.

In sum, although defendant’s extensive history of surveilling unclothed women in public restrooms is certainly offensive and disturbing, there was no legal authority for the circuit court to order defendant to register as a sex offender. We reverse the circuit court’s order requiring defendant to register as a sex offender under SORA and remand these consolidated cases to the circuit court for the entry, amendment, or correction of any orders necessary to effectuate our ruling in this opinion.

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

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly