



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,197-01

Ex parte JONATHAN HOSS KIBLER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
IN CAUSE NO. F-2002-1689-D & F-2002-1690-D
FROM THE 362ND DISTRICT COURT
DENTON COUNTY**

WALKER, J., filed a dissenting opinion, in which KELLER, P.J., joined.

DISSENTING OPINION

Today, in construing Texas Code of Criminal Procedure art. 62.101(a)(4), the majority essentially holds that two convictions or adjudications occurring in the same criminal proceeding will invariably occur “before or after” one another which, in specified sex cases, results in a lifetime sex offender registration requirement. I cannot agree. Our principles of statutory construction state that “[w]e presume that the legislature intended for every word to have a purpose, and we should give effect if reasonably possible to each word, phrase, and clause of the statutory language.” *Sims v. State*, 569 S.W.3d 634, 640 (Tex. Crim. App. 2019). Under the majority’s reasoning, the convictions would have to occur “simultaneously”—at the same, exact, discrete point in time—to not be considered “before or after” one another. The problem with the majority’s reasoning is that

it does not actually leave room for two convictions to occur simultaneously, as there will always be aspects of one case that will be articulated before the other. For example, if a judge adjudicates an individual for two offenses in one proceeding, the judge will still repeat one cause number before the other, even if pronouncing guilt on both cause numbers in the same breath. The majority's opinion would not consider this to be simultaneous; simultaneous convictions would be nearly, if not completely, impossible.

If the Legislature intended for an indecency with a child conviction to result in an automatic life registration requirement if the defendant has another reportable conviction, it would have said so; it would not have included the temporal "before or after" requirement. The majority did not say, and I do not believe, that the article in this case is ambiguous. And "[w]here the statute is clear and unambiguous, the Legislature must be understood to mean what it has expressed[.]" *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) (quoting *Coit v. State*, 808 S.W.2d 473, 475 (Tex. Crim. App. 1991)). Here, if we accept the majority's reasoning, there was no reason for the Legislature to express a "before or after" requirement at all.

In following our principles of statutory construction, we must presume that the Legislature used the words "before or after" for a purpose. *See Sims*, 569 S.W.3d at 640. It seems clear to me that the purpose was to leave open the possibility of two simultaneous guilty pleas without the result of a lifetime sex offender registration requirement.¹ In order to respect this purpose and to avoid

¹The majority's holding would not allow for a defendant to plea to indecency and another reportable conviction simultaneously without the defendant having to register as a sex offender for life. This appears to circumvent the clear and unambiguous language of the statute. Multiple scenarios come to mind that the Legislature may have considered when they enacted the temporal "before or after" requirement. One such scenario is where a nineteen-year-old is engaged in an intimate consensual relationship with an individual that is barely under sixteen years of age. The nineteen-year-old is arrested after the fifteen-year-old's mother finds out about the relationship and

rendering the Legislature’s language superfluous, we should interpret the statute to find that convictions or adjudications occurring in a singular proceeding occur at the same time—not before or after one another. Because I believe the majority’s interpretation violates our statutory construction principles and does not give effect to the Legislature’s expressed language, I respectfully dissent.

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is charged with two counts of sexual assault. All the parties agree that probation is appropriate and that the defendant should not be required to register as a sex offender for his or her entire life. The prosecutor offers to reduce the two charges to indecency with a child. Under the majority’s reasoning, even though the State did not desire for the defendant to have to register as a sex offender for life, he or she would be required to do so even if both counts are pled in the same proceeding. Because the majority would allow for the “before or after” requirement to be met by two charges being pled in a singular proceeding, any individual convicted of multiple counts of indecency with a child—no matter the circumstances—would have to register for life, even when the pleas occur in the same proceeding or stem from the same set of circumstances. *See* TEX. CODE CRIM. PROC. Ann. art. 62.101(b). Under the majority’s holding, the Legislature’s temporal “before or after” requirement is essentially meaningless.