Cite as 2012 Ark. 421

SUPREME COURT OF ARKANSAS

No. 12-176

BOBBY L. HARRELL
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered November 8, 2012

APPEAL FROM THE SHARP COUNTY CIRCUIT COURT,
[NO. CV-2011-175]
HON. HAROLD S. ERWIN, JUDGE

REVERSED AND REMANDED.

KAREN R. BAKER, Associate Justice

Appellant, Bobby L. Harrell, appeals the order entered by the Sharp County Circuit Court denying his petition seeking to terminate his obligation to report as a sex offender. For reversal, he contends that the circuit court erred in its interpretation of the relevant statute. This court has jurisdiction over this case pursuant to Arkansas Supreme Court Rule 1-2(b)(6) (2012).

On January 31, 1992, a jury in Delta County, Texas convicted Harrell of indecency with a child. Harrell was placed on ten years probation and ordered to pay a $10,000 fine. In September 2002, Harrell successfully completed his probation. In 2007, Harrell relocated to Arkansas and was required to register as a sex offender under the Arkansas Sex Offender Registration Act of 1997. Harrell complied with this requirement and was assessed as a Level 1 Sex Offender.

On August 25, 2011, Harrell filed an application with the Sharp County Circuit Court to terminate his obligation to register as a sex offender pursuant to the provisions of

the Arkansas Sex Offender Registration Act of 1997, specifically Ark. Code Ann. § 12-12-919 (Supp. 2003), "Termination of obligation to register." The State filed a general denial and moved to have the application dismissed asserting that Harrell's application was premature. On November 15, 2011, the circuit court conducted a hearing on Harrell's application. On November 30, 2011, the circuit court entered its order denying Harrell's application for termination to register as a sex offender as premature.

Harrell presents one issue on appeal, asserting that the circuit court erred in its interpretation of Ark. Code Ann. § 12-12-919(b)(2)(A) in finding that Harrell had not met the requirements to terminate his registration obligation.

In reviewing a statute, "[t]he first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language." *Potter v. City of Tontitown*, 371 Ark. 200, 264 S.W.3d 473 (2007). However, "when a statute is ambiguous, . . . we must interpret it according to the legislative intent, and its review becomes an examination of the whole act." *Johnson v. Dawson*, 2010 Ark. 308, at 4, 365 S.W.3d 913, 916; *MacSteel Div. of Quanex v. Ark. Okla. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005) (observing that this court will not read into a statute a provision that simply was not included by the General Assembly); *Dep't of Human Servs. & Child Welfare Agency Review Bd. v. Howard*, 367 Ark. 55, 62, 238 S.W.3d 1, 6 (2006) (noting that our basic rule of statutory construction is to give effect to the intent of the legislature).

Here, the circuit court applied § 12-12-919 and denied Harrell's application:

> The Court finds that although an individual can file an application to terminate his obligation to register fifteen (15) years after being placed on probation pursuant to Ark.

> Code. Ann. § 12-12-919(b)(1)(A)(i), the court cannot grant an order terminating the obligation under Ark. Code Ann. [(b)] (2)(A) until the applicant placed on probation has not been adjudicated of a sex offense for a period of fifteen (15) years after the applicant was released from prison or other institution. The Court interprets "other institution" to mean in this case the probation services of the 8th Judicial District Community Supervision, Delta County, Texas. Considering that the Plaintiff did not complete his probation until 2002, a period of fifteen (15) years has not elapsed since the Plaintiff was released from the probation institution as required by Subsection (2)(A). The Court finds that the application of the Plaintiff should be denied on the grounds that it is premature in that a period of fifteen (15) years has not elapsed since the Plaintiff was released from supervision.

In sum, the circuit court's finding hinged upon Harrell's release from prison or other institution and the circuit court's interpretation of "institution." However, we conclude that the circuit court did not need to make a determination regarding what the term "institution" includes.

In reviewing the applicable statute it is clear that the statute's language is inconsistent. Specifically, the language in § 12-12-919(b)(1)(A)(i) is inconsistent with subsection (b)(2)(A). First, subsection (b)(1)(A)(i) allows an individual to apply for relief from the registration requirements fifteen (15) years after having been placed on probation. *Id.* However, the following subsection, (b)(2)(A), requires the circuit court to grant the requested relief once the applicant demonstrates that "[t]he applicant placed on . . . probation has not been adjudicated guilty of a sex offense for a period of fifteen (15) years after the applicant was released from prison or other institution." Ark. Code Ann. § 12-12-919(b)(2)(A) (Repl. 2009). Thus, while a probationer may apply for termination of his obligation to register fifteen years after having been placed on probation, subsection (b)(2)(A) seems to require the applicant to demonstrate his release from probation and his release from prison or other

institution. We read this language as ambiguous, as it is uncertain when the circuit court shall grant relief to an applicant such as Harrell who was not incarcerated.

In light of this ambiguity, we turn to the statute's legislative history. In reviewing the legislative history, as the State recognizes, Act 21, § 10 of the 2003 Second Extraordinary Session last amended Ark. Code Ann. § 12-12-919 and is the language our General Assembly passed to codify as § 12-12-919(b)(2)(A). However, the language from Act 21, § 10 and the language that was codified at § 12-12-919(b)(2)(A), are different. Act 21 provides in part:

> (2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:
>
> > (A) The applicant, for a period of fifteen (15) years after the person was released from prison or other institution, placed on parole, supervised release, or probation has not been adjudicated guilty of a sex offense; and
> >
> > (B) The applicant is not likely to pose a threat to the safety of others.

Act of Dec. 31, 2003, No. 21,§ 10, 2005 Ark. Acts 827, 848.

However, the Act was codified as:

> (2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:
>
> > (A) The applicant placed on parole, supervised release, or probation has not been adjudicated guilty of a sex offense for a period of fifteen (15) years after the applicant was released from prison or other institution; and
> >
> > (B) The applicant is not likely to pose a threat to the safety of others.

Ark. Code Ann. § 12-12-919(b)(2)(A) (Supp. 2005).[1]

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[1]The 2003 Supplement to Ark. Code Ann. § 12-12-919 was in accord with Act 21 of 2003 with one small discrepancy. The 2003 Supplement's version failed to substitute the phrase "for a period of" for the term "within." However, the 2005 Supplement altered the

In reviewing the General Assembly's language and the codified version, it is apparent that the language of the General Assembly was substantially altered by the Arkansas Code Revision Commission (ACRC). Pursuant to Ark. Code Ann. § 1-2-303(d)(1)(A)-(S) (Repl. 2008), the ACRC, in the process of codifying the Acts, is permitted to make certain corrections to spelling, grammar, and clerical errors. Ark. Code Ann. § 1-2-303 (Repl. 2008). However, § 1-2-303(d)(1) specifically provides that "the commission shall not authorize any change in the substance or meaning of any provision of the Arkansas Code or any act of the General Assembly. The bureau shall not change the substance or meaning of any provision of the Arkansas Code or any act of the General Assembly." Ark. Code Ann. § 1-2-303(d)(1) (Repl. 2008).

Here, ACRC substantively altered Act 21 in its codification, which became § 12-12-919(b)(2)(A), in a manner that changed its meaning. The Arkansas Code prohibits such a substantive change. *See also Porter v. Ark. Dep't of Health & Human Serv.s*, 374 Ark. 177, 182-83, 286 S.W.3d 686, 691 (2008). Accordingly, we must rely on the original wording of Act 21 so as to not lead to an absurd interpretation of the statute. Therefore, we hold that a probationer may apply to terminate his or her obligation to register as a sex offender fifteen years after being placed on probation. Further, that probationer is entitled to relief upon a showing by a preponderance of the evidence that he or she has not been adjudicated of a sex offense during that fifteen-year-time period and he or she is not likely to pose a threat to the safety of others.

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language of Act 21 and has remained the same up to and including the 2011 Supplement.

We reverse and remand the circuit court's order denying Harrell's application for termination of registration under Ark. Code Ann. § 12-12-919 to the circuit court for further proceedings consistent with this opinion.

Reversed and remanded.

Larry Dean Kissee, for appellant.

Dustin McDaniel, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.