

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )  
 )  
 v. ) ID No. 1902011488  
 )  
 LAMAR STANLEY, )  
 )  
 Defendant. )

**MEMORANDUM OPINION  
AND ORDER ON DEFENDANT’S  
MOTION FOR SENTENCE MODIFICATION**

**INTRODUCTION**

Defendant, Lamar Stanley (“Defendant”), through a motion filed by his counsel, seeks to modify the condition in his sentence that requires him to register as a Tier III sex offender. Defendant contends that the proper application of Title 11 *Del.C.* § 4121(d)(4) (“§4121(d)(4)”) would require him to register as a Tier II sex offender. The State filed a response in opposition to Defendant’s motion. The State contends that §4121(d)(4) requires Defendant to register as a Tier III offender. Therefore, the question before the Court is one of statutory interpretation. Title 11 *Del.C.* § 4214(d)(4) states:

Notwithstanding any provision of this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section and who is thereafter

convicted of any second or subsequent offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section shall be designated to Risk Assessment Tier III.

A Tier III sex offender must comply with the registration provisions of 11 *Del.C.* § 4120 for the rest of his life, whereas a Tier II sex offender is released after 25 years.<sup>1</sup> Among other distinctions, a Tier III offender must verify his address more frequently and wait 15 years longer than a Tier II offender to petition for assignment to a lower Tier.<sup>2</sup>

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 21, 2016, Defendant pled guilty to Rape in the Fourth Degree for an offense he committed in 2014.<sup>3</sup> On July 3, 2019, Defendant pled guilty to Rape in the Fourth Degree for an offense he committed in 2013.<sup>4</sup> Hence, Defendant's second criminal act resulted in his first conviction and his first criminal act resulted in his second conviction. The prosecution of Defendant's first criminal act was delayed due to the lack of accusations against Defendant by the first victim and her family, and the inability of Delaware police to investigate out-of-state evidence.<sup>5</sup>

---

<sup>1</sup> 11 *Del.C.* § 4121(e)(1).

<sup>2</sup> 11 *Del.C.* § 4121(e)(2).

<sup>3</sup> D.I. 12. Case No.: 1601003563.

<sup>4</sup> D.I. 3.

<sup>5</sup> State's Response ("SR"), D.I. 6, at 2.

Defendant's convictions stem from his unlawful sexual relations with two minor children. In 2013, Defendant engaged in sexual intercourse with 15-year-old B.M.<sup>6</sup> when Defendant was 31 years old. Defendant was a family friend of B.M.'s parents. In October of 2013, B.M. gave birth to Defendant's child. Around January of 2014, Defendant had unwanted sexual intercourse with another child, 13-year-old M.D., on three separate occasions. M.D. was a mentally delayed child with an IQ of 66, and Defendant was her neighbor. In September of 2014, M.D. gave birth to Defendant's child, and B.M. gave birth to a second child by the Defendant.

#### November 2016 Conviction

On November 21, 2016, Defendant pled guilty to one count of Rape in the Fourth Degree for the acts he committed against M.D.<sup>7</sup> The plea agreement that Defendant signed with the assistance of counsel specified that a guilty plea would require him to register as a Risk Assessment Tier II sex offender.<sup>8</sup> On February 10, 2017, Defendant was sentenced to ten years at Level V, suspended after two years for 8 years of Level IV, suspended after six months for two years at supervision Level III. Defendant was ordered to register as a Tier II sex offender as a condition of his sentence.<sup>9</sup>

---

<sup>6</sup> The victims, B.M. and M.D., are identified by their initials to preserve their privacy.

<sup>7</sup> D.I. 12. Case No.: 1601003563.

<sup>8</sup> *Id.*

<sup>9</sup> D.I. 12. Case No.: 1601003563.

### July 2019 Conviction

On July 3, 2019, Defendant signed a plea agreement to one count of Rape in the Fourth Degree for the offense he committed against B.M.<sup>10</sup> Defendant signed a plea agreement with the assistance of counsel that specified that, as a result of the guilty plea, he would be required to register as a Risk Assessment Tier III sex offender.<sup>11</sup> Under “Other Conditions”, the plea agreement stated: “*Pursuant to 11 Del.C. § 4121(d)(4), Defendant is to register as a Tier III Sex Offender. The defense requests leave to file [sic] motion within 30 days if there is supporting law that defendant should otherwise remain a Tier II Sex Offender.*”<sup>12</sup> After the guilty plea was accepted by the Court, Defendant was sentenced in the same proceeding to 10 years at supervision Level V, suspended for two years at supervision Level III, and was ordered to register as a Tier III sex offender as a condition of his sentence.<sup>13</sup> Defendant now challenges his sex offender registration designation.

On August 5, 2019, Defendant filed a Motion for Sentence Modification (the “Motion”),<sup>14</sup> pursuant to Delaware Superior Court Criminal Rule 35(b) (“Rule 35”). On September 20, 2019, the State filed a Response in Opposition to Defendant’s Motion (the “Response”).<sup>15</sup>

---

<sup>10</sup> D.I. 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> D.I. 4.

<sup>14</sup> D.I. 5.

<sup>15</sup> D.I. 6.

## PARTIES' CONTENTIONS

### I. Defendant's Position:

Defendant argues that because his second conviction arises out of an act that preceded his first conviction, it does not qualify as a conviction that triggers Tier III registration. Defendant claims that §4121(d)(4) unambiguously requires a second or subsequent conviction to arise from an offense committed after the first qualifying conviction was entered to trigger Tier III registration. Defendant contends that a plain reading of the phrase in § 4121(d)(4), which states, “who is thereafter convicted of any second or subsequent offense,” does not include Defendants’ 2019 conviction. Defendant, however, does not advance any specific reasoning that leads to this conclusion. Defendant’s more developed argument is that the statute is ambiguous, and that the legislative intent of the statute supports Defendant’s interpretation.

Defendant relies on a Pennsylvania Supreme Court case, *A.S. v. Pennsylvania State Police* (“*A.S.*”),<sup>16</sup> as persuasive authority to support his interpretation. In *A.S.*, the court considered whether a sex offender, by virtue of his conviction, was required to register for ten years or for the rest of his life pursuant to Pennsylvania’s former

---

<sup>16</sup> 143 A.3d 896, (Pa. 2016).

sex offender registration statute.<sup>17</sup> The Pennsylvania court held that the statute, in part, embodied a “recidivist philosophy.”<sup>18</sup> *A.S.* described the “recidivist philosophy” as the belief that the law should punish more harshly repeat offenders, especially those who “squander a given opportunity to reform.”<sup>19</sup> Applying this legislative philosophy, the Pennsylvania Court determined that the phrase “two or more convictions”, required “an act, a conviction, and a subsequent act” to trigger lifetime registration requirements.<sup>20</sup>

Defendant argues that §4121(d)(4) also embodies the “recidivist philosophy”.<sup>21</sup> Defendant claims that his second conviction does not trigger Tier III registration because his criminal acts pre-dated his first conviction, thereby denying an opportunity to reform between his first and second convictions.<sup>22</sup>

---

<sup>17</sup> 42 Pa.C.S. § 9795.1(b)(1).

<sup>18</sup> *A.S.* at 417 (“[W]e are satisfied that Section 9795.1... encompasses the recidivist philosophy in addition to its perhaps more obvious goals of public protection and deterrence”).

<sup>19</sup> *See generally*, *A.S.* at 416-419. (“[A] tiered approach, [where] more serious (primarily violent) offenders and “true” recidivists who squander a given opportunity to reform are understandably subject to lifetime requirements. By contrast, lesser, first-time offenders, especially those who are nonviolent, receive an opportunity for rehabilitation and eventual freedom from the requirements if they “stay on the path” for ten years”). *A.S.* at 417-418.

<sup>20</sup> *A.S.* at 417-22.

<sup>21</sup> Defendant also contends that issues of equity support a modification of his registration to Tier II. Defendant claims that when he pled guilty in 2016, he detrimentally relied on the understanding that the State would not prosecute any potential charges against him relating to B.M. Defendant’s detrimental reliance argument fails because it lacks any support in the record.

<sup>22</sup> In support of his claim that he has been rehabilitated, Defendant asserts that the first victim, B.M., did not press charges and, that she and Defendant were engaged to be married when Defendant was arrested in 2019. He also asserts that while he was on probation in 2018 to 2019, he held two full time jobs and was enrolled in online courses to get his GED.

## II. State's Position:

The State claims that §4121(d)(4) unambiguously requires Defendant to register as a Tier III sex offender and that this result accords with legislative intent. The State argues that the italicized words in the phrase “*any second* or subsequent *offense*,” clearly incorporate Defendant’s second conviction as a trigger of Tier III registration.

Referencing well-established statutory construction principles, the State posits that if the Court finds that the language of §4121(d)(4) is unambiguous, it must apply the literal meaning unless such application produces an absurd or unreasonable result.<sup>23</sup> The State claims that §4121(d)(4) was not created pursuant to a “recidivist philosophy”, but rather embodies the “compulsory approach” which approves of the result in this case. The “compulsory approach,” requires that offenders satisfying statutory, offense-related criteria be subject to registration and notification and excludes judicial decision making from the legislatively-determined registration Tiers to ensure that registration and community notification of convicted sex offenders would occur.<sup>24</sup> The State contends that *A.S.*’s “recidivist philosophy” is inapposite to Delaware’s registration statute and cases construing it.

---

<sup>23</sup> The State cites several Delaware Supreme Court opinions where the Court followed this two-step analysis. SR at 9; citing *Buckingham v. State*, 482 A.2d 327 (Del. 1984), *Hall v. State*, 473 A.2d 353 (Del. 1984), and *Ross v. State*, 990 A.2d 424 (Del. 2010).

<sup>24</sup> See generally, *Helman v. State*, 784 A.2d 1058, 1068-1070.

## DISCUSSION

Defendant's argument, that §4121(d)(4) requires a different result than that imposed in his sentence, presents the Court with an issue of statutory interpretation. The Court has limited discretion when it faces questions of statutory interpretation. "It is well settled that statutory language is to be given its plain meaning and that where a statute is clear and unambiguous there is no need for statutory interpretation."<sup>25</sup> Where a statute is unambiguous, the Court's role is "limited to an application of the literal meaning of the words."<sup>26</sup> A statute is unambiguous when there are "no reasonable doubts as to the meaning of the words used."<sup>27</sup> A statute is not rendered ambiguous simply because there is a disagreement between the parties about its proper application.<sup>28</sup>

However, when the statute is ambiguous, "the goal of statutory construction is to determine and give effect to legislative intent."<sup>29</sup> "Under Delaware law, a statute is ambiguous if: first, it is reasonably susceptible to different conclusions or interpretations; or second, a literal interpretation of the words of the statute would lead to an absurd or unreasonable result that could not have been intended by the

---

<sup>25</sup> *State v. Skinner*, 632 A.2d 82, 85 (Del. 1993).

<sup>26</sup> *Ross v. State*, 990 A.2d 424, 428 (Del. 2010) (citing *In Re Adoption v. Swanson*, 623 A.2d 1095 (Del. 1993)).

<sup>27</sup> *Ross*, 990 A.2d at 428.

<sup>28</sup> *Id.* at 429.

<sup>29</sup> *LeVan v. Indep. Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007).



legislature.”<sup>30</sup> An ambiguous statute should be construed “in a way that will promote its apparent purpose and harmonize it with other statutes” within the statutory scheme.<sup>31</sup>

### I. Ambiguity

In accordance with the rules of statutory interpretation, the Court first examines the statute with the specific task of determining whether it is ambiguous.

The statute, §4121(d)(4), states:

Notwithstanding any provision of this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section and who is thereafter convicted of any second or subsequent offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section shall be designated to Risk Assessment Tier III.

The Court finds that this statute is plain and clear as applied to the facts and circumstances of this case. In 2016, Defendant was convicted of Rape in the Fourth Degree, which is an offense set forth under 11 *Del.C.* § 4121(d)(2).<sup>32</sup> Because of that conviction, Defendant became a sex offender who had “previously been convicted of [an] offense set forth in paragraph... (d)(2)”. Thereafter, on July 3,

---

<sup>30</sup> *Ross*, 990 A.2d at 428.

<sup>31</sup> *LeVan*, 940 A.2d at 933.

<sup>32</sup> 11 *Del.C.* § 4121(d)(2)(a) (“Rape in the third degree unless the offense involved a child under 12 or the offense involved force or the threat of physical violence, *rape in the fourth degree*, sexual abuse of a child by a person in a position of trust...”) (emphasis added).

2019, Defendant was “convicted of [a] second...offense set forth in paragraph... (d)(2)” when the Court accepted his guilty plea to Rape in the Fourth Degree.

The statute specifies a required sequence of convictions, not offenses. The convictions must be entered in sequence because the statute requires the first conviction to have “previously been” entered, and the second conviction must be entered “thereafter.” Offenses are not required to meet the same chronology because the word “offense” is modified by different language, “second or subsequent.” A literal reading of the statute in context demonstrates that Defendant’s July 2019 conviction in this case is unambiguously subsumed by the plain meaning of § 4121(d)(4), thereby requiring Tier III registration.

## II. Reasonableness of Result

Paradoxically, the Court must consider the legislative intent of the statute, even when the statute is unambiguous, to ensure that the literal application of the statute does not produce an absurd or unreasonable result “that could not have been intended by the legislature.” Here, the Court finds that §4121(d)(4) follows the “compulsory approach” rather than the “recidivist philosophy” of Pennsylvania’s statute.

**A. *A.S. v. Pennsylvania State Police (Recidivist Philosophy)***

*A.S.* interpreted Pennsylvania’s former sex offender registration statute.<sup>33</sup> The statute stated, in relevant part: “(b) Lifetime registration – The following individuals shall be subject to lifetime registration: (1) An individual with two or more convictions of any of the offenses set forth in subsection (a).”<sup>34</sup>

In *A.S.*, the defendant was a 21-year-old man who had lawful sexual intercourse with a 16-year-old girl.<sup>35</sup> The defendant, however, unlawfully took pictures of their sexual acts. The defendant ultimately pleaded guilty to one count of Sexual Abuse of Children and one count of Unlawful Contact with a Minor, which were both “offenses set forth in subsection (a)” of the Pennsylvania registration statute.<sup>36</sup> The court deferred sentencing of the defendant until “a pre-sentence report and sexual offender assessment” were produced.<sup>37</sup> At the sentencing hearing, the defendant, prosecutor, and sentencing court all believed that the defendant would be subject to registration as a sex offender for 10 years as a result of his conviction.<sup>38</sup>

After the defendant registered for 10 years, the Pennsylvania State Police (“PSP”) denied his petition for removal from the registry under the belief that his guilty plea triggered lifetime registration because he was “an individual with two or

---

<sup>33</sup> 42 Pa.C.S. § 9795.1(b)(1)

<sup>34</sup> *Id.*

<sup>35</sup> Pennsylvania’s minimum age of consent is 16. 18 Pa.C.S. § 3122.1.

<sup>36</sup> *A.S.* at 409.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 409-10.

more convictions” of qualifying crimes.<sup>39</sup> The defendant brought a mandamus action against PSP and the Pennsylvania Supreme Court considered the PSP’s determination.

The court held that the sex offender statute embodied a “recidivist philosophy” with the intent to set up a graduated registration scheme to deter repeat offenders.<sup>40</sup> Applying this intent to the statute, the court determined that “two or more convictions” required “an act, a conviction, and a subsequent act” to trigger life-time registration requirements for sex offenders.<sup>41</sup>

### **B. The “Compulsory Approach”**

Longstanding Delaware precedent establishes that Delaware’s approach to sex offender registration and notification follows the “compulsory approach.”<sup>42</sup> Under this scheme, the statute “requires that offenders satisfying statutory, offense-related criteria be subject to registration and notification, affording offenders no right to a prior hearing on the eligibility determination,” and the “sentencing court has no discretion in making this determination.”<sup>43</sup> Delaware’s sex offender statute is an

---

<sup>39</sup> *Id.* at 410.

<sup>40</sup> *Id.* at 417-18.

<sup>41</sup> *A.S.* at 422.

<sup>42</sup> *Helman v. State*, 784 A.2d 1058 (Del. 2001).

<sup>43</sup> *Helman*, 784 A.2d at 1066.

“offense driven” statute “without regard to mitigating factors of the offender or the offense.”<sup>44</sup>

### **C. Defendant’s sentence conforms to legislative intent**

The purpose of the compulsory approach is to ensure that every person who is convicted of qualifying offenses is required to register at the legislatively designated Tier. The complete elimination of judicial discretion in the determination evinces the statute’s intent to ensure community notification rather than discourage recidivism. The reversed order in which the State prosecuted Defendant’s offenses, and any diminished effect it had on deterring his recidivism, is irrelevant to the statute’s intent to notify the community that Defendant was twice convicted of Rape in the Fourth Degree.

Indeed, it is Defendant’s interpretation of the statute that would lead to absurd results not intended by the legislature. Under Defendant’s construction of the language of the statute, a perpetrator of sexual assault would not be eligible for Tier III designation, if he is later convicted of a previously unsolved statutorily qualifying sexual assault that occurred prior to his first conviction. Such an illogical result could not have been intended by the legislature when §4121(d)(4) was enacted. Hence, under the facts present in Defendant’s case, the application of §4121(d)(4) to require

---

<sup>44</sup> *Helman* at 1066 (citing 11 Del.C. §4121(e)(1)(a) a conviction “mandates the Tier level without any regard to the facts and circumstances of the particular case”).

Defendant to register as a Tier III sex offender would have been intended and contemplated by the legislature.<sup>45</sup>

### CONCLUSION

For the foregoing reasons, Defendant's Motion for Sentence Modification is hereby **DENIED**.

**IT IS SO ORDERED THIS 26<sup>TH</sup> DAY OF DECEMBER 2019.**



---

Sheldon K. Rennie, Judge

Original to Prothonotary

cc: Lamar Stanley (SBI #00725779) HRYCI, Wilmington, DE  
Misty A. Seemans, Esq., APD, Office of Public Defender, Wilmington, DE  
Cari Chapman, Esq., DAG, Department of Justice, Wilmington, DE

---

<sup>45</sup> The Court notes that *A.S.* is inapposite to Defendant's case. *A.S.* concerned offenses against one victim, the victim had reached Pennsylvania's age of consent, the conviction arose from a single course of action, and there was only one judgement of conviction containing multiple offenses.