

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE: TIMOTHY PORTER)
)
) C.A. No. 05M-05-039-FSS
)

Submitted: July 22, 2005
Decided: October 19, 2005

ORDER

*Upon Defendant’ s Petition for Redesignation of
Sex Offender Risk Assessment Tier - - **DENIED***

On May 12, 2005, Mr. Porter filed his Petition for Redesignation of Sex Offender Risk Assessment Tier. Porter had been convicted in New York and a risk assessment was made there. When Porter returned to Delaware, he was assigned to a higher tier, consistent with Delaware’ s risk assessment statute. Porter claims that New York’ s law applies.

The court heard argument on June 27, 2005 and it required the State to file a response within ten days. The State asked for and received an additional week, which meant that its response was due on July 14, 2005. The State filed its submission on July 22, 2005.

It appears that in February 2003, Porter committed acts in New York, using the internet, amounting to sexual solicitation of a child.¹ Porter was prosecuted and convicted in New York. As required by New York’ s law, Porter was evaluated and after

¹ New York Penal Laws sections 110/235.22; 11 *Del. C.* § 1112A.

a hearing, he was assigned to Sex Offender Registration Level 1, New York' s lowest designation.

Although Porter was convicted in New York, he is a Delaware resident and he intends to continue living here. Accordingly, having been convicted of a predicate offense, he is required under Delaware law to register as a sex offender and he must be assigned to a tier level. In contrast to New York law, Delaware' s assignment of sex offenders to risk assessment tiers is offense-based and automatic.² In other words, the New York conviction and Porter' s decision to live here trigger Delaware' s registration law. And under Delaware law, Porter must be assigned to a higher tier, regardless of New York' s risk assessment. New York' s assessment is appropriate for someone living in New York. Delaware' s statute, however, reflects this community' s registration needs. Common sense dictates that New York should not control the way sex-offenders living in Delaware should be assessed.

The court is satisfied that Porter' s tier level assignment in Delaware is triggered and controlled by Delaware' s law, not New York' s. Therefore, the Petition for Re-designation is ***DENIED***.

IT IS SO ORDERED.

Judge

cc: Prothonotary
pc: Stuart Sklut, Deputy Attorney General

² *Helman v. State*, 784 A.2d 1058, 1065-68 (Del. 2001).

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