

# Third District Court of Appeal

## State of Florida

Opinion filed August 28, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-976  
Lower Tribunal No. 93-15016E

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**State of Florida,**  
Petitioner,

vs.

**Damian Brena,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Alberto Milian, Judge.

Ashley Moody, Attorney General, and Bilal Ahmed Faruqui, Senior Assistant Attorney General, (Tallahassee), for petitioner.

Kenneth P. Speiller, for respondent.

Before EMAS, C.J., and LOGUE and GORDO, JJ.

GORDO, J.

The State seeks certiorari review of the trial court’s order granting Damian Brenna’s Motion to Delete Registration Requirement directing the Florida Department of Law Enforcement (“FDLE”) to remove the statutory requirement that Mr. Brenna register as a sexual offender. Because the trial court’s order constitutes a departure from the essential requirements of the law resulting in a miscarriage of justice, we grant the State’s petition and quash the order below.

### **FACTUAL & PROCEDURAL BACKGROUND**

On July 20, 1994, Mr. Brenna was convicted among other charges of armed kidnapping of a minor and conspiracy to commit armed kidnapping. Thereafter he was sentenced to five years in prison followed by five years of probation. Due to multiple violations of probation, Mr. Brenna was sentenced to serve additional time in prison and was not released from supervision until June 30, 2006.

Three years after his conviction, the Legislature enacted the Public Safety Information Act creating section 943.0435 of the Florida Statutes. The Legislature deemed that public safety concerns compelled the cataloguing of sexual offenders. Section 943.0435, entitled “Sexual offenders required to register with the department; penalty,” mandates that all persons convicted of qualifying offenses register as sexual offenders with FDLE. The Act requires sexual offenders to report their current residence to FDLE, provides procedures for reporting and dictates a penalty for failing to report as required.

The sexual offender designation is based on statutory criteria. Section 943.0435 defines “Sexual offender” as a person who:

(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: . . . s. 787.01, . . . where the victim is a minor . . .

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

§ 943.0435(1)(h)1a(I)–(II), Fla. Sta. (2018). Section 787.01 specifically defines “kidnapping.” Thus, this statutory framework requires persons convicted of armed kidnapping of a minor to register as sexual offenders with FDLE and applies to anyone who has been released from a sanction imposed upon conviction for a qualifying offense on or after October 1, 1997.

It is uncontested that Mr. Brena, having been convicted of armed kidnapping of a minor in 1994 and released from supervision in 2006, is statutorily required to register as a sexual offender with FDLE. However, before his release in 2006, Mr. Brena was deleted as an offender from the database in error and was not notified of his registration requirements.

In 2018, Mr. Brena's co-defendant, Angel Yune, who had been registering as a sexual offender, asked FDLE to review his case to determine if he qualified for removal of the registration requirement. In reviewing his case, FDLE discovered that Mr. Brena was never notified that he was required to register as a sexual offender pursuant to the Act. On September 26, 2018, FDLE sent Mr. Brena a letter notifying him that he qualified for mandatory registration and was statutorily required to register as a sexual offender. Notably, FDLE did not seek to penalize Mr. Brena for his failure to comply with the Act after being released, as they recognized he had not been previously notified he was required to do so.

On March 14, 2019, Mr. Brena filed a motion to delete the registration requirement before the criminal circuit court that adjudicated him guilty in 1994. In this motion, which was not filed pursuant to Florida Rules of Criminal Procedure 3.800(a) or 3.850, Mr. Brena asked the court to order FDLE to delete the statutory requirement that he register as a sexual offender. The trial court heard arguments from Mr. Brena and FDLE on the matter. Importantly, Mr. Brena's counsel conceded he had been convicted of a qualifying offense and he was not eligible for “[r]emoval of the requirement to register as a sexual offender or sexual predator in special circumstances” pursuant to section 943.04354. Nonetheless, Mr. Brena

argued that the doctrine of laches should prohibit FLDE from enforcing the statutory requirements twelve years after his release from supervision.<sup>1</sup>

The trial court applied the doctrine of laches and granted the motion finding it was appropriate to order FDLE to delete the statutorily mandated requirement that Mr. Brena register as a sexual offender. This petition followed.

## **LEGAL ANALYSIS**

“To invoke the certiorari jurisdiction of this court, a petitioner must demonstrate a departure from the essential requirements of the law which results in a material injury for which there is no adequate remedy on appeal.” State v. Styles, 962 So. 2d 1031, 1032 (Fla. 3d DCA 2007) (citing Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 812, 822 (Fla. 2004)). “The requirements of material harm and the lack of a remedy on appeal are jurisdictional.” State v. Welch, 94 So. 3d 631, 634 (Fla. 2d DCA 2012). “Irreparable harm is present because the State has no remedy by appeal.” Id. (citing Fla. R. App. P. 9.140(c)) (listing the orders from which the State may take an appeal)). Further, “the failure to review this type of

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<sup>1</sup> The doctrine of laches is an equitable defense. Ticktin v. Kearin, 807 So. 2d 659, 663 (Fla. 3d DCA 2001). “Laches is an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party.” Id. “[L]aches is a doctrine asserted as a defense, which ‘requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.’” McCray v. State, 699 So. 2d 1366, 1368 (Fla. 1997) (quoting Costello v. United States, 365 U.S. 265, 282 (1961)).

case causes material harm to the State when a sexual offender is improperly relieved of the registration requirement.” Id. We have jurisdiction.

Next, we consider whether there was a departure from the essential requirements of the law. “In criminal cases, the circuit court primarily has postconviction jurisdiction to review motions filed pursuant to Florida Rules of Criminal Procedure 3.800(a) and 3.850.” State v. Whitt, 96 So. 3d 1125, 1126 (Fla. 5th DCA 2012). The Florida Rules of Criminal Procedure, in limited circumstances, grant the circuit court jurisdiction to consider postconviction motions, including rule 3.800 motions to correct, reduce and modify sentences and rule 3.850 motions to vacate, set aside or correct sentences.

We observe that Mr. Brena’s motion to delete the registration requirement was not brought pursuant to either rule 3.800 or 3.850. Nor could it properly be considered by the trial court as a rule 3.800(a) or 3.850 motion for it is well-settled that the sexual offender registration requirement is not punishment and is not part of a sentence. See State v. Partlow, 840 So. 2d 1040, 1043 (Fla. 2003); § 943.0435(12), Fla. Stat. (2002) (“The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes.”). “Because the sexual offender designation was not part of the plea or sentence, the circuit court did not have postconviction jurisdiction to consider this matter.” Whitt, 96 So. 3d at 1126.

Despite Mr. Brena acknowledging he was not eligible pursuant to Florida statutes for removal of the requirement to register as a sexual offender, the trial court improperly granted equitable relief.<sup>2</sup> It is a basic tenet of our jurisprudence and the first principle of equity jurisdiction that “equity follows the law.” Hedges v. Dixon Cnty., 150 U.S. 182, 192 (1893). In fact, “wherever the rights or the situation of parties are clearly defined and established by law, equity has no power to change or unsettle those rights or that situation, but in all such instances the maxim ‘equitas sequitur legem’<sup>3</sup> is strictly applicable.” Id. (quoting Magniac v. Thomson, 56 U.S. 281, 299 (1853)).

In this domain, the Legislature has clearly mandated a registration requirement for sexual offenders. “Where the legislature has provided such a process, courts are not free to deviate from that process absent express authority.” Pineda v. Wells Fargo Bank, N.A., 143 So. 3d 1008, 1011 (Fla. 3d DCA 2014). “Our responsibility . . . is to apply the law as the Legislature has so clearly announced it. We are not endowed with the privilege of doing otherwise regardless of the view which we might have as individuals.” State v. DiGuilio, 491 So. 2d 1129, 1133 (Fla.

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<sup>2</sup> We do not foreclose the possibility that if Mr. Brena had been criminally charged with failure to register as a sexual offender under these circumstances, an equitable defense may have been properly raised.

<sup>3</sup> Latin for equity follows the law, which means equity cannot alter the law of the land, but follows it.

1986) (citation omitted). Accordingly, the trial court did not have the authority to blatantly disregard a statutory mandate and supplant its judgment by labeling it equitable relief.

“The law is the law.” DTRS Intercontinental Miami, LLC v. A.K. Gift Shop, Inc., 77 So. 3d 785, 787 (Fla. 3d DCA 2011) (citation omitted). Courts may not “carve exceptions into an otherwise clear and imperative statute.” Id. To do so would be an abrogation of legislative power in violation of our constitutional structure of checks and balances. See Art. II, § 3, Fla. Const.; State v. Lewars, 259 So. 3d 793, 798 (Fla. 2018).

The separation of powers doctrine is founded on mutual respect of each of the three branches for the constitutional prerogatives and powers of the other branches. Just as we would object to the intrusion of the executive or legislative branches into this Court’s authority to promulgate rules of court procedures or to discipline parties before the courts as in contempt proceedings, we must be equally careful to respect the constitutional authority of the other branches. Courts should be loath to intrude on the powers and prerogatives of the other branches of government and, when necessary to do so, should limit the intrusion to that necessary to the exercise of the judicial power.

Orr v. Trask, 464 So. 2d 131, 135 (Fla. 1985) (citations omitted).

Finally, we note this is an issue which has been previously discussed in Florida jurisprudence. See Welch, 94 So. 3d 631 (holding the circuit court departed from the essential requirements of the law in granting Welch’s petition to remove the requirement to register as a sex offender where the court contravened the statute

and granted equitable relief); State v. Caragol, 120 So. 3d 641 (Fla. 5th DCA 2013) (holding the trial court did not have discretion to remove the sexual offender designation absent a finding that Caragol met the statutorily-mandated eligibility requirements for removal; thus, the trial court departed from the essential requirements of the law).

## **CONCLUSION**

On the record before us, the trial court lacked authority to order FDLE—the agency entrusted by the Legislature to maintain sexual offender registries and ensure appropriate reporting—to delete the statutory requirement that Mr. Brena register as a sexual offender. We conclude the trial court’s order constitutes a departure from the essential requirements of the law resulting in a miscarriage of justice. Accordingly, we grant the petition and quash the order below.

Petition granted and order quashed.