



## **Case Summary**

Roy Arensman appeals his conviction for failure to register as a sex offender as a Class D felony. We reverse.

### **Issue**

Arensman raises one issue, which we restate as whether the trial court properly determined that Arensman was required to register as a sex offender.

### **Facts**

In 1995, Arensman pled guilty to Class B felony attempted criminal deviate conduct and Class C felony child molesting for acts alleged to have occurred during the months of October, November, and December 1993. He was sentenced to fourteen years in the Department of Correction. Arensman was released from the Department of Correction on February 2, 2009, and he moved to Floyd County. Arensman was informed that he was required to register as a sex offender within seventy-two hours of his release, but he refused to do so. On March 4, 2009, Arensman was charged with failure to register as a sex offender as a Class D felony. At his bench trial, Arensman requested that the trial court dismiss the charge because the sex offender registry requirements had not been enacted at the time of his offenses. He argued that requiring him to register as a sex offender violated the prohibition against ex post facto laws. The trial court denied Arensman's motion to dismiss and found Arensman guilty of failure to register as a sex offender as a Class D felony. The trial court sentenced Arensman to serve 908 days in jail.

## Analysis

Arensman argues that the trial court abused its discretion by denying his motion to dismiss and finding that he was required to register as a sex offender. We review a trial court's decision regarding a motion to dismiss a charging information for an abuse of discretion. State v. Davis, 898 N.E.2d 281, 285 (Ind. 2008). Courts have the inherent authority to dismiss criminal charges where the prosecution of such charges would violate a defendant's constitutional rights. Id.

According to Arensman, the requirement that he register as a sex offender violates the Indiana Constitution's prohibition against ex post facto laws and our supreme court's holding in Wallace v. State, 905 N.E.2d 371, 374-376 (Ind. 2009). The State concedes that, based on Wallace, Arensman's conviction must be reversed.

In Wallace, the defendant was charged with Class B felony child molesting and Class C felony child molesting in 1988. He pled guilty in 1989 to Class C felony child molesting, and he completed his probation in 1992. Two years later, the Indiana Legislature passed the Indiana Sex Offender Registration Act ("the Act"), which required probationers and parolees convicted of child molesting on or after June 30, 1994 to register as sex offenders. In 2001, the Act was amended to require all offenders convicted of certain sex offenses to register as sex offenders regardless of conviction date. In 2003, Wallace was charged with Class D felony failure to register as a sex offender, and although he filed a motion to dismiss his charges based in part on an ex post facto argument, he was found guilty.

On appeal, our supreme court addressed whether Wallace's registration requirement violated the Indiana Constitution's ex post facto clause. The Indiana Constitution provides that "[n]o ex post facto law . . . shall ever be passed." Ind. Const. art. I, § 24. The ex post facto prohibition forbids any law that imposes a punishment for an act that was not punishable at the time it was committed or that imposes additional punishment to the punishment then prescribed. Wallace, 905 N.E.2d at 377. "The underlying purpose of the Ex Post Facto Clause is to give effect to the fundamental principle that persons have a right to fair warning of that conduct which will give rise to criminal penalties." Id. (citing Armstrong v. State, 848 N.E.2d 1088, 1093 (Ind. 2006), cert. denied).

Our supreme court concluded the application of the Act to the defendant violated the prohibition on ex post facto laws contained in the Indiana Constitution because it "impose[d] burdens that have the effect of adding punishment beyond that which could have been imposed when his crime was committed." Id. at 384. Consequently, our supreme court reversed his conviction for failure to register as a sex offender.

Here, the State concedes that Arensman's offenses were committed "before the registration requirement attached to sex offenders under" the Act. Appellee's Br. at 3. Under Wallace, the date that the offense is committed is controlling. Requiring Arensman to register as a sex offender violates the Indiana Constitution's prohibition

against ex post facto laws. Therefore, the State concedes that Arensman's conviction for failure to register as a sex offender under the Act must be reversed.<sup>1</sup>

### **Conclusion**

The State concedes that requiring Arensman to register as a sex offender violates the Indiana Constitution's prohibition against ex post facto laws because he committed his offenses prior to the enactment of the Act. The trial court abused its discretion by denying Arensman's motion to dismiss, and we reverse his conviction for failure to register as a sex offender.

Reversed.

BAKER, C.J., and VAIDIK, J., concur.

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<sup>1</sup> According to the State, Arensman was also required to register as a sex offender as a condition of parole. However, the State charged Arensman with failure to register under the Act and did not pursue an allegation that Arensman violated a condition of his parole. We express no opinion as to whether the requirement to register as a sex offender as a condition of parole would violate the prohibition against ex post facto laws.