

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-113
SKS - KEN-11/16/2006

JOHN DOE,

Plaintiff

v.

**DECISION ON MOTIONS
TO DISMISS**

EVERT FOWLE, COL. CRAIG
POULIN, and EVERETT B.
FLANNERY, JR., in their
official capacities,

Defendants

DONALD L. GARBRECHT
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JAN 16 2007

This matter comes before the court on motions to dismiss filed collectively by defendants Fowle and Poulin and filed separately by defendant Flannery. Earlier in this litigation, the plaintiff requested a temporary restraining order to prevent the defendants from enforcing the Sex Offender Registration and Notification Act of 1999 ("SORNA") (34-A M.R.S.A. §§ 11201-11256). That request was denied because the plaintiff failed to demonstrate a likelihood of success on the merits. Despite a multi-faceted attack, the plaintiff still fails to convince the court on the merits. The court has considered as true all of the facts pled by the plaintiff. However, the defendants have convinced the court that they are entitled to dismissal of the plaintiff's claims as a matter of law.

Background

With one exception that does not affect these motions,¹ the background set forth in the court's decision on the plaintiff's application for temporary restraining order is incorporated herein.

¹ The original discussion of background noted that plaintiff Doe had not yet registered under SORNA as of the date of that order, May 4, 2006. The court was informed by correspondence from counsel for the

Discussion

In its May 4, 2006 order, this court stated that none of the leading cases appear to support the plaintiff's arguments, and that continues to be the case. A leading case in Maine is *State v. Haskell*, 2001 ME 154; 784 A.2d 4, in which the Supreme Judicial Court noted, "Sex offender registration and notification laws have been the subject of much litigation and have been overwhelmingly sustained as constitutional by the majority of courts, n.12, including the United States District Court for the District of Maine, *see Corbin v. Chitwood*, 145 F.Supp.2d 92, 99 (D.Me. 2001)." The footnote referenced in the quote sets forth a very extensive list of some of the cases, noting the variety of constitutional challenges which have failed in each case. Faced with this mountain of precedent against him, the plaintiff attempts to cast his arguments as uniquely different or that the courts are simply wrong.

Discussion

As the moving parties, the defendants support the motions by addressing each of the counts in the plaintiff's complaint. The arguments begin by noting that SORNA has the presumption of constitutionality, having been duly enacted by the Maine Legislature. In the face of this presumption, the plaintiff has asserted several constitutional arguments.

First, the plaintiff argues that the registration requirement, at least as applied to him, violates constitutional requirements of Due Process in that he was not aware of his ultimate registration requirement at the time he entered his guilty plea. Plaintiff states that he is not challenging the statute on an *ex-post facto* basis, yet that is the usual vehicle for addressing this type of problem. Our Supreme Judicial Court has already indicated

State defendants that prior to oral argument on September 7, 2006, Doe had registered and was placed in the Registry. Since Doe's name could always be removed from the Registry if successful in this litigation, the fact of registration does not render the case moot.

that SORNA does not pose *ex-post facto* problems. *State v. Haskell*, 2001 ME 154, 784 A.2d 4. The Due Process argument falters because of the mistaken belief that the requirement of registration is part of a criminal punishment. On the contrary, it is clear from *Haskell* that there are legitimate non-punitive goals of SORNA which are collateral consequences of the plaintiff's conviction as a sex offender, and do not trigger Due Process issues.

Plaintiff's second constitutional argument is that the court should hold the statute void for vagueness. However, the court finds nothing particularly vague or complex about the statutory requirements. It is clear that the duty to register is initiated by a conviction for a sex offense, and the type of registration – 10 year versus lifetime – simply depends upon the specific statutory identification of the offense. The court finds no vagueness.

Next, plaintiff argues his right to a civil jury trial for determination of certain facts necessary to determine the category of the offense and to assess the plaintiff's risk of reoffending. Although the plaintiff correctly cites the Maine Constitution, Art. I, § 20, concerning the right to civil jury trials, the section is irrelevant because there is nothing for a jury to find under SORNA. The statute requires the court to make a determination of the classification of the offender – 10 years versus lifetime – but that determination is made solely on the basis of the section of the criminal statutes under which the offender was convicted. Determining the applicable statute is a legal determination particularly within the province of the court and is not an issue for the jury. Further, the Department of Corrections is required to conduct a risk assessment (34-A M.R.S.A. § 11253), but that assessment is for purposes other than determining whether a sex offender is required to register. As stated before, the sole trigger for applying the registration requirements is conviction of a sexual offense and the risk of recidivism is

irrelevant to this issue. Finally, to the extent that the sex offender has a right to a jury trial, it is the criminal trial which was held or waived prior to his conviction for the specific offense. Since the fact of conviction triggers the responsibility to register, no further trial is necessary.

Plaintiff's next constitutional argument is that the forced registration scheme with its two class registration requirements violates the plaintiff's right to constitutional Equal Protection since it is done without risk assessment. The difference between the classes depends on the seriousness of the crime. Those convicted of less serious crime have to register for 10 years; more serious, for the rest of their lives. There is a rational relationship between this differentiation and the legislative goal of protecting vulnerable individuals from convicted sex offenders. The Legislature could have concluded that an individual who commits a more serious sexual offense poses a greater risk of further offending, and therefore should be required to register for the longer period of time so that the public is more aware of the offender's presence. This is a rational and legitimate legislative conclusion sufficient to overcome any Equal Protection arguments.

Another constitutional argument by the plaintiff is that SORNA violates substantive due process in that it violates one of the plaintiff's protected liberty interests, the right to privacy. Maine Constitution, Art. I, § 1. Assuming that Article I, §1 does include such a privacy right, the question is whether that right constitutionally prevents public safety authorities from disseminating information concerning the whereabouts of convicted sexual offenders. The fact of the conviction is already within the well-recognized realm of public information. Adding identifying information to make the public safety purpose of the legislation effective does not breach any fundamental privacy right either, or if it does, it is necessary to protect public welfare.

A registration system which is limited to the offender's name and the bare fact of conviction of a sex offense would seriously hamper its effectiveness.

With regard to the plaintiff's argument that enforcement of the registration statute violates 42 U.S.C. § 1983 as a violation of the plaintiff's constitutional rights, the court concludes simply that no such constitutional violation has been proved. Furthermore, as the section 1983 argument applies to defendant Flannery, the Sheriff cannot be held liable as a county law enforcement official for enforcing a State law.

Finally, a few words about the plaintiff's argument that his claims are unique and matters of first impression. In support of this claim, the plaintiff points to the "coercive" effects he believes SORNA has. These effects include the payment of an annual fee and the disclosure of new information concerning address, employment and other personal identifying facts which go beyond the simple fact of conviction. While these are the statutory requirements, the court finds no constitutional violation here either. Payment of the fee is simply to help offset the public expense of the registration program, and virtually every Sex Offender Registry statute which has been upheld requires filing of similar information. As noted previously, the whole purpose of the program is to give convicted sex offenders a higher public recognition in the interest of improved public safety.

For the reasons stated above, the entry will be:

The defendants' motions to dismiss are GRANTED; the plaintiff's complaint is DISMISSED as a matter of law, with prejudice, for failure to state a claim upon which relief may be granted.

Dated: November 16, 2006



S. Kirk Studstrup
Justice, Superior Court

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SUPERIOR COURT
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Docket No AUGSC-CV-2006-00113

DOCKET RECORD

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04/28/2006 Party(s): JOHN DOE
ATTORNEY - RETAINED ENTERED ON 04/26/2006
Plaintiff's Attorney: JAMES E MITCHELL

04/28/2006 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 04/28/2006
Plaintiff's Attorney: JAMES E MITCHELL
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