

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN RAY BLOCKSOM,

Defendant-Appellant.

UNPUBLISHED

October 21, 2008

No. 277214

Dickinson Circuit Court

LC No. 06-003648-FC

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant was convicted by a district court jury of indecent exposure, MCL 750.335a, and was thereafter convicted by a circuit court jury of being a sexually delinquent person, MCL 767.61a. Defendant was sentenced to 9 to 20 years' imprisonment. He appeals as of right. Because defendant received the procedural protections afforded to those charged as sexual delinquent persons and because the sentencing court did not engage in impermissible judicial fact-finding, we affirm.

I

Defendant was charged with indecent exposure and with being a sexually delinquent person at the time of the offense. Following a jury trial in district court, defendant was found guilty of indecent exposure. The district court then bound defendant over to circuit court for trial on the sexual delinquency charge. Defendant moved for dismissal, arguing that MCL 767.61a required the sexual delinquency trial to be held in the same court, and before the same judge, as the predicate charge. The circuit court denied the motion. Defendant was thereafter convicted of being a sexually delinquent person.

II

On appeal, defendant argues that the circuit court lacked jurisdiction over the sexual delinquency charge because the indecent exposure and sexual delinquency charges were required to be tried in the same court, before the same judge.

Sexual delinquency proceedings are governed by MCL 767.61a, which provides, in pertinent part:

In any prosecution for an offense committed by a sexually delinquent person for which may be imposed an alternate sentence to imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life, the indictment shall charge the offense and may also charge that the defendant was, at the time said offense was committed, a sexually delinquent person. . . . Upon a verdict of guilty to the first charge or to both charges or upon a plea of guilty to the first charge or to both charges the court may impose any punishment provided by law for such offense.

In construing a statute, this Court must give effect to the Legislature's intent as expressed by the plain language of the statute. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). When statutory language is unambiguous, no further judicial construction is permitted. *Id.* A court must not read anything into a statute that is not within the manifest intention of the Legislature as gathered from the act itself; rather, the Legislature is presumed to have intended the meaning it plainly expressed. *People v St John*, 230 Mich App 644, 648; 585 NW2d 849 (1998).

No statutory authority expressly precluded the bifurcated proceedings here. A district court has criminal jurisdiction over misdemeanors "punishable by a fine or imprisonment not exceeding 1 year, or both." MCL 600.8311(a). Because indecent exposure is a misdemeanor punishable by imprisonment for not more than one year, MCL 750.335a, it is properly within the jurisdiction of the district court. Conversely, the sexual delinquency charge exposed defendant to a possible penalty of life imprisonment, MCL 767.61a, bringing it outside the district court's limited jurisdiction. Accordingly, the circuit court had jurisdiction to adjudicate the sexual delinquency charge after completion of the indecent exposure trial in the district court.

Defendant relies on *People v Helzer*, 404 Mich 410; 273 NW2d 44 (1978), as support for his argument that he was improperly convicted of being a sexually delinquent person in circuit court. In *Helzer*, however, the Court was not presented with the issue whether bifurcated district and circuit court proceedings are permissible when a defendant is charged with a misdemeanor offense that is within the jurisdiction of the district court and is also charged with being a sexually delinquent person. Rather, the defendant in *Helzer* was charged with gross indecency, a five-year felony, MCL 750.338, and with being a sexually delinquent person. The issues presented in that case were whether it was proper to try the defendant separately on each offense, before the *same* jury, and whether, because the sexual delinquency charge carried a possible penalty of life imprisonment, the defendant was entitled to 20 peremptory challenges. The Court held that a defendant who is charged with being a sexually delinquent person is entitled to have a *separate* jury decide the sexual delinquency charge and is entitled to 20 peremptory challenges in the empaneling of that jury. *Id.* at 424. It was within this context that the Court commented that "the second jury should be empaneled before the same trial judge immediately after conviction on the principal charge." *Id.* Although this statement describes the procedure to be followed in a case involving two charges before the circuit court, it does not address the situation presented here, where the principal charge is within the district court's jurisdiction. Accordingly, we conclude that *Helzer* is inapposite.

Defendant also relies on *People v Winford*, 404 Mich 400, 408 n 11; 273 NW2d 968 (1978), in which the Supreme Court stated, in a footnote:

Where the prosecutor decides to charge defendant in the original indictment or information with sexual delinquency, he should bring the misdemeanor prosecution on the principal offense of indecent exposure in circuit court under the statute providing concurrent jurisdiction with district court. See MCL 767.1. If the prosecutor initially charges only indecent exposure and before trial decides to amend and charge sexual delinquency as well, then the entire proceedings would be subject to transfer to circuit court at that time.

The issue presented in *Winford* was whether it was proper to charge the defendant with being a sexually delinquent person after trial on the principal offense. The Court held that, when charging a defendant with a principal offense, MCL 767.61a gives a prosecutor discretion to also charge the defendant with being a sexually delinquent person, but “no authority exists in this statutory provision, or in any other, allowing the prosecutor to file an information subsequent to trial on the principal offense.” *Id.* at 407-408. Although the above-quoted footnote indicates that it would have been proper to bring the principal indecent exposure charge in circuit court, it does not indicate, nor does it necessarily follow, that the district court was without jurisdiction over that charge.

More significantly, however, defendant here does not seek relief from his indecent exposure conviction. Rather, he only seeks to have his sexual delinquency conviction vacated on the basis that the circuit court lacked jurisdiction over that offense. As previously explained, and as indicated in both *Helzer* and *Winford*, jurisdiction over that offense was properly with the circuit court. Thus, to the extent there was any error in this case, the error involved bringing the principal indecent exposure charge in district court, rather than circuit court. But because defendant never challenged the propriety of that charge in district court, he failed to preserve any claim of error in relation to the district court proceedings. Accordingly, appellate relief is not available unless defendant’s substantial rights were affected. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Even if there was a procedural irregularity, defendant was afforded the procedural protections established in *Helzer* and *Winford*. He was charged with being a sexually delinquent person in the same information that charged him with the principal offense. *Winford, supra*. Additionally, a separate jury was empaneled to decide the sexual delinquency charge. *Helzer, supra*. On appeal, defendant does not make any attempt to explain how he was prejudiced by the procedure used in this case. Thus, defendant has failed to show that his substantial rights were affected by any procedural irregularity that may have occurred. Accordingly, appellate relief is not warranted.

III

Defendant also argues that the sentencing guidelines were improperly scored because none of the sentencing court’s scoring decisions were predicated on facts found by the jury, thereby violating his Sixth Amendment right to jury. In support of his argument, defendant relies on *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), in which the United States Supreme Court held that it is a violation of the Sixth Amendment for a sentencing court to increase a defendant’s maximum sentence based on facts not found by a jury. Our Supreme Court has held that *Blakely* does not apply to Michigan’s indeterminate sentencing scheme, in which a defendant’s maximum sentence is fixed by statute, and the sentencing guidelines only affect the minimum sentence. *People v Drohan*, 475 Mich 140, 159-164; 715 NW2d 778 (2006). Thus, there is no merit to defendant’s argument.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra