This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1546

Martin Matthew Lange,
Appellant,

vs.

Drew Evans, Superintendent,
Bureau of Criminal Apprehension,
Respondent.

Filed July 5, 2022
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CV-20-4380

Bradford Colbert, Mitchell S. Zillman (certified student attorney), Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The Minnesota Bureau of Criminal Apprehension (BCA) informed Martin Matthew Lange that he is required to register as a predatory offender based on an incident that occurred almost two decades earlier. Lange has complied with the BCA's directive but

has filed this lawsuit against the BCA superintendent to challenge the registration requirement. The district court granted the BCA superintendent's motion for summary judgment. We conclude that, in light of the undisputed facts, Lange is not entitled to relief on any of his claims. Therefore, we affirm.

FACTS

Lange's obligation to register as a predatory offender is based on an incident that occurred 22 years ago. On October 13, 2000, Lange allegedly pushed his girlfriend onto a bed, held her down, and attempted to remove her clothes. During a struggle, Lange struck his girlfriend on her chin, leaving a bruise. Lange's girlfriend's mother called 911. After law-enforcement officers arrived, Lange admitted that he had struck his girlfriend.

Three days later, the state charged Lange with attempted fourth-degree criminal sexual conduct, in violation of Minn. Stat. § 609.345, subds. 1(c), 2 (2000), and domestic assault, in violation of Minn. Stat. § 609.2242, subd. 1(2) (2000).

In early May 2001, the state filed another complaint in a new case concerning the same incident. The state charged Lange with fifth-degree criminal sexual conduct, in violation of Minn. Stat. § 609.3451, subd. 1(1) (2000). The probable-cause statement of the second complaint is identical to that of the first complaint.

In late May 2001, the state and Lange entered into a plea agreement. Lange agreed to plead guilty to fifth-degree criminal sexual conduct in the second case, and the parties agreed that he would be sentenced to jail for a period equal to the time he had spent in pre-trial detention and thereafter would be placed on probation for two years. It is undisputed that Lange pleaded guilty to fifth-degree criminal sexual conduct in the second case, but

the transcript of the plea hearing is not in the record of this case because it has not been retained. Approximately one week after his guilty plea in the second case, the state dismissed the complaint in the first case. *See* Minn. R. Crim. P. 30.01.

In May 2004, Lange admitted to a probation violation. The district court ordered him to serve 75 days in jail. After Lange completed his jail time, the district court discharged him from probation, ordered supervision to cease, and closed the file.

In August 2016, the BCA determined that Lange is required to register as a predatory offender on the ground that he had been charged with fourth-degree criminal sexual conduct in a case that arose out of the same set of circumstances as his conviction of fifth-degree criminal sexual conduct. The BCA successively mailed three letters to Lange's last-known address to inform him that he is required to register. Each letter was returned to the BCA as undeliverable. The BCA suspended its efforts to contact Lange.

In November 2018, Lange was arrested in Dakota County on three outstanding warrants and was detained. The BCA then informed Lange of his registration requirement, and Lange completed a registration form. Lange has complied with his registration requirement since November 2018. Lange was released from jail in January 2019. The BCA will require him to register as a predatory offender until January 2029.

In June 2020, Lange commenced this action against Drew Evans, the superintendent of the BCA. Lange sought an injunction prohibiting Evans from requiring him to register as a predatory offender. He asserted six legal theories: (1) procedural due process, (2) substantive due process, (3) cruel and unusual punishment, (4) laches, (5) a claim based on the predatory-offender statute, and (6) promissory estoppel.

In July 2021, the parties filed cross-motions for summary judgment. Lange executed an affidavit in which he stated that, at the time of his guilty plea in 2001, he understood that he would not be required to register as a sex offender or predatory offender as a consequence of his guilty plea, that the absence of a registration requirement was "an important part of the plea agreement," and that he did not learn of his registration requirement until 2018. In September 2021, the district court granted Evans's motion for summary judgment and denied Lange's motion for summary judgment. Lange appeals.

DECISION

Lange argues that, with respect to five of the six claims pleaded in his complaint, the district court erred by granting Evans's motion for summary judgment. A district court must grant a motion for summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We apply a *de novo* standard of review to the district court's legal conclusions on summary judgment and view the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I. Statutory Requirements

Lange first argues that the district court erred by granting summary judgment to Evans on Lange's claim based on the predatory-offender statute. Lange contends that the statute does not require him to register because the state dismissed the complaint that

alleged fourth-degree criminal sexual conduct, which is the offense that requires registration.

A person must register as a predatory offender if "the person was charged with . . . a felony violation of . . . any of the following [offenses], and convicted of . . . that offense or another offense arising out of the same set of circumstances . . . ." Minn. Stat. § 243.166, subd. 1b(a)(1) (2020). Fourth-degree criminal sexual conduct is one of the enumerated offenses for which registration is required. *Id.*, subd. 1b(a)(1)(iii). Registration is required only if the enumerated offense is supported by probable cause. *State v. Lopez*, 778 N.W.2d 700, 704-05 (Minn. 2010).

The district court stated in the background section of its memorandum that, with respect to the first criminal case, "[o]n February 14, 2001, at the contested omnibus hearing, [Lange] did not challenge probable cause, which was found." In analyzing Lange's statutory claim, the district court stated further that "there was probable cause to support the original charges" and that "there was a contested omnibus hearing and [Lange] elected not to challenge probable cause." Lange does not challenge these factual statements on appeal. The district court concluded that Lange's plea agreement did not "extinguish the probable cause for the fourth degree charge." Accordingly, the district court determined that the BCA properly required Lange to register as a predatory offender.

Lange contends, "Because the State dismissed the complaint that contained the predatory offense, the statutory requirement that Lange be 'charged' with a predatory offense is not satisfied." Lange relies on *State v. Haukos*, 847 N.W.2d 270 (Minn. App. 2014), in which this court reiterated that "a qualifying charge may trigger the registration

requirement under Minn. Stat. § 243.166 only if it is supported by probable cause," *id.* at 274, and, in addition, stated that "it is the judiciary's determination of probable cause, not the prosecutor's bringing of a charge, that triggers the statutory basis for sex-offender registration," *id.* at 273. The offender in *Haukos* challenged the existence of probable cause after his trial but before sentencing and entry of final judgment. *Id.* at 272-73. The district court found that there was probable cause to support the charge alleging the enumerated offense, and this court affirmed that determination. *Id.* at 272-75. This case is different from *Haukos* because Lange did not challenge the existence of probable cause while his first criminal case was pending, between October 2000 and June 2001. Rather, Lange challenged it for the first time in this case, and he argues that this court should deem probable cause to be absent as a matter of law merely because the charge alleging an enumerated offense was dismissed.

Lange's argument is inconsistent with *Lopez*, in which the supreme court inquired into whether there was probable cause to support a charge that had been dismissed by the state. *See* 778 N.W.2d at 703-04. In addition, Lange's argument is inconsistent with this court's opinion in *Thibodeaux v. Evans*, 926 N.W.2d 602 (Minn. App. 2019), *rev. denied* (Minn. June 26, 2019), *cert. denied*, 140 S. Ct. 1136 (2020), which is a more-similar case. The state charged Thibodeaux twice, with two complaints containing identical probable-cause statements. *Id.* at 605. Thibodeaux pleaded guilty to an offense that did not require registration, and the state dismissed an offense that required registration. *Id.* Twenty years later, Thibodeaux challenged his registration requirement in an action against the BCA superintendent and made an argument that is substantially similar to Lange's argument—

that the enumerated offense was not supported by probable cause because it had been dismissed by the state pursuant to a plea agreement. *Id.* at 605. We noted that, during the pendency of the two criminal cases, "the district court determined that the charge was supported by probable cause" and, accordingly, concluded that "Thibodeaux was charged with a registration offense and that charge was supported by probable cause." *Id.* at 606.

We are bound by our opinion in *Thibodeaux*, which concluded that the mere dismissal of a charge alleging an offense that requires registration does not compel the conclusion that the charge was not supported by probable cause. *See id*. Accordingly, in light of both *Lopez* and *Thibodeaux*, Lange is required by statute to register as a predatory offender because he was charged with a registrable offense and convicted of an offense arising out of the same set of circumstances.

Thus, the district court did not err by granting Evans's motion for summary judgment on Lange's statutory claim.

II. Promissory Estoppel

Lange next argues that the district court erred by granting summary judgment to Evans on Lange's promissory-estoppel claim.

"Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact." *Javinsky v. Commissioner of Admin.*, 725 N.W.2d 393, 398 (Minn. App. 2007). To establish a claim of promissory estoppel, a plaintiff must prove that (1) "a clear and definite promise was made," (2) "the promisor intended to induce reliance and the promisee in fact relied to his or her detriment," and (3) "the promise must be enforced to prevent injustice." *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 746

(Minn. 2000). "Promissory estoppel . . . may be applied against the state to the extent that justice requires." *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 564 (Minn. App. 2012) (quotation omitted).

The district court determined that Evans was not estopped from requiring Lange to register because neither Evans nor the BCA had made the promise on which Lange's claim is based and because the BCA is not in privity with the prosecutor who allegedly made the promise. In essence, the district court concluded that Lange did not have evidence sufficient to prove the second element of a promissory-estoppel claim.

On appeal, Lange contends that his evidence is capable of satisfying all elements of a promissory estoppel claim and that the district court erred in its privity analysis.[1] It is undisputed that the prosecutor who allegedly made a promise to Lange was not employed by the BCA. Consequently, Lange's claim depends on the premise that a promissory-estoppel claim may be asserted against a person who is in privity with the promisor. But Lange has cited no caselaw for that proposition. Lange cites *Maitland v. University of Minnesota*, 43 F.3d 357 (8th Cir. 1994), in which the United States Court of Appeals for the Eighth Circuit reviewed a district court decision that a plaintiff's claims were barred by "general principles of estoppel" based on a prior case to which the plaintiff had not been a party. *Id.* at 363-64. But the *Maitland* opinion did not apply the law of promissory estoppel

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[1]The district court did not expressly determine whether Lange could establish the first element of a promissory claim. We question whether Lange has evidence that "a clear and definite promise was made." *See Martens*, 616 N.W.2d at 746. In his affidavit, Lange states merely that he "pled guilty with the understanding that [he] would not have to register as a predatory offender." But nowhere in his affidavit does he specifically recite or describe the promise that allegedly was made by the prosecutor.

or the concept of privity. *Id.* In any event, a federal court's opinion does not bind this court on a matter of state law. *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 330 (Minn. 2000); *Lamere v. St. Jude Med., Inc.*, 827 N.W.2d 782, 788 n.1 (Minn. App. 2013); *In re Estate of Eckley*, 780 N.W.2d 407, 411 (Minn. App. 2010). In short, Lange's claim is not viable because there is no Minnesota precedent applying the concept of privity to a promissory-estoppel claim.

Furthermore, even if the concept of privity could be invoked in aid of a promissory-estoppel claim, Lange could not establish privity between the prosecutor and the BCA. In *State v. Lemmer*, 736 N.W.2d 650 (Minn. 2007), the supreme court held that, for purposes of collateral estoppel, the state, which appeared in a criminal case through a county attorney's office, was not in privity with the commissioner of the department of public safety (DPS), which appeared in a related civil case. *Id.* at 659-63. The *Lemmer* court recognized that the state and DPS have "a connection" but placed more emphasis on their "differing functions and responsibilities" and concluded that there was no privity between them. *Id.* at 661-63. As in *Lemmer*, the functions and responsibilities of the BCA are distinct from that of the state and a county attorney's office. The BCA, which is a division of DPS, performs "such functions and duties as relate to statewide and nationwide crime information systems," including the maintenance of the registered predatory offender database. Minn. Stat. § 299C.01, .093 (2020). County attorneys and their assistants, in contrast, prosecute felonies and other crimes. Minn. Stat. § 388.051, subd. 1(3) (2020). As in *Lemmer*, there is no privity between the BCA and the prosecutor who represented the state in Lange's first criminal case and allegedly made a promise to Lange.

Thus, the district court did not err by granting Evans's motion for summary judgment on Lange's claim of promissory estoppel.

III. Laches

Lange next argues that the district court erred by granting summary judgment to Evans on Lange's claim of laches. He contends that the BCA should be barred by the doctrine of laches from imposing a registration requirement on him many years after the conclusion of the two criminal cases arising out of the October 2000 incident.

"Laches is an equitable doctrine applied to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Monaghen v. Simon*, 888 N.W.2d 324, 328 (Minn. 2016) (quotation omitted). In deciding whether to apply laches, a court must determine "whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for." *Carlson v. Ritchie*, 830 N.W.2d 887, 891 (Minn. 2013) (quotation omitted).

The district court rejected Lange's laches claim for two reasons. First, the district court reasoned that the doctrine of laches does not apply to this case. Second, the district court reasoned that, even if the doctrine were to apply, it would not prevent Evans from requiring Lange to register on the ground that Lange was not prejudiced by the BCA's delay because Lange's multiple subsequent incarcerations require him to continue to register. *See* Minn. Stat. § 243.166, subd. 6(c).

On appeal, Lange does not directly challenge either of the district court's reasons. In all of the cases cited by Lange, laches was asserted as a defense. *See Clark v. Reddick*,

791 N.W.2d 292, 294 (Minn. 2010); *Briggs v. Buzzell*, 204 N.W. 548, 549 (Minn. 1925); *Harr v. City of Edina*, 541 N.W.2d 603, 606 (Minn. App. 1996). Lange does not cite any caselaw in which laches was recognized as a free-standing cause of action. Accordingly, the district court correctly concluded that the doctrine of laches does not apply.

Thus, the district court did not err by granting Evans's motion for summary judgment on Lange's claim of laches.

IV. Due Process

Lange last argues that the district court erred by granting summary judgment to Evans on Lange's claims that the registration requirement violates his right to due process. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from depriving a person of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Lange asserts various types of due-process theories. We will consider each in turn.

A. Procedural Due Process

Lange argues that the district court erred by granting summary judgment to Evans on Lange's claim that he was denied his right to procedural due process.

If a procedural-due-process claim is asserted by a person required to register as a predatory offender, the applicable caselaw is found in *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999), and *Werlich v. Schnell*, 958 N.W.2d 354 (Minn. 2021). Two questions arise: "First, is there a liberty or property interest with which the state has interfered?" "Second, were the procedures used constitutionally sufficient?" *Werlich*, 958 N.W.2d at 371-72 (quotation and citation omitted). A liberty interest could be based on a fundamental right

or on a state law that creates a liberty interest. *Id.* at 372. A liberty interest also could be based on the "stigma-plus" doctrine, by which "a liberty interest is implicated when a loss of reputation is coupled with the loss of some other tangible interest." *Id.* (quotation omitted).

Lange seeks to establish a liberty interest under the stigma-plus doctrine. In *Boutin*, the supreme court concluded that being labeled a predatory offender resulted in a loss of reputation, which was a recognized stigma. 591 N.W.2d at 718. But the supreme court also concluded that "there is no recognizable interest in being free from having to update address information" and that the "minimal burden" of the then-in-effect registration requirements did not amount to a loss of "some other tangible interest." *Id.* Thus, in *Boutin* the "plus" requirement was not satisfied, and the predatory-offender-registration statute was not facially unconstitutional. *Id.* at 718-19. The supreme court recently acknowledged, however, that the predatory-offender-registration statute has since been amended and that *Boutin* does not foreclose all constitutional challenges. *Werlich*, 958 N.W.2d at 361-62. In *Werlich*, the appellant, who was required to register based on a dismissed enumerated offense, asserted six types of liberty interests. *Id.* at 358-59, 363. But the *Werlich* court recognized only one liberty interest: the fundamental right to parent a child. *Id.* at 371-73.

Lange contends that, in light of the more burdensome requirements discussed in *Werlich*, a person would have a protectible liberty interest if he or she lacks a primary address or works or attends school away from home. But Lange has not alleged that he is such a person or that he has suffered any such consequences. He states in his affidavit that

the registration requirement is harmful to him because he believes that his registration requirement will hinder his future applications for jobs and housing and his interest in travel. But he does not explain with specificity how the additional requirements imposed since *Boutin* have hindered or might hinder his applications for jobs and housing. *See Bedeau v. Evans*, 926 N.W.2d 425, 433 (Minn. App. 2019) (concluding that appellant did not "provide sufficient evidence to suggest that the registration requirement was the primary cause of her difficulties" in finding housing and employment). With respect to his interest in travel, Lange asserts only that, in one municipality in Minnesota, he may not stay at another person's home for more than 14 days if the home is near a school or child-care facility. That example does not demonstrate that Lange's registration requirement is punitive or will "result in a loss of a recognizable interest." *See Werlich*, 958 N.W.2d at 362 (quotation omitted). Lange also contends that his registration requirement will adversely affect his ability to obtain health care. But we rejected that argument in *Bedeau*, and Lange does not explain why he is more likely to be denied health care than the appellant in that case. *See* 926 N.W.2d at 433. Lange has not established a protectible liberty interest.

Even if Lange could establish a protectible liberty interest, he could not establish that he has not received the process that is due. He would be entitled to a hearing and an opportunity to be heard. *See id.* Lange had an opportunity in 2000 and 2001, in the first criminal case, to challenge the existence of probable cause supporting the enumerated offense. He did not do so. "By failing to challenge probable cause," Lange "waived his opportunity to provide an evidentiary basis to supplement the information found in the

complaint for purposes of a probable-cause challenge." *See Haukos*, 847 N.W.2d at 274 n.4. Lange has received the process that is due.

B. Substantive Due Process

In connection with his claim of laches, Lange argues that the district court erred by granting summary judgment to Evans on Lange's claim that he was denied his right to substantive due process.

If a substantive-due-process claim is asserted by a person required to register as a predatory offender, the court's analysis depends on whether a fundamental right is implicated. *Werlich*, 958 N.W.2d at 366. If so, strict scrutiny applies. *Id.* If not, "the plaintiff must show that the statute does not 'provide a reasonable means to a permissible objective.'" *Id.* (quoting *Boutin*, 591 N.W.2d at 716).

The district court determined that Lange's registration requirement does not violate his substantive-due-process rights because it is a collateral consequence of his conviction and sentence, not a part of the sentence itself. Lange contends that the BCA's delay in informing him of his registration requirement violated his right to substantive due process on the ground that it denied him finality in sentencing. To support this argument, Lange cites *State v. Calmes*, 632 N.W.2d 641 (Minn. 2001), in which the appellant challenged a five-year term of conditional release that was imposed while he was on supervised release. *Id.* at 644-45. The supreme court stated that an offender's due-process rights "may be violated when a defendant's sentence is enhanced after the defendant has developed a crystallized expectation of finality in the earlier sentence." *Id.* at 645.

The *Calmes* opinion does not apply in this case because Lange's registration requirement is not part of his criminal sentence. Rather, Lange's registration requirement is a civil regulatory matter that is not punitive. *See Boutin*, 591 N.W.2d at 717. Because the registration requirement is a civil regulatory matter, it is a collateral consequence of a sentence rather than part of the sentence itself. *Taylor v. State*, 887 N.W.2d 821, 826 (Minn. 2016); *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn. 2002). Lange has identified no other fundamental right that may be affected by the BCA's delay in informing him of his registration requirement. Accordingly, Lange does not have a fundamental right on which to base a substantive-due-process claim.

The remaining question is whether the registration requirement is "a reasonable means to a permissible objective." *See Werlich*, 958 N.W.2d at 366 (quotation omitted). In *Boutin*, the supreme court stated that "the primary purpose of the [predatory-offender-registration] statute is to create an offender registry to assist law enforcement with investigations." 591 N.W.2d at 717. The *Boutin* court concluded that maintaining a registry "is rationally related to the legitimate state interest of solving crimes." *Id.* at 718. Lange has not argued otherwise. The BCA has not violated Lange's right to substantive due process.

C. Right to Enforcement of Plea Agreement

In connection with his claim of promissory estoppel, Lange contends that, to vindicate his constitutional right to due process, he is entitled to specific performance of the state's alleged promise that he would not be required to register. He cites *Santobello v. New York*, 404 U.S. 257 (1971), in which the United States Supreme Court held that,

"when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 262.

Numerous Minnesota appellate opinions have cited and applied *Santobello*. Indeed, the supreme court has applied *Santobello* in holding that if a criminal offender pleaded guilty based on a promise made in a plea agreement, and if there is a subsequent breach of the plea agreement, the offender may be entitled to plea withdrawal or specific performance of the plea agreement. *See James v. State*, 699 N.W.2d 723, 730 (Minn. 2005); *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). These remedies are available to a criminal offender in a post-conviction action. *See* Minn. Stat. § 590.01, subd. 2 (2020). A post-conviction action must be commenced within two years of a conviction, *id.*, subd. 4(a), but there are exceptions that might allow a post-conviction petition to be filed after that two-year period, *id.*, subd. 4(b)-(c).

Lange has not attempted to enforce the prosecutor's alleged promise in a post-conviction action. It appears that he has not exhausted his potential post-conviction remedies. Lange does not cite any caselaw for the proposition that a person may seek enforcement of a plea agreement under *Santobello* in a civil action. Because Minnesota law allows for the relief described in *Santobello* in a post-conviction action, due process does not require this court to award the same type of relief on a claim of promissory estoppel in a civil case such as this one.

D. Right to Not be Actively Misled

In connection with his claim of promissory estoppel, Lange also contends that, to vindicate his constitutional right to due process, he is entitled to the remedy of specific performance on the ground that an agent of the state actively misrepresented to him that he would not be required to register. He cites *McDonnell v. Commissioner of Public Safety*, 473 N.W.2d 848 (Minn. 1991), in which the supreme court stated that "due process does not permit those who are perceived to speak for the state to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations." *Id.* at 854 (citing *Raley v. Ohio*, 360 U.S. 423 (1959)). Lange did not present this argument to the district court. Thus, the argument has been forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

In sum, the district court did not err by granting Evans's motion for summary judgment.

Affirmed.