STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1127

Ronald Marlyn Wolbert, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 16, 2010
Affirmed
Toussaint, Chief Judge

Mille Lacs County District Court
File No. 48-K5-93-000768

Ronald Marlyn Wolbert, Milaca, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janice S. Kolb, Mille Lacs County Attorney, Mark J. Herzing, Assistant County Attorney, Milaca, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Johnson, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

In this pro se appeal, appellant Ronald Marlyn Wolbert argues that the district court erred in denying him relief from his obligation to register as a predatory offender under Minn. Stat. § 243.166 (2008). He asserts that he was not notified of his obligation to register in 1995, when he pleaded guilty to one count of fourth-degree criminal sexual conduct, and that his conviction was reduced to a misdemeanor when he was discharged in 2001, pursuant to Minn. Stat. § 609.13 (2000). Because appellant's request for relief can be construed as a petition for postconviction relief and because his claims are without merit, we affirm.

D E C I S I O N

The district court concluded that it lacked authority to grant appellant relief under Minn. Stat. § 243.166, subd. 2 ("The court may not modify the person's duty to register in the pronounced sentence or disposition order."). In its informal brief, the state requests "that appellant's submission be summarily dismissed with directions to appellant to address his concerns administratively with the Minnesota Department of Corrections – Bureau of Criminal Apprehension."

Appellant's motion for relief was prompted by a February 25, 2008 letter from the Bureau of Criminal Apprehension (BCA) advising him of his obligation to register as a predatory offender.[1] The BCA is responsible for monitoring and tracking Minnesota's

[1] It should be noted that after appellant was discharged in 2001, he moved to South Dakota, where authorities informed him that he would be required to register as a sex

registered offenders, particularly once they are discharged from the custody of the commissioner of corrections. *See* 1991 Minn. Laws ch. 285, § 3 (enacting Minn. Stat. § 243.166). In at least one case, Minnesota appellate courts have reviewed the decision to require a defendant to register on appeal in a civil action brought by the defendant against the commissioner. *See, e.g.*, *Boutin v. LaFleur*, 591 N.W.2d 711, 714 (Minn. 1999). Other cases challenging registration requirements have generally sought to attack the underlying conviction on which the registration requirement is dependent, usually in the form of a postconviction petition seeking to withdraw a guilty plea. *See, e.g.*, *Kaiser v. State*, 641 N.W.2d 900, 902 (Minn. 2002).

In *State v. Jedlicka*, 747 N.W.2d 580, 584 (Minn. App. 2008), the state argued that Jedlicka should have brought a declaratory judgment action against the commissioner to challenge the requirement that Jedlicka register. Similar to appellant in this case, Jedlicka sought relief from the registration requirement *after* he was released from prison.[2] *Jedlika*, 747 N.W.2d at 584. The state in *Jedlicka* argued that the district court had no authority to consider whether Jedlicka was subject to registration and could not

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offender based on his 1995 Minnesota conviction. He registered in South Dakota in November 2005. In 2008, after he returned to Minnesota, the BCA informed him that he would be required to register in Minnesota until November 2015, ten years after he initially registered in South Dakota.

[2] Here, appellant has filed his request for relief long after his sentence has been served and he has been discharged from probation. A defendant's unconditional discharge from incarceration is no bar to postconviction relief; "even though a defendant's sentence has expired and he has been completely discharged," he may nevertheless seek postconviction relief. *Morrissey v. State*, 286 Minn. 14, 15, 174 N.W.2d 131, 133 (1970). While appellant's preferred remedy in this case is outright reversal of the requirement that he register as a predatory offender, he alternatively requests withdrawal of his 1995 guilty plea.

modify its original order requiring him to register, citing Minn. Stat. § 243.166 (providing that district court is required to notify person of duty to register, but court "may not modify the person's duty to register in the pronounced sentence or disposition order"). *Id.* While recognizing that the "case presents a tangled and peculiar procedural posture, the subject of which has not been addressed in Minnesota case law," this court nevertheless concluded that the district court had authority to review its prior order, which included the provision notifying Jedlicka that he was required to register. *Jedlicka*, 747 N.W.2d at 585-86. This case is slightly different from *Jedlicka* because the district court's original sentencing order did not include any notification to appellant that he is required to register.

Nevertheless, appellate courts have addressed challenges to registration requirements in many different types of cases, and appellant's challenge is not significantly different. Appellant's motion for relief from his registration requirement alternatively requests withdrawal of his 1995 guilty plea, which is a common postconviction claim. We will therefore construe the registration issue as being properly raised in this postconviction proceeding.

While appellant appears pro se in this appeal, he was represented by an attorney in the district court when he filed this motion seeking relief from his obligation to register. The arguments raised in his motion are generally based on the fact that appellant was not notified of his obligation to register when he pleaded guilty and was sentenced in 1995 and on the fact that he assumed that he would not be required to register after he was discharged from probation in 2001 and his conviction was reduced to a misdemeanor.

Registration is a "collateral" consequence of a conviction and is not a direct part of the sentence or conviction. *See Kaiser*, 641 N.W.2d at 903-04 (rejecting postconviction petitioner's claim that lack of notice of registration requirement is "manifest injustice" so as to form basis for withdrawal of guilty plea). Challenges to the lack of notice of collateral consequences such as predatory-offense registration have been wholly rejected by the supreme court in *Kaiser* and other cases. *See Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998) (holding that defendant need only be advised of direct consequences of guilty plea).

Appellant also argues that his conviction was reduced to an offense on which registration is not required. As the state reasons, appellant's argument is misplaced. "Section 609.13 does not require felony convictions where guilt is adjudicated, but sentencing is stayed, to be treated as misdemeanors in every conceivable situation." *In re Woollett*, 540 N.W.2d 829, 833 (Minn. 1995) (holding applicant for peace officer license could be barred on grounds of prior felony, even though conviction had been reduced to misdemeanor under section 609.13); *see also State v. Anderson*, 733 N.W.2d 128, 135 (Minn. 2007) (rejecting appellant's argument that firearm prohibition statute did not apply to him because he had been discharged from probation and his prior felony burglary conviction became misdemeanor under section 609.13). The registration statute at issue here requires an offender to register when he or she is either *convicted* of an enumerated predatory offense or *charged* with an enumerated predatory offense but convicted only of "another offense arising out of the same set of circumstances." Minn. Stat. § 243.166, subd. 1b(a)(i) (emphasis added).

Appellant was charged with several enumerated predatory offenses (second- and fourth-degree criminal sexual conduct) and convicted of fourth-degree criminal sexual conduct. Even though his conviction was reduced to a misdemeanor under section 609.13, that misdemeanor arose "out of the same set of circumstances" for which he was originally charged and to which he pleaded guilty. *See State v. Lopez*, ____ N.W.2d ____, ____ 2010 WL 455288, at * 6 (Minn. Feb. 11, 2010) (holding that "same set of circumstances" provision in § 243.166 "requires registration where the same general group of facts gives rise to both the conviction offense and the charged predatory offense"). He admitted that he had sexual contact with a 15-year-old girl while she was babysitting his children, that the girl had been drinking alcohol, and that he was more than 48 months older than the girl. *See* Minn. Stat. § 609.345, subd. 1 (1992) (defining fourth-degree criminal sexual conduct). Thus, appellant was required to register. *See Boutin*, 591 N.W.2d at 716 (holding that defendant was required to register as predatory offender when he pleaded guilty to third-degree assault arising out of incident for which he was also charged with third-degree criminal sexual conduct).

As the BCA letter notifying appellant of his obligation to register acknowledges, it appears that appellant's attorney and the corrections agent mistakenly believed that the statutes under which appellant was convicted and sentenced did not require registration and that, once he was discharged, he would no longer be obligated to register.[3] Appellant

[3] Since its enactment in 1991, the registration statute has been amended multiple times. But this court has held that the statute applies retroactively to defendants who have committed qualifying offenses before the effective date of the amendment. *State v. Lilleskov*, 658 N.W.2d 904, 909 (Minn. App. 2003). This court has also concluded that

does not claim that he was promised that he would not have to register if he pleaded guilty. Rather, appellant argues that after he was discharged in 2001, he was "lulled into a false sense of closure," which was disrupted years later when the BCA notified him of the registration requirement. While it is clear that appellant should have been notified of his obligation to register, this lack of notice does not allow appellant to now avoid his obligation to register as a predatory offender.

We therefore conclude that appellant is not entitled to relief. He was charged with and pleaded guilty to an offense that required him to register, and his claim of lack of notice does not establish a manifest injustice that would allow him to withdraw his 1995 guilty plea.

Affirmed.

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the statute, when applied to a defendant who was convicted of sex offenses prior to the time the statute took effect, is not an unconstitutional ex post facto law because it is not punishment but serves an important regulatory purpose. *State v. Manning*, 532 N.W.2d 244, 248-49 (Minn. App. 1995), *review denied* (Minn. July 20, 1995).