IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

J.B.,	)	
	)	
Appellant,	)	
	)	
v.	)	WD84010
	)	
PAUL C. VESCOVO, III, ET AL.,	)	Opinion filed: August 31, 2021
	)	
	)	
Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
THE HONORABLE K. ELIZABETH DAVIS, JUDGE

Division Three: Edward R. Ardini, Jr., Presiding Judge,
Mark D. Pfeiffer, Judge and W. Douglas Thomson, Judge

J.B. appeals the trial court's judgment denying his petition for removal from the Missouri sex offender registry. On appeal, J.B. contends the trial court erred in determining J.B. was adjudicated for a tier III sexual offense because he pled guilty to a non-registerable, class A misdemeanor offense in 1997, and designating him as a tier III offender would lead to an illogical result and a contradiction of the legislative intent behind the removal process. We affirm.

Factual and Procedural History

In 1997, J.B. was charged with sexual abuse in the second degree alleging that he subjected the alleged victim, to whom he was not married and who was less than twelve to thirteen, to sexual contact. J.B. pled guilty to the amended misdemeanor charge of attempted endangering the welfare of a child in the first degree pursuant to a plea agreement and received a suspended imposition of sentence with a probation term of two years. Although not initially required to register with the sex offender registry, due to a statutory change he was later required to do so. In 2014, J.B. learned of the statutory change requiring him to register and did so. Shortly thereafter, J.B. filed a petition for declaratory judgment seeking his removal from the sex offender registry. After a bench trial, the trial court determined that J.B. pled guilty to a registerable offense and denied his request to be removed from said registry.[1] The trial court's determination was affirmed in *Doe v. Belmar*, 564 S.W.3d 415 (Mo. App. E.D. 2018).

Missouri's Sex Offender Registration Act ("SORA"), section 589.400 et seq., effective January 1, 1995, originally imposed lifetime registration requirements for qualifying offenses with limited exceptions. *Dixon v. Missouri State Highway Patrol*, 583 S.W.3d 521, 525 (Mo. App. W.D. 2019). In 2018, the General Assembly amended

[1]Notably, the trial court's judgment in that decision provided additional information about the underlying offense from the victim's testimony, including that the victim, a thirteen-year-old female attending a church camp was ordered by J.B., who was serving in a leadership role as a pastor at the camp, to take off all of her clothes in front of him. J.B. lifted her breasts and touched her vagina. J.B. told the victim that if she told anyone her mother would be disappointed and she would get in trouble. "[W]e are permitted 'to take judicial notice of our own records and may take judicial notice of the records of other cases when justice so requires.'" *Muhammad v. State*, 579 S.W.3d 291, 293 n.4 (Mo. App. W.D. 2019).

SORA and "for the first time divided sexual offenders into three 'tiers,' based on the severity of the offenses of which they were convicted." *Id.*; section 589.414.[2] "The 2018 amendments specified that only offenders in the highest tier—tier III—would be subject to a lifetime registration obligation." *Id.* Sexual offenders in tiers I and II are eligible to petition for removal from the registry after fifteen and twenty-five years, respectively. Section 589.400.4. Section 589.414.7(2)(d) provides that a person adjudicated for the crime of endangering the welfare of a child in the first degree under section 568.045, if the offense is sexual in nature,[3] is a tier III offender, requiring registration for life.

On January 14, 2020, J.B. filed his petition for removal from the Missouri sex offender registry ("Petition") pursuant to section 589.401 alleging his designation as a tier III offender is incorrect because (1) the original charged offense of felony sexual abuse in the second degree, is classified as a tier I offense, and (2) he pled guilty to a misdemeanor offense of attempted endangering the welfare of a child in the first degree and the tier III classification contains no other misdemeanor offenses. J.B. asserted his proper tier classification is tier I because his *original* charge is listed as such, and the charge to which he pled guilty is a misdemeanor.

After an evidentiary hearing, the trial court entered its judgment ("Judgment") denying the Petition and made the following findings of fact and conclusions of law:

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[2]All statutory references are to RSMo 2016, as updated by supplement unless otherwise indicated.

[3]The underlying offense was previously determined to be sexual in nature, thus requiring J.B. to register as a sex offender. See generally, *Doe,* 564 S.W.3d at 421.

1. On March 27, 1997, in the Circuit Court of Clay County, Missouri, [J.B.] was adjudicated for the criminal offense of attempted endangering the welfare of a child in the first degree pursuant to section 568.045 . . .in that [J.B.] attempted to act in a manner that created a substantial risk to the body and health of [Victim] 'by having her disrobe in front of [J.B.]'

2. Section 589.414 . . . provides, 'Tier III sexual offenders include . . . [a]ny offender who has been adjudicated for the crime of . . . [e]ndangering the welfare of a child in the first degree under section 568.045 if the offense is sexual in nature[.]' Section 589.414.7(2)(d), RSMo Supp 2018.

3. Section 589.40[4][4] . . . provides:
   As used in section 589.400 and 589.425, the following terms mean:
   'Adjudicated' or 'adjudication' . . . a finding of guilt, plea of guilt . . . to committing, attempting to commit[.]

4. Therefore, [J.B.] was adjudicated for a Tier III sexual offense because the offense was sexual in nature[.]

5. As a result, [J.B.] is required to register as a sex offender for his lifetime pursuant to section 589.401.4[.]

6. Neither the classification of the original offense with which [J.B.] was charged nor the fact that the offense for which [J.B.] was adjudicated is a misdemeanor affects the classification of [J.B.'s] offense as a Tier III sexual offense.

J.B. appeals.

Standard of Review

"'An appellate court will reverse a judgment of a trial court when it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law.'" *Dixon*, 583 S.W.3d at 523 (citation omitted). "'Questions of statutory interpretation are reviewed *de novo*.'" *Id.* (citation omitted).

[4]At oral argument, J.B.'s counsel conceded the Judgment contained a typographical error when it referred to section 589.400 instead of section 589.404.

"'Any time a court is called upon to apply a statute, the primary obligation is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning.'" *Id.* at 523-24 (citation omitted).

Analysis

In his sole point on appeal, J.B. asserts that the trial court erred in determining J.B. was adjudicated for a tier III sexual offense because he pled guilty to a non-registerable, class A misdemeanor offense and designating him as a tier III offender would lead to an illogical result and a contradiction of the legislative intent behind the removal process. J.B. does not challenge the registration requirement itself, which has clearly been determined. *Doe,* 564 S.W.3d at 421. His pending challenge is solely to his status as a tier III offender.

> The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language. This Court must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language. When the words are clear, there is nothing to construe beyond applying the plain meaning of the law. A court will look beyond the plain meaning of the statute only when the language is ambiguous or would lead to an absurd or illogical result.

Kersting v. Replogle, 492 S.W.3d 600, 602 (Mo. App. W.D. 2016) (quoting *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013)). "'A statute is ambiguous when its plain language does not answer the current dispute as to its meaning.'" *Id.* at 603 (citation omitted).

We first turn to J.B.'s argument that SORA is a penal statute such that the Rule of Lenity requires ambiguities within SORA be resolved against the

government. "The Rule of Lenity mandates that 'ambiguity in a penal statute will be construed against the government or party seeking to exact statutory penalties and in favor of persons on whom such penalties are sought to be imposed.'" *Selig v. Russell*, 604 S.W.3d 817, 825 (Mo. App. W.D. 2020) (quoting *J.S. v. Beaird*, 28 S.W.3d 875, 877 (Mo. banc 2000)). The Rule of Lenity "'applies to interpretation of statutes only if, after seizing everything from which aid can be derived, the court can make no more than a guess as to what the legislature intended.'" *Selig*, 604 S.W.3d at 825 (quoting *State v. Liberty*, 370 S.W.3d 537, 547 (Mo. banc 2012)). Thus, in order to determine whether to apply the Rule of Lenity, we must first determine whether there is an ambiguity within the statutes under review such that we are unclear as to the legislative intent. Here, we find the words of the applicable statutes clear and free of ambiguity, thereby rendering the Rule of Lenity inapplicable.

Section 589.414.5-7 address the specific tiers within which an offender is classified based upon which offense the offender has been adjudicated. Each subsection, in precisely the same language, states "[t]ier [either I, II, or III] sexual offenders include: Any offender who has been adjudicated for the offense of," after which the included sexual offenses are listed. The "offense of" endangering the welfare of a child in the first degree under section 568.045 is a tier III offense if the offense is sexual in nature. Section 589.414.7(2)(d).

Key to analyzing section 589.414.7 is the definition of "adjudicated", which is found at section 589.404(1), and states: As used in sections 589.400 to 589.425, the following terms mean: (1) "Adjudicated" or "adjudication", adjudication of

delinquency, a finding of guilt [or] plea of guilty, . . ., to committing, attempting to commit, or conspiring to commit[.] Thus, were we to replace the defined word "adjudicated" with its statutory definition, we may read section 589.414.7(2)(d) as follows, "[t]ier III sexual offenders include . . . (2) [a]ny offender who has [*pled guilty*] to [committing, *attempting to commit,* or conspiring to commit] the offense of . . . (d) [e]ndangering the welfare of a child in the first degree under section 568.045 if the offense is sexual in nature. Here, J.B. *pled guilty* to the offense of *attempted* endangering the welfare of a child in the first degree. Clearly then, J.B. was *adjudicated*, as that term is defined in section 589.404 and as used in section 589.414, of endangering the welfare of a child in the first degree because he pled guilty to attempting to commit such offense. Thus, it is equally clear that J.B. is a tier III sexual offender. Because section 589.414 is clear and free of ambiguity, the Rule of Lenity is not applicable.

This analysis also addresses J.B.'s argument that the trial court erred in finding him a tier III offender because his plea of guilty was to a misdemeanor that did not require registration at the time. As determined above, it is clear the legislature intended to designate his offense as a tier III offense, regardless of its status as a misdemeanor. Section 589.414.7(2)(d). This claim has no merit. *Kersting*, 492 S.W.3d at 602.

J.B. makes a series of conclusory arguments that placing him in tier III would lead to an illogical result and a contradiction of legislative intent, including: SORA should be considered a redemptive statute, and therefore remedial in nature and

liberally construed; the legislature simply could not have intended to treat those convicted of a misdemeanor more severely than those convicted of offenses J.B. believes to be more serious, and; that it is illogical that he entered into a plea agreement and pled guilty in 1997 to an 'attempt' misdemeanor to avoid sex offender registration, but he is now subject to lifetime registration. All of J.B.'s arguments seek to compel this court to construe the statutes in such a way that J.B. is not placed in tier III. This we cannot do as the statutes are clear and unambiguous. Where, as here, "the words are clear, there is nothing to construe beyond applying the plain meaning of the law." *Id.* J.B.'s arguments fail to demonstrate *any* ambiguity in the referenced statutes. Rather, they are policy arguments which should be made, if anywhere, to the legislature. Furthermore, while J.B. attacks his placement in tier III, he fails to provide any reasonable basis on which he could conceivably be placed *in* tier I or tier II.

The trial court did not err in classifying J.B. as a tier III sex offender and denying his Petition. Point is denied.

Conclusion

The trial court's judgment is affirmed.

W. DOUGLAS THOMSON, JUDGE

All concur.