IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NOs. WR-91,197-01 & WR-91,197-02

EX PARTE JONATHAN HOSS KIBLER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
IN CAUSE NOs. F-2002-1689-D & F-2002-1690-D FROM
THE 362ND DISTRICT COURT
DENTON COUNTY**

NEWELL, J., announced the judgement of the Court and delivered an opinion in which RICHARDSON, SLAUGHTER and MCCLURE, JJ., joined. YEARY, J., filed a concurring opinion. KELLER, P.J., filed a dissenting opinion. WALKER, J., filed a dissenting opinion in which KELLER, P.J., joined. HERVEY and KEEL, JJ., dissented.

Has a person convicted of multiple charges of indecency with a child in the same proceeding received one reportable conviction or

adjudication "before or after" another, such that the person has a duty to register as a sex offender for life? Yes. Article 62.101(a)(4) of the Code of Criminal Procedure, which establishes when the duty to register as a sex offender expires, does not require that one conviction be final before the second conviction is received. Thus, a sex offender can be required to register for life if he or she receives two separate convictions for the offense of indecency with a child, even if they are adjudicated in the same proceeding.

Background

The parties in this case have entered an agreed stipulation to the facts, and the habeas court has made findings pursuant to those stipulations. In 2002, a grand jury returned two indictments in two separate cause numbers each charging Applicant with three counts of aggravated sexual assault of a child. Pursuant to a plea agreement, Applicant pleaded guilty to two charges of indecency with a child by exposure as alleged in count three in each cause number.[1] Count three of both indictments alleged conduct that was committed on the same

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[1] *See* TEX. PEN. CODE § 21.11(a)(2). Indecency with a child by exposure is a lesser-included offense of aggravated sexual assault of a child. *See Evans v. State*, 299 S.W.3d 138, 143 (Tex. Crim. App. 2009) (holding, in the context of a double-jeopardy claim, that indecency with a child is a lesser-included offense of aggravated sexual assault of a child when both offenses are predicated on the same act).

day, March 1, 2000, but against different victims. The trial court accepted the plea agreements and placed Applicant on deferred adjudication community supervision for a concurrent period of eight years in each case on February 20, 2003. One of the conditions of Applicant's probation required him to comply with the Sex Offender Registration Program.

In 2006, the State filed motions to adjudicate Applicant's guilt in both cases. On March 1, 2007, Applicant entered negotiated pleas of "true" to the allegations contained in each of the State's motions to adjudicate. During the same proceeding, the trial court adjudicated Applicant guilty and sentenced him to two years confinement in the Institutional Division of the Texas Department of Criminal Justice in each case, with the sentences to run concurrently. Applicant did not appeal his convictions. Applicant presents no reporter's record of either the plea or adjudication proceedings, but the parties have stipulated that Applicant received one conviction "contemporaneously" with the other.

After discharging his sentences in 2008, Applicant received conflicting information regarding the duration of his duty to register as a sex offender. In 2013, an attorney with the Texas Department of Public Safety and Debbie Nemeth, a field representative with the Texas Department of Public Safety's "Sex Offender Registration Unit,"

separately advised Applicant by email that he was required to register for life based on his two convictions for indecency with a child. But in 2015, Nemeth sent an email to a sex offender registrar employed by the Sheriff's Department of Tom Green County, where Applicant was residing. Nemeth asked the registrar to correct the website for the Texas Sex Offender Registry to show Applicant as only being required to register as a sex offender for ten years, with an ending registration date of March 12, 2018. Later that year, the State's registry and database were updated accordingly and identified Applicant as a person required to register as a sex offender for ten years, not life. In 2018, however, officials with the Texas Sex Offender Registration Bureau, a division of the Texas Department of Public Safety, informed Applicant once again that he was required to register for life.

Contemporaneous vs. Simultaneous

Applicant filed this application for a writ of habeas corpus, alleging that he is being improperly required to register as a sex offender for life based on an erroneous interpretation of Article 62.101(a)(4) of the Texas Code of Criminal Procedure. The trial court entered findings of fact and conclusions of law and recommended that Applicant be denied relief. We filed and set the application to consider whether a person who receives multiple convictions in the same proceeding for two

separate offenses of indecency with a child has received one conviction "before or after" the other.

Much of the persuasive force of Applicant's arguments flows from his assertion that he was convicted of or adjudicated for the two separate offenses "simultaneously." However, Applicant has not established that fact.[2] The agreed fact-finding regarding the plea hearing recites that Applicant "simultaneously" entered "a plea" of guilty to both offenses at the same plea hearing. However, there is no reporter's record of the plea proceedings to support the contention that he was simultaneously placed on deferred adjudication community supervision for both offenses. Rather, the agreed findings note that the trial court followed the State's recommendation "and entered an order in each case accordingly," suggesting that Applicant was not placed on deferred adjudication in each case "simultaneously."

Similarly, the fact finding regarding the adjudication proceeding only recites that Applicant was adjudicated guilty and "convicted" in each case "contemporaneously the same day (during the same proceeding)." While the word "contemporaneous" can include situations

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[2] *See, e.g.*, *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002) ("To prevail upon a post-conviction writ of habeas corpus, applicant bears the burden of proving, by a preponderance of the evidence, the facts that would entitle him to relief."); *Ex parte Torres*, 483 S.W.3d 35, 43 (Tex. Crim. App. 2016) (same).

where two events occur "simultaneously," it also encompasses situations in which two events occur during a period of time.[3] The most these findings establish is that Applicant was convicted and adjudicated in each case within the same proceeding. Consequently, we need only answer in this case whether the legislature's use of the phrase "before or after" in Article 62.101(a)(4) precludes reliance upon two convictions obtained contemporaneously in the same proceeding. As we will explain in greater detail below, we hold that it does not.

Standard of Review

On post-conviction review of habeas corpus applications under Article 11.07 of the Texas Code of Criminal Procedure, the convicting court is the "original factfinder," but this Court is the ultimate fact finder.[4] The habeas court's findings of fact are not automatically binding upon us, but we will ordinarily defer to and accept them if they are

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[3] Bryan A. Garner, GARNER'S MODERN LEGAL USAGE 212 (2016) ("Contemporaneous does not mean precisely "simultaneous"; rather it means 'belonging to the same time or period; occurring at about the same time.'"). For example, the "contemporaneous objection" rule necessarily contemplates that an objection can be lodged before error occurs and yet the objection is still considered "contemporaneous." *See e.g.*, *Ex parte Medellin*, 280 S.W.3d 854, 860 (Tex. Crim. App. 2008) ("[A] contemporaneous objection permits the trial judge to remedy potential error before it occurs.").

[4] *Ex parte Kussmaul*, 548 S.W.3d 606, 634 (Tex. Crim. App. 2018).

supported by the record.[5] When reviewing the habeas court's legal conclusions, we apply a *de novo* standard of review.[6]

This case primarily involves a question of statutory interpretation. Statutory construction is a question of law that we review *de novo*.[7] When we interpret statutes, we seek to effectuate the collective intent or purpose of the legislators who enacted the legislation.[8] In so doing, we necessarily focus our attention on the literal text of the statute in question and attempt to discern the fair, objective meaning of the text at the time of its enactment.[9] In interpreting the text of the statute, we must presume that every word in a statute has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible.[10] We do not focus solely upon a discrete provision; we look at other statutory provisions as well to harmonize

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[5] *Id.*; *Ex parte Garcia*, 353 S.W.3d 785, 787–88 (Tex. Crim. App. 2011) (citing *Ex parte Reed*, 271 S.W.3d 698, 727–28 (Tex. Crim. App. 2008)).

[6] *Ex parte De La Cruz*, 466 S.W.3d 855, 866 (Tex. Crim. App. 2015).

[7] *Watkins v. State,* 619 S.W.3d 265, 273 (Tex. Crim. App. 2021) (citing *Ramos v. State* 303 S.W.3d 302, 306 (Tex. Crim. App. 2009)).

[8] *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).

[9] *Id.*

[10] *State v. Rosenbaum*, 818 S.W.2d 398, 400–01 (Tex. Crim. App. 1991) (citing TEX. GOV'T CODE §§ 311.025(b), 311.026(a)); *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997).

provisions and avoid conflicts.[11] And we construe a statute that has been amended as if it had originally been enacted in its amended form, mindful that the legislature, by amending the statute, may have altered or clarified the meaning of earlier provisions.[12]

Analysis

No one disputes that Applicant was required to register as a sex offender based on his two convictions for indecency with a child. Chapter 62 of the Texas Code of Criminal Procedure governs the Texas Sex Offender Registration Program. Article 62.051 imposes a duty to register on a person who has a reportable conviction or adjudication.[13] And a conviction for indecency with a child in violation of Section 21.11 of the Penal Code is a reportable conviction, under both current law and

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[11] *See, e.g.*, *Murray v. State*, 302 S.W.3d 874, 877–79 (Tex. Crim. App. 2009) (interpreting the phrase "included in the indictment" in Article 4.06 of the Code of Criminal Procedure after considering Articles 37.08 and 37.09 of the Code of Criminal Procedure).

[12] *Powell v. Hocker*, 516 S.W.3d 488, 493 (Tex. Crim. App. 2017); *see also Mahaffey v. State*, 316 S.W.3d 633, 642 (Tex. Crim. App. 2010) (citing *Getts v. State*, 155 S.W.3d 153, 158 (Tex. Crim. App. 2005)).

[13] TEX. CODE CRIM. PROC. art. 62.051(a).

Article 62.051 was renumbered from its predecessor, Article 62.02, in 2005. *See* Act of May 26, 2005, 79th Leg., R.S., ch. 1008, § 1.01, 2005 Tex. Gen. Laws 3385, 3392. Article 62.02, as it read in 2000 when the underlying conduct occurred in this case, similarly imposed a duty to register on a "person who has a reportable conviction or adjudication." *See* Act of May 27, 1999, 76th Leg., R.S., ch. 1415, § 10, 1999 Tex. Gen. Laws 4831, 4835 (codified at TEX. CODE CRIM. PROC. art. 62.02).

the law in effect at the time Applicant committed the offenses in 2000.[14] Accordingly, Applicant was required to register as a sex offender.

Instead, the dispute in this case centers solely on the duration of Applicant's duty to register as a sex offender. Generally, a person's duty to register extends for one of two time periods—either ten years or the person's lifetime—depending on certain conditions.[15] These two alternatives for the expiration of the duty to register have existed since 1997 and have remained the same throughout the relevant time periods pertaining to this case.[16] However, the conditions warranting lifetime registration, as opposed to the 10-year registration period, have evolved over the years.

Under the law in effect at the time Applicant committed the underlying offenses, Applicant's duty to register would be limited to ten years. As it read in 2000, then-Article 62.12 imposed a lifetime registration requirement only on a person with a reportable conviction or adjudication for a "sexually violent offense" or for one of three specifically enumerated offenses, which did not include indecency with

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[14] *See* TEX. CODE CRIM. PROC. art. 62.001(5)(A); TEX. CODE CRIM. PROC. art. 62.01(5)(A) (West 2000). Article 62.01 was renumbered to Article 62.001 in 2005. *See* Act of May 26, 2005, 79th Leg., R.S., ch. 1008, § 1.01, 2005 Tex. Gen. Laws 3385, 3386.

[15] *See* TEX. CODE CRIM. PROC. art. 62.101.

[16] *Compare* Act of June 1, 1997, 75th Leg., R.S., ch. 668, § 1, 1997 Tex. Gen. Laws 2253, 2261 (codified at TEX. CODE CRIM. PROC. art. 62.12), *with* TEX. CODE CRIM. PROC. art. 62.101.

a child.[17] Moreover, the definition of a "sexually violent offense" did not include indecency with a child by exposure.[18] Because Applicant's offenses were not defined as sexually violent offenses at the time he committed the offenses, Applicant's duty to register as a sex offender would end on the 10th anniversary of the date on which the court discharged community supervision.[19]

At the time Applicant pleaded guilty and was placed on deferred adjudication, another version of the statute was in effect as a result of a legislative amendment to Article 62.12(a) in 2001.[20] As amended, the statute provided that a person with a reportable conviction for indecency with a child by exposure was required to register as a sex offender for life "if before or after the person is convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that

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[17] *See* TEX. CODE CRIM. PROC. art. 62.12 (West 2000), as amended by Act of June 1, 1997, 75th Leg., R.S., ch. 668, § 1, 1997 Tex. Gen. Laws 2253, 2261.

[18] *See* TEX. CODE CRIM. PROC. art. 62.01(6) (West 2000), as amended by Act of June 1, 1997, 75th Leg., R.S., ch. 668, § 1, 1997 Tex. Gen. Laws 2253, 2254.

[19] *See* TEX. CODE CRIM. PROC. art. 62.12(b) (West 2000), as amended by Act of June 1, 1997, 75th Leg., R.S., ch. 668, § 1, 1997 Tex. Gen. Laws 2253, 2261.

[20] *See* TEX. CODE CRIM. PROC. art. 62.12(a)(3) (West 2001), as amended by Act of May 8, 2001, 77th Leg., ch. 211, § 12, 2001 Tex. Gen. Laws 399, 402.

requires registration under this chapter . . ."[21] This amendment applies to an offense committed before, on, or after the effective date of the Act, which was September 1, 2001.[22] Thus, this version of the statute applies to Applicant regardless of the fact that he committed the offenses at issue prior to the effective date of the statute.[23] The substance of this amendment remained in effect in 2007, when Applicant was adjudicated guilty, convicted, and sentenced to prison, though the 79th Legislature had renumbered the statute from Article 62.12 to Article 62.101 in 2005.[24] The current statute contains the same language.[25] Because the two statutes are identical in relevant part and this opinion will apply to the new statute, we will refer to the current

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[21] *Id.*

[22] Act of May 8, 2001, 77th Leg., ch. 211, § 22, 2001 Tex. Gen. Laws 399, 405. Sex offender registration requirements do not constitute punishment, so the retroactive application of the amendment creates no *ex post facto* issue. *Rodriguez v. State*, 93 S.W.3d 60, 69, 79 (Tex. Crim. App. 2002); *see also Smith v. Doe*, 538 U.S. 84, 102–03 (2003).

[23] *See* TEX. GOV'T CODE § 311.025(b) ("[I]f amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each."). Applicant does not argue that this provision does not apply to him. Instead, Applicant accepts that the current statute applies to him but contends that it has been interpreted erroneously.

[24] *See* TEX. CODE CRIM. PROC. art. 62.101(a)(3) (West 2007), amended by Act of May 26, 2005, 79th Leg., R.S., ch. 1008, § 1.01, 2005 Tex. Gen. Laws 3385, 3405.

[25] *See* TEX. CODE CRIM. PROC. art. 62.101(a)(4).

statutory provision, Article 62.101(a)(4), in our analysis as Applicant does.

Therefore, Applicant's duty to register as a sex offender continues for his lifetime if "before or after" he was adjudicated or convicted for one offense of indecency with a child by exposure, he "received" another reportable conviction or adjudication for a reportable offense.[26] Applicant argues that the "before or after" language in Article 62.101(a)(4) precludes reliance upon two convictions for indecency with a child that were both "received" during the same proceeding to establish a duty to register as a sex offender for life. We disagree.

Considering the words "before" and "after" as they appear in the statute, we apply the ordinary meaning to each word unless they have acquired a technical meaning.[27] These words are not defined in the statute and have not otherwise acquired any technical meaning. Consequently, we must discern their ordinary meaning. The Merriam-Webster Dictionary defines "before" to mean "in advance" or "at an earlier time."[28] And it defines "after" as "following in time or place."[29]

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[26] *See* TEX. CODE CRIM. PROC. art. 62.101(a)(4).

[27] *Watkins*, 619 S.W.3d at 272.

[28] *Before*, Merriam-Webster Collegiate Dictionary 110 (11th ed. 2020).

[29] *After*, Merriam-Webster Collegiate Dictionary 23 (11th ed. 2020).

Reading the text in context, the legislature's use of "before" and "after" reflects an understanding of the practical realities of plea practice. A trial court has discretion on how to control its docket and can consider multiple cases in separate proceedings or in the same proceeding.[30] But even when the trial court considers separate cases in the same proceeding the trial court will still recite one cause number before the other. The legislature did not need to allow for a simultaneous receipt of a conviction in the text of the statute because, as a practical matter, one conviction will be received either before or after the other.

Further, this interpretation of the text is bolstered by the absence of limitations on the broad applicability of the words "before" or "after." Compared to other statutes that require the sequential commission of offenses, Article 62.101(a)(4) contains no language requiring that the underlying offenses be committed sequentially. There is no requirement that the imposition of two or more convictions be in a specific order relative to the commission of the underlying offenses. The text does not require that the defendant receive each conviction on a different day

[30] *See, e.g.*, *Stone v. State*, 171 S.W.2d 364, 367 (Tex. Crim. App. 1943) ('The order in which cases are called for trial, unless cases have been previously set for a certain date, rests largely within the discretion of the trial court, and unless it is made to appear that the court has abused its discretion with respect thereto the injury of the appellant, this court would not be authorized to reverse the case by reason thereof.").

or in a separate proceeding. Simply put, we do not believe the legislature's use of "before or after" in the statute suggests a categorical exemption from the lifetime registration requirement for sex offenders who have been convicted of two indecency-with-a-child offenses simply because both convictions were "received" during the same proceeding. To hold to the contrary, we would have to re-write the statute to say either "at least a day before or after" or "before or after the proceeding in which the person is convicted or adjudicated."

Moreover, writing this type of "separate day" requirement into the statute would subject defendants with identical criminal histories to different registration requirements. As mentioned above, the text of the statute does not tie the length of the registration requirement to the commission of the offense or the finality of a particular conviction. Instead, the statute ties it to the receipt of a reportable conviction or adjudication. Under Applicant's reading of the statute, a defendant who receives a conviction for indecency with a child by exposure and some other reportable conviction will only be required to register as a sex offender for ten years if the defendant receives both in the same proceeding. But a defendant who receives those same two reportable convictions will be required to register for life if he receives each one on

a different day. This is the type of absurd outcome the legislature could not have possibly intended.[31]

In the context of sentencing enhancement, the legislature has used specific language to prohibit the State from using multiple convictions obtained in the same proceeding for enhancement purposes by specifically tying the propriety of enhancement to both the commission of the underlying offense and the finality of the conviction. For example, enhancement under Section 12.42(d) of the Texas Penal Code clearly requires that a defendant not only receive multiple convictions in a specific, sequential order, but also that the defendant must commit the second offense after the conviction for the first offense becomes final. Section 12.42(d) provides in relevant part:

> [I]f it is shown on the trial of a felony offense . . . that the defendant has *previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final*, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.[32]

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[31] *See, e.g., Griffith v. State*, 116 S.W.3d 782, 785 (Tex. Crim. App. 2003) (noting that courts should apply an interpretation of a statute that does not lead to absurd results over one that does).

[32] TEX. PEN. CODE § 12.42(d) (emphasis added).

In explaining how Section 12.42(d) operates, we have said that "[t]he sequence of events must be proved as follows: (1) the first conviction becomes final; (2) the offense leading to a later conviction is committed; (3) the later conviction becomes final; (4) the offense for which defendant presently stands accused is committed."[33] In this way, the legislature foreclosed enhancement of a defendant who received multiple convictions in the same proceeding. By comparison, the language in Article 62.101(a)(4) is nowhere near as explicit.

Section 12.425 of the Penal Code provides another useful illustration. In *Campbell v. State*, we interpreted the language of then-Section 12.42(a), which was later moved to Section 12.425.[34] The relevant language of the statute read as follows:

> (a)(1) If it is shown on the trial of a state jail felony . . . that the defendant has *previously been finally convicted of two state jail felonies*, on conviction the defendant shall be punished for a third-degree felony.
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> (2) If it is shown on the trial of a state jail felony . . . that the defendant has *previously been finally convicted of two felonies, and the second previous felony conviction is for an offense that occurred subsequent to the first previous*

[33] *Tomlin v. State*, 722 S.W.2d 702, 705 (Tex. Crim. App. 1987) (en banc); *Jordan v. State*, 256 S.W.3d 286, 290–91 (Tex. Crim. App. 2008).

[34] *See Campbell v. State*, 49 S.W.3d 874 (Tex. Crim. App. 2001).

> *conviction having become final*, on conviction the defendant shall be punished for a second-degree felony.[35]

We concluded in *Campbell* that subsection (a)(1) [now Section 12.425(a)] did not contain a sequential requirement, while subsection (a)(2) [now Section 12.425(b)] did.[36] We reasoned that, "by failing to include the language used elsewhere in the Penal Code, including subsection (a)(2), to specify a specific order of the prior offenses, the legislature chose not to require that the prior state jail felony convictions be sequential."[37] "Thus, under subsection (a)(1), the state must prove that there are two prior final convictions for state jail felonies, but does not need to prove that the prior convictions occurred sequentially, as it must under subsection (a)(2)."[38] In this way, the text of subsection (a)(2) specifically forecloses the State from enhancing a defendant with two prior state jail felony convictions received in the same proceeding, while (a)(1) does not.

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[35] TEX. PEN. CODE § 12.42(a) (West 2001) (emphasis added), redesignated as TEX. PEN. CODE § 12.425 by Act of May 25, 2011, 82nd Leg., R.S., ch. 834, § 5, 2011 Tex. Gen. Laws 2104, 2105.

[36] *Campbell*, 49 S.W.3d at 876.

[37] *Id.*

[38] *Id.*

In contrast, Section 49.09(b) of the Penal Code does not contain sequential language. Section 49.09(b) provides:

> (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:
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> (1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or
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> (2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.[39]

In *Gibson v. State*, we found that this language only required "a showing that a defendant has been convicted twice before for offenses relating to the operation of a motor vehicle, aircraft or watercraft while intoxicated."[40] In reaching this conclusion, we compared the language of Section 49.09 to Section 12.42(d).[41] We reasoned that, "[i]n writing this statute, the Legislature did not say the convictions had to occur in a specified order, or that they needed to arise from separate

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[39] TEX. PEN. CODE § 49.09(b).

[40] *Gibson v. State*, 995 S.W.2d 693, 696 (Tex. Crim. App. 1999).

[41] *Id.*

transactions. The Legislature expressed only that the State must prove a defendant had two prior convictions for intoxication-related offenses."[42]

The same reasoning applies here. We have said that the rules of statutory construction require us "to presume that the Legislature selected and used language in a careful and deliberate manner[,]" and "[t]he same rules should apply to the failure of the Legislature to include language."[43] We have also said that "when the Legislature desires to convey a certain level of specificity within a statutory provision, it knows how to do it."[44] Had the legislature intended to foreclose reliance upon two prior convictions obtained in the same proceeding to determine when the duty to register as a sex offender expires, it could have crafted the statute to do so, as it did in both Section 12.42(d) and Section 12.425(a)(2) of the Penal Code.[45] The legislative choice to use less explicit language in Article 62.101 suggests that the legislature did not

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[42] *Id.*

[43] *Ex parte Perez*, 612 S.W.2d 612, 614 (Tex. Crim. App. 1981).

[44] *Cornet v. State*, 359 S.W.3d 217, 222 (Tex. Crim. App. 2012).

[45] *See, e.g.*, *Long v. State*, 931 S.W.2d 285, 290 (Tex. Crim. App. 1996) ("[H]ad the legislature intended to apply a reasonable person standard, they easily could have specified one, or a clear synonym."); *Hatch v. State*, 958 S.W.2d 813, 816 (Tex. Crim. App. 1997) ("Chapter 62 of the Government Code shows that the Legislature knew how to restrict statutes to civil cases. For example, the very next section of the Texas Government Code, Section 62.202, is restricted to 'a civil case.'").

intend to preclude reliance upon the receipt of a conviction for indecency with a child and another reportable conviction or adjudication in the same proceeding when determining the expiration of a duty to register as a sex offender.[46]

Applicant, however, argues that the legislature intended to exempt sex offenders who commit indecency with a child by exposure and another reportable offense from lifetime registration because there is some language in the statute requiring sequential ordering of the convictions. Applicant points to the legislature's use of the phrase "before, on, or after" in the bill amending the statute as justification for his position that the legislature's failure to include "on" in the relevant subsection shows an intent to exclude situations in which two convictions are received in the same proceeding.[47] We acknowledge that the language in the statute can cover situations involving sequential

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[46] *See, e.g.*, *Cornet*, 359 S.W.3d at 222 (reasoning that the legislature's decision to refer "simply to 'medical care'" in TEX. PEN. CODE § 22.011(d) and not "provide for different standards" as it did in TEX. PEN. CODE § 22.04(k) suggested that the legislature intended the same standard to "apply to all persons, health-care professional or not, who can otherwise validly claim the defense[.]"); *Yazdchi v. State*, 428 S.W.3d 831, 849 n.12 (Tex. Crim. App. 2014) (Price, J., concurring) (noting, based on the legislature's decision in another section of the statute to make consideration of a prior deferred adjudication that is later discharged relevant only to a particular issue, that the legislature knew how to specifically limit the fact-finder's consideration of a particular circumstance; and concluding that the legislature's failure to include any such limitations in another section suggested that the legislature did not intend to limit consideration under that section).

[47] *See* Act of May 8, 2001, 77th Leg., ch. 211, § 22, 2001 Tex. Gen. Laws 399, 405.

convictions, but we disagree that this language affirmatively excludes reliance upon convictions or adjudications obtained or received in the same proceeding.

As discussed above, the text of the statute does not specifically foreclose situations in which a defendant receives multiple convictions in the same proceeding. The legislature has demonstrated its ability to draft statutes that completely foreclose use of multiple convictions received in the same proceeding, albeit in the context of sentence enhancement.[48] In the statute at issue in this case, the legislature did not write into the statute a specific requirement that either conviction must be final or that each conviction must be received in separate proceedings for the Texas Department of Public Safety to determine when the duty to register as a sex offender expires.

Moreover, the legislature's use of the "before or after" language does not foreclose the possibility that a defendant could receive one conviction for indecency with a child either before or after another one even within the same proceeding. As a practical matter, in accepting a plea bargain that disposes of multiple charges, a trial judge has the

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[48] *See, e.g.*, TEX. PEN. CODE § 12.42(d); TEX. PEN. CODE § 12.425(a)(2).

ability to make a finding of guilt and assess punishment in each case individually, even while doing so within the same proceeding.

Further, as discussed above, Applicant has not established as a matter of fact that he received both convictions for indecency with a child at the same time. Consequently, we need only address the question of whether Applicant's contemporaneous receipt of two indecency-with-a-child convictions within the same proceeding satisfies the "before or after" language in the statute. And, without a record of the adjudication proceeding, we cannot say that Applicant's "contemporaneous" receipt of both adjudications during the same proceeding falls outside the text of the statute's requirement that receipt of one adjudication occur either "before or after" the other.[49]

Finally, we disagree with Applicant's argument that the common-law rule for calculating time requires us to construe events that occur on the same day as taking place "at the same time" for purposes of analyzing the statute at issue. In *Hyde v. White*, the Texas Supreme Court recognized that, for questions involving the computation of time,

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[49] *See Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985) ("In a postconviction collateral attack, the burden is on the applicant to allege and prove facts which, if true, entitle him to relief.").

"the law recognizes no fraction of a day."[50] But this case does not involve a question about the computation of time; it involves a question about the priority of acts done in the same day, which, as the Supreme Court recognized in *Hyde*, was a different inquiry than the computation of time.[51] The other cases cited by Applicant are similarly distinguishable because they address computation of time, which is not at issue here.[52]

This case is not about when Applicant's sentences began to run, or when the duty to register as a sex offender commenced. It is about when Applicant's duty to register as a sex offender expires. By statute, the duty to register as a sex offender is not affected by a defendant's

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[50] *Hyde v. White*, 24 Tex. 137, 138 (1859). Indeed, the Supreme Court in *Hyde* was faced with the constitutional provision that required the Court to examine the meaning of the phrase "one day" to determine how to calculate a "day". *Id.* The Court considered a situation in which a bill was passed less than 24 hours before it was presented but still presented to the governor on the next calendar day. *Id.* This is a completely different scenario than the one presented in this case. Here, we are asked to consider the phrase "before or after" to determine whether one event occurred before or after another. We are not faced with a question of the computation of time.

[51] *See id.* ("The first important rule to be observed, and which should be kept constantly in mind, is, that in the computation of time (except where the priority of acts, done on the same day, is in question), the law recognizes no fraction of a day.")

[52] *See Nesbit v. State*, 227 S.W.3d 64 (Tex. Crim. App. 2007) (addressing the proper calculation of time in the context of a motion to revoke a defendant's probation); *State v. Aguilera*, 165 S.W.3d 695, 698, 698 n.8 (Tex. Crim. App. 2005) (in holding that a trial court had authority to modify a defendant's sentence minutes after it was originally pronounced, noting that that a defendant's sentence begins to run on the day that it is pronounced, regardless of the time at which the sentence was pronounced).

appeal or even a pardon.[53] That is because the duty to register as a sex offender is not a criminal sanction, and statutes imposing such a duty were enacted amid public outcry that sex offenders were particularly likely to re-offend and that the communities in which sex offenders lived were entitled to be warned of the offender's presence in order to protect themselves from future harm.[54] So while the text of various punishment enhancement statutes may provide useful analogies regarding the interpretation of statutory text, those illustrative analogies do not turn a non-punitive sanction into an enhanced sentence. The text of the statute at issue in this case does not tie the determination of the expiration of a duty to register as a sex offender to the day that the sentence for a prior reportable conviction or adjudication begins to run. Accordingly, we disagree with Applicant that we should apply precedent regarding when a sentence commences to the interpretation of statutory text involving an order or sequence of events. We see no conflict between our holding in this case and the common-law rule regarding the computation of time.

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[53] TEX. CODE CRIM. PROC. art 62.002(b). The duty to register as a sex offender is terminated after a defendant receives a pardon or has his or her conviction set aside on appeal. TEX. CODE CRIM. PROC. art. 62.002(c).

[54] *Rodriguez v. State*, 93 S.W.3d 60, 74, 79 (Tex. Crim. App. 2002).

We also disagree that our reading of the statute will place an undue burden on the Texas Department of Public Safety (DPS) in determining when a duty to register as a sex offender expires. Indeed, in this case DPS was able to ascertain, without the aid of a clerk or reporter's record, when Applicant's duty to register as a sex offender expired. Further, this issue will only arise when courts deal with two discrete types of offenses. First, this case will apply when a defendant receives a conviction for indecency with a child by exposure along with another reportable conviction or adjudication on the same day. Second, this case would apply when a defendant receives a conviction for unlawful restraint, abduction, or aggravated kidnapping (without the intent to violate or abuse the victim sexually) against a child along with an additional reportable conviction or adjudication on the same day. This case would not impact cases in which those reportable convictions are received on different days. We are not persuaded that DPS will be unduly burdened by having to ascertain when a defendant's duty to register expires in these discrete situations.

However, if we are to assume that these scenarios will arise so often that they would be unduly burdensome to DPS, then it is worth noting that applying Applicant's reading of the statute would likely place an undue burden on trial courts. For example, Applicant's reading would

require trial courts to coordinate with counsel to facilitate two different pleas on two different days. It would require a defendant to appear in court on two separate days, sometimes with transportation arrangements secured by the trial court. And it will likely increase county budgets to cover reimbursement for the additional plea proceedings. If we can accept these administrative burdens for one interpretation of the statute, we can accept the other.

Ultimately, however, we are not in a position to construe the statute in a manner that substitutes what we believe is right or fair for what the legislature has written.[55] "[J]udicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted."[56] Consequently, we are not at liberty to disturb the legislature's policy decision in this case.

Conclusion

Accordingly, we conclude that Article 62.101(a)(4) does not require that multiple convictions for indecency with a child by exposure occur in separate proceedings to subject a person with multiple reportable convictions to a lifetime duty to register as a sex offender.

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[55] *Tamez v. State*, 11 S.W.3d 198, 203 (Tex. Crim. App. 2000) (Keller, J. dissenting); *see also Parham v. Hughes*, 441 U.S. 347, 99 S.Ct. 1742, 60 L.Ed.2d 269 (1979).

[56] *Vandyke v. State*, 538 S.W.3d 561, 569 (Tex. Crim. App. 2017) (quoting *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979).

Applicant's two convictions for indecency with a child by exposure qualify as first and second reportable convictions requiring lifetime registration under Article 62.101(a)(4). Consequently, Applicant is not entitled to habeas corpus relief. Applicant's post-conviction writ is denied.

Delivered: September 21, 2022

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