



In the Missouri Court of Appeals Eastern District

DIVISION FIVE

JOSEPH WILLIAMS,)	No. ED93827
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	
COLONEL JERRY LEE AND)	
COLONEL JAMES F. KEATHLEY,)	Honorable Dale Hood
)	
Respondents.)	FILED: May 4, 2010

Joseph Williams ("Williams") appeals the trial court's judgment granting Colonel Jerry Lee's and Colonel James Keathley's (collectively, "Respondents") motion to dismiss, and ordering Williams to maintain registration in Missouri as a sex offender. We reverse and remand.

I. BACKGROUND

On February 5, 2000, Williams pled guilty in a military tribunal to one specification of carnal knowledge under Article 120 of the Uniform Code of Military Justice ("UCMJ"), and one specification of sodomy with a child under the age of 16 in violation of Article 125 of the UCMJ. No law - Missouri, federal, or military - required

Williams to register as a sex offender at the time of his convictions.¹

The Missouri legislature subsequently revised Missouri's Sexual Offenders Registration Act ("SORA"). The revisions included Williams amongst those it required to register as a sex offender. See section 589.400.1(5) RSMo Supp. 2002² (requiring registration by any person who has pled guilty "in any other state or under federal jurisdiction to committing, or attempting to commit, an offense which, if committed in this state, would be a violation of chapter 566, RSMo . . ."). The St. Louis County Police Department notified Williams that his convictions under the UCMJ required him to register as a sex offender pursuant to section 589.400.1(5). Williams registered as a sex offender and has maintained registration for the past six years.

The Missouri Supreme Court subsequently decided Doe v. Blunt, 225 S.W.3d 421 (Mo. banc 2007). Blunt held that SORA violated Missouri's ban on retrospective laws to the extent that it required persons to register for offenses that occurred before such offenses were added to SORA's registration requirements. Based on Blunt's holding, Williams filed a Petition for Declaratory Judgment and for Expungement of Records ("Petition") in January 2009. Williams asserted that, as in Blunt, the actions that formed the basis of his guilty pleas did not require him to register as a sex offender at the time of his convictions. He therefore sought a declaratory judgment that he was not required to register as a sex offender pursuant to section 589.400.1(5). Furthermore, Williams sought expungement of those "records maintained or disseminated under the sexual

¹ At the time of Williams's conviction, Missouri law required registration by any person who had "pled guilty to committing . . . a felony offense of chapter 566, RSMo," or "pled guilty . . . in any other state or under federal jurisdiction to committing . . . an offense which, if committed in this state, would be a felony violation of chapter 566, RSMo . . ." Sections 589.400.1(1), (5) RSMo Supp. 1999. Williams's offenses were not felony equivalents under Missouri law, nor was he required to register pursuant to federal or military law.

² Unless otherwise noted, all further statutory citations are to RSMo 2002.

offender registration laws inasmuch as those records have the unique ability to damage [Williams's] reputation . . ."

Respondents filed a motion to dismiss Williams's Petition and argued that federal law, the Sexual Offender Registration and Notification Act ("SORNA"), 42 U.S.C. sections 16911-16917, nonetheless required Williams to register as a sex offender in Missouri. Because Williams qualified as a sex offender under the UCMJ, Respondents asserted that SORNA imposed an independent federal obligation upon Williams to register in the jurisdiction where he resides. Since federal law required Williams to register, Respondents argued that Missouri law, section 589.401.1(5), required him to register as well.

Williams responded by contending that he was exempt from the federal registration requirements pursuant to 42 U.S.C. section 16911(5)(C). That section states that consensual sexual conduct is not an offense when the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

The trial court granted Respondents' motion to dismiss. It stated that, "federal law 28 C.F.R. Sec. 571.72(b), 42 U.S.C. 16913, and Section 589.400 R.S.M.o. applies [sic] in the present case. Thus, [Williams] is required under federal law to register in Missouri, the jurisdiction in which he currently resides." Williams appeals.

II. DISCUSSION

Our review here is of the granting of a motion to dismiss a petition for declaratory relief. We review the trial court's grant of a motion to dismiss de novo. Richardson v. City of St. Louis, 293 S.W.3d 133, 136 (Mo. App. E.D. 2009). "We review the allegations set forth in the petition to determine whether principles of substantive law are

invoked, which, if proved, would entitle [the] petitioner to declaratory relief." Shelter Mutual Ins. Co. v. Vulgamott, 96 S.W.3d 96, 102 (Mo. App. W.D. 2003). "When the trial court fails to make a declaration settling rights, as when it dismisses petition without a declaration, a reviewing court may make the declaration." Nicolai v. City of St. Louis, 762 S.W.2d 423, 426 (Mo. banc 1988) (citing Magenheim v. Bd. of Educ., 347 S.W.2d 409, 418 (Mo. App. E.D. 1961)). Because this case presents a purely legal issue, this Court will undertake to declare the rights and duties of the parties. Id.

In his first point on appeal, Williams argues that the trial court erred in finding that federal law requires him to maintain sex offender registration in Missouri because the federal definition of "sex offense" specifically excludes Williams's conduct. We agree.

Williams argues that SORNA - specifically 42 U.S.C. section 16911(5)(C) - exempts him from the duty to register in Missouri. He claims that the trial court erroneously concluded that every person who was exempt from registering under SORA nonetheless automatically had an independent federal duty to register under SORNA.

SORNA applies to individuals who committed a sex offense prior to July 20, 2006. 42 U.S.C. section 16913(d). It provides, among other things, that "a sex offender shall register . . . in each jurisdiction where the offender resides." 42 U.S.C. section 16913. The Act defines a "sex offender" as "an individual who was convicted of a sex offense." 42 U.S.C. section 16911(1). A "sex offense" includes "a criminal offense that has an element involving a sexual act or sexual contact with another." 42 U.S.C. section 16911(5)(A)(i). SORNA defines a "criminal offense" to include "a military offense specified by the Secretary of Defense . . ." 42 U.S.C. section 16911(5)(A)(iv). The

UCMJ designates carnal knowledge and sodomy with a minor as sexual offenses that require registration. 28 C.F.R. sections 571.72(b)(2), (4).

SORNA, however, specifically exempts certain conduct from its definition of a sex offense. 42 U.S.C. section 16911(5)(C) states:

Offenses involving consensual sexual conduct

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter [. . .] if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

In addressing why the exception contained in section 16911(5)(C) does not apply to Williams's conduct, Respondents state only that "the United States Attorney General has stated that individuals who commit the crimes of carnal knowledge . . . and sodomy . . . are required to register under SORNA." While Respondents' statement is correct, Respondents fail to adequately address why the exception does not apply.

Williams submitted a brief in support of his Petition in the trial court, wherein he alleged that he was exempt from registration pursuant to section 16911(5)(C). Williams alleged that he was 19 years old at the time of the offenses and that his girlfriend, the prosecuting witness, was 15 years old at the time. He further alleged that it was a non-violent, consensual act. Respondents did not contest these assertions. Furthermore, the trial court had before it the police report that gave the ages of the participants, and the consensual nature of the conduct. We therefore find that Williams meets the requirements set forth in 42 U.S.C. section 16911(5)(C) in that the victim was at least 13 years old and Williams was not more than 4 years older than the victim. He is thereby exempt from registering under SORNA. Williams's first point is granted.

In his second point, Williams argues that the trial court erred in refusing to order destruction of his records from the sex offender registries, and refusing to delete information pertaining to him, because such information was obtained in violation of the Missouri Constitution and federal law.

Respondents concede that, "if this Court were to find that [Williams] not be required to register as a sex offender under SORNA that those specific records should be destroyed." Based on our finding in point one, we direct Respondents to destroy the records related to Williams's registration as a sex offender.

III. CONCLUSION

The judgment of the trial court is reversed and remanded. On remand, the trial court is directed to enter its finding that Williams is exempt from registering under SORNA pursuant to 42 U.S.C. section 16911(5)(C).³ The trial court is further directed to order Respondents to destroy records related to Williams's sex offender registration.

Kenneth M. Romines, C.J., concurs
William L. Syler, Sp. J., concurs

Roy L. Richter, Judge

³ For clarity's sake, we note that Missouri law does not require Williams to register. Thus, he is exempt from all registration requirements.