

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOHN DOE,

Respondent,

v.

JAMES F. KEATHLEY,

Appellant.

DOCKET NUMBER WD72121

Date: April 26, 2011

Appeal from:
Cole County Circuit Court
The Honorable Richard G. Callahan, Judge

Appellate Judges:
Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Attorneys:
Jeremiah Morgan, Jefferson City, MO, for appellant.
Mark Charles Prugh, Waynesville, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

JOHN DOE

Respondent,

v.

JAMES F. KEATHLEY,

Appellant.

WD72121

Cole County

Before Division Three Judges: Alok Ahuja, P.J., Victor C. Howard and Cynthia Martin, JJ.

Respondent John Doe pled guilty to the charge of sexual abuse in the first degree in the Circuit Court of St. Louis County on October 13, 1992. Doe was ordered to serve five years' probation with counseling, and was given a suspended imposition of sentence ("SIS"). Doe successfully completed his probation.

Doe filed a petition seeking declaratory and mandamus relief in the Circuit Court of Cole County, alleging that he was not required to register as a sex offender. Although Appellant James Keathley, then the Superintendent of the Missouri Highway Patrol, conceded that Doe did not need to register as a sex offender under the state sex-offender registration statute, Keathley nevertheless argued that Doe had an independent obligation to register under the federal Sex Offender Registration and Notification Act, 42 U.S.C. §§ 16901-16929 ("SORNA"). The circuit court ultimately rejected Keathley's argument, concluding that, "[u]nder Missouri law, a suspended imposition of sentence is not a conviction. . . . [A] suspended imposition of sentence will not satisfy a federal statute that requires a conviction to trigger its application." Keathley appeals.

REVERSED.

The circuit court erred in applying state law, rather than federal law, to determine whether Doe had previously been "convicted," and therefore constituted a "sex offender" under SORNA, 42 U.S.C. § 16911(1). The general rule is that, absent a "plain indication" to the contrary, federal law controls the meaning of terms used in a federal statute. SORNA contains no "plain indication" that the meaning of "convicted" should be determined by state law. In enacting SORNA, Congress intended to create a comprehensive, uniform, nationwide scheme to govern the registration of sex offenders; applying state-law definitions of the term "convicted" would be inconsistent with this purpose. Further, the Attorney General, in guidelines

implementing SORNA, has likewise concluded that the interpretation of the term “convicted” is governed by federal, not state law. Finally, unlike other federal statutes, SORNA contains no provision expressly providing that the law of the jurisdiction rendering a disposition of criminal charges controls the question whether that disposition constitutes a “conviction.”

Under federal law, the disposition of Doe’s St. Louis County charges constitutes a “conviction.” In *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983), the United States Supreme Court held that an Iowa state-court disposition in which an individual received probation, and sentencing was deferred, constituted a prior “conviction” for purposes of a federal firearm statute, even though the record of the disposition was later expunged when the individual successfully completed his probation. *Dickerson* suggested that a guilty plea alone could constitute a conviction, separate and apart from the later sentencing of the defendant. Further, *Dickerson* held that the fact that the individual was placed on probation supported the conclusion that the individual had been “convicted,” because “[i]t is . . . plain that one cannot be placed on probation if the court does not deem him to be guilty of a crime.” *Id.* at 114. Other federal decisions reach the same result under other federal statutes in which the term “convicted” is undefined.

Under these decisions, Doe had been “convicted” in the earlier St. Louis County proceeding, within the meaning of SORNA, 42 U.S.C. § 16911(1). He pled guilty to the charges against him, and was placed on probation. No imposition of an actual term of imprisonment was required.

We also reject Doe’s arguments that SORNA was inapplicable to him unless and until he traveled in interstate commerce, that the application of SORNA’s registration requirements to his pre-SORNA conviction violates the *ex post facto* clause of the federal constitution, and that Missouri has been excused from requiring that he register as a sex offender by the Attorney General’s implementing guidelines.

Opinion by: Alok Ahuja, Judge

April 26, 2011

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