OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

ERIC EDWARD BACON,	)	No. ED107919
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Charles County
vs.	)	
	)	Hon. Jon Alan Cunningham
MISSOURI STATE HIGHWAY PATROL, COLONEL DAVID TODD AND ST. CHARLES COUNTY PROSECUTING ATTORNEY,	)	
	)	Filed:
Appellants.	)	April 7, 2020

The Missouri State Highway Patrol, Colonel David Todd and the St. Charles County Prosecuting Attorney appeal from the judgment granting E.B.'s ("Petitioner") petition to have his name removed from the sex offender registry under Missouri's Sex Offender Registration Act ("SORA"), Section 589.400 *et seq*.

AFFIRMED.

Division One holds:

Prior to the 2018 SORA amendments, all sex offenders were required to register for their lifetimes. In 2018, the legislature restructured SORA and divided offenders into tiers based on the severity of their offenses. A tier I offender may petition for removal from the registry ten years after the date on which he was required to register for his most recent offense, but a tier II offender is not eligible for removal for twenty-five years. A tier I offender is upgraded to tier II if he is adjudicated for a tier I offense and "*is already required* to register as a tier I offender due to having been adjudicated of a tier I offense on a previous occasion." Section 589.414.6(2) (emphasis added). This provision plainly means that to be upgraded to tier II, the offender must *at the time of the second tier I adjudication* already be required to register due to a previous tier I adjudication.

Petitioner has two adjudications—one in November 2002 and one in July 2004—both for possession of child pornography, which is now a tier offense but at the time of the adjudications did not carry a registration requirement at all. He only became required to register for that offense later by virtue of a change in the law, either when that crime was added to SORA in August 2004 or because of the federal registration act enacted in 2006. More than ten years later and after the 2018 amendments, he petitioned for removal from the registry alleging that under the new tiered system he is a tier I offender. We agree with Petitioner that he is not subject to an upgrade to tier II based on his

multiple tier I offenses, as the government argued, because at the time of his second adjudication in 2004, he was *not* already required to register due to the previous 2002 adjudication or for any reason. Therefore he is a tier I offender and was eligible for removal from the registry.

Opinion by: Robert G. Dowd, Jr., J.
Robert M. Clayton III, P.J. and Roy L. Richter, J., concur.

Attorneys for Appellant: Caleb J. Aponte and Robert E. Hoeynick, Jr.

Attorneys for Respondent: Matthew D. Fry and Nathan T. Swanson

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.