

Summary of SC89635, *State of Missouri v. William D. Holden*

Appeal from the Marion County circuit court, Judge Robert M. Clayton II.

Attorneys: Holden was represented by Irene Karns of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Shaun J. Mackelprang and Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A sex offender appeals his conviction for failing to register a change of address within 10 days of moving. In a 7-0 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirmed the conviction. The statute requiring the change of address registration is not unconstitutional, the state's failure to admit additional registration forms did not violate a Supreme Court rule or United States Supreme Court precedent, the trial court did not abuse its discretion in admitting evidence of the victim's age on a registration form, and the prosecutor's reference during cross-examination to the victim's age did not result in manifest injustice. In a concurring opinion, Judge Richard B. Teitelman expressed concern that the decision might cause sex offenders to be less inclined to file registration forms.

Facts: In March 1995, William Holden pleaded guilty to two counts of sodomy with a child under the age of 14 for conduct that occurred in April 1994. When he was released from prison in May 2001, he moved to Hannibal and registered as a sex offender with the local sheriff's department pursuant to sections 589.400, RSMo 2000, *et seq.* The initial registration form contained the statutory requirements that Holden register every 90 days and that he notify the sheriff's department within 10 days of any change of address. Between 2001 and 2007, Holden continued to register every 90 days. When he registered in May 2007, he reported a change of address. Three months later, he informed the sheriff's office that he had moved from the May address more than a month earlier because of unsanitary conditions. In his same August 2007 registration, he also informed the sheriff that he had moved more than two weeks earlier from the subsequent address to his car near the river. He acknowledged signing the May 2007 form but stated he was unaware of the 10-day requirement for reporting a change of address. Holden was arrested, and the state charged him with failing to register a change of address within 10 days as required by section 589.414, RSMo Supp. 2006. Following a March 2008 jury trial, the state admitted into evidence Holden's initial form, signed in May 2001, and the form he signed in May 2007. Both of these forms contained the 10-day requirement for notification after a change of address. Holden objected, both before and during trial, to the inclusion of the victim's age appearing on the forms for the jury to see. Holden testified in his own defense, and during cross-examination, the prosecutor asked him whether he had pleaded guilty to sodomizing a 5-year-old victim. The jury found Holden guilty, and he was sentenced to four years in prison. He appeals.

AFFIRMED.

Court en banc holds: (1) Section 589.414 is constitutional as applied to Holden. The trigger date for purposes of retrospective analysis is the date of the conviction or plea, not the date of the

underlying offense. If the plea or conviction occurred before the statute's effective date, the registration requirements are retrospective. If the plea or conviction occurs after the statute's effective date, however, the registration requirements are not retrospective, regardless of when the underlying offense was committed. Although the Court in *Doe v. Blunt*, 225 S.W.3d 421 (Mo. banc 2007), and *R.L. v. Mo. Dept. of Corr.*, 245 S.W.3d 236 (Mo. banc 2008), overstated the holding in *Doe v. Phillips*, 194 S.W.3d 833 (Mo. banc 2006), each case focused on the law in effect when the guilty plea was entered. Neither decision altered the core analysis of *Phillips* (declaring the registration requirements unconstitutional only as to those sex offenders who were convicted of or pleaded guilty to the law's January 1, 1995, effective date). Here, when Holden pleaded guilty to the sodomy charges, the registration requirements had been in effect for several months.

(2) The state's failure to disclose 23 of Holden's registration forms did not violate Rule 25.03(c) or *Brady v. Maryland*, 373 U.S. 83 (1963). Under *Brady* and the rule, the state cannot suppress evidence favorable to a defendant where the evidence is material to either guilt or punishment, which occurs only when there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. Here, however, the result would not have been different. The two forms completed by Holden that were admitted contained the 10-day requirement, and he placed his initials next to this requirement on the May 2007 form. Further, *Brady* only applies when the defense discovers information after trial that had been known to the prosecution at trial. It does not apply here because Holden knew the additional forms existed at the time of trial because he had completed the forms over the previous seven years.

(3) The court did not abuse its discretion in admitting a registration form that included the victim's age, and the prosecutor's reference to the victim's age during cross-examination did not result in manifest injustice. The victim's age was relevant to prove Holden previously was convicted of a sexual offense involving a child under the age of 14 years, and the commission of this offense was a condition for the registration requirements, including section 589.414, to apply. To the extent the victim's age is inflammatory, it results from Holden's conduct and does not outweigh its probative effect. As to the prosecutor's statement, Holden first raised this issue in his motion for a new trial. The state asked Holden about the victim's age only to confirm the conviction and the age of the victim involved and did not ask him for any additional details. No manifest injustice or miscarriage of justice resulted.

Concurring opinion by Judge Teitelman: The author writes separately only to suggest that, as a result of this decision, sex offenders may be less inclined to comply with registration requirements, noting that Holden undertook good faith but a technically erroneous effort at compliance.