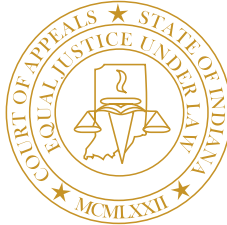


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Marty J. Wilson,
Appellant

v.

State of Indiana,
Appellee

May 30, 2025

Court of Appeals Case No.
25A-CR-115

Appeal from the Lawrence Superior Court
The Honorable Robert R. Cline, Judge

Trial Court Cause No.
47D02-9805-CF-257

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Marty J. Wilson appeals the trial court’s denial of his Verified Petition for Removal of Sexually Violent Predator Designation and motion to correct error. We affirm.

Facts and Procedural History

- [2] In May 1998, the State charged Wilson with child molesting as a class B felony alleging that he performed deviate sexual conduct with E.B., a child under fourteen years of age. In June 1999, the trial court issued an order accepting Wilson’s guilty plea. In August 1999, the court sentenced Wilson to ten years with three years suspended.
- [3] On August 26, 2024, Wilson filed “Defendant’s Verified Petition for Removal of Sexually Violent Predator Designation.” Appellant’s Appendix Volume II at 159. Wilson argued that he has been registering as a sexually violent predator (“SVP”) since 2002, that he has never been prosecuted for failing to register, and that his petition was his first request for the SVP designation to be removed. He stated that he attached a letter to his petition indicating that he has complied with the requirements for registration, that he successfully completed sex offender therapy and has not committed any subsequent criminal offenses, that he has worked for the same supervisor/employer since 2003, that he is a military veteran and was honorably discharged from the Army, and that he attached a letter from his employer which reflected his professional manner at work and the fact that he has never attempted to hide or mislead others about

his history. He requested that the court set a hearing on his petition and appoint Dr. George Parker and Dr. Sean Samuels, or any other expert the court deemed suitable, to evaluate him to assist the court in making its decision. On October 22, 2024, the court denied Wilson’s petition.

[4] Wilson filed a motion to correct error arguing that, effective July 1, 1998, the Indiana legislature created the SVP designation and at that time the registration period for a person designated as an SVP was indefinite; that he pled guilty in 1999 and the court did not make a determination that he was an SVP; that he was released from prison and began registering as a sex offender in 2002; that in 2003 the legislature amended the statute to require persons determined to be SVPs to register for life; that in 2006 the legislature amended the SVP statute to provide that registrants who were convicted of a qualifying offense were designated, by operation of law, as an SVP; that child molesting as a class B felony was one of the qualifying offenses; and that “[t]hus, [he] was designated an SVP by operation of law and required to register for life.” *Id.* at 167 (citing *Lemmon v. Harris*, 949 N.E.2d 803, 806-807 (Ind. 2011) (reviewing amendments to SVP statutes)). He argued that, under Ind. Code § 35-38-1-7.5(g), if a defendant has registered as an SVP for a period of at least ten years, he may petition the court to consider whether he should no longer be required to register as an SVP.¹ He argued that, “[b]y summarily denying his petition

¹ Ind. Code § 35-38-1-7.5(g) provides in part:

based solely on review of his criminal case, [he] has not been provided meaningful review; thus, retroactive application of the change in law constitutes *ex post facto* punishment.” *Id.* at 171.

[5] On January 13, 2025, the court held a hearing. The court stated “the criminal case file actually is a fairly thick case file in this particular case and I did review the whole thing,” “this Court record is not scant,” “there’s copies of . . . six depositions in here,” and “I felt very firmly convinced that Mr. Wilson was still a danger and should be on the registry.” Transcript Volume II at 7-9. The court denied Wilson’s motion to correct error.

Discussion

[6] We generally review a trial court’s denial of a motion to correct error for an abuse of discretion. *Booher v. State*, 773 N.E.2d 814, 817 (Ind. 2002). Wilson asserts that retroactive application of the SVP statute to him constitutes *ex post*

A person who is a sexually violent predator may petition the court to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

- (1) the sentencing court or juvenile court makes its determination under subsection (e); or
- (2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing.

facto punishment in violation of the Indiana Constitution. The Indiana Supreme Court stated:

Under Indiana law, there are two avenues by which a sex offender may qualify as an SVP. First, a person can qualify as an SVP by reason of a “mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense.” Ind. Code § 35-38-1-7.5(a). This determination may be made by the court upon request by the prosecuting attorney. Ind. Code § 35-38-1-7.5(e) (providing that, if it grants the motion of the prosecuting attorney, the court shall conduct a hearing at which two court-appointed psychologists or psychiatrists with expertise in criminal behavior disorders evaluate the person and testify). Second, a person may become an SVP by virtue of the offense committed. Ind. Code § 35-38-1-7.5(b).

Gonzalez v. State, 980 N.E.2d 312, 319 (Ind. 2013).

- [7] The parties agree that Wilson’s SVP designation occurred “by operation of law” because he committed a qualifying offense. Wilson asserts that his SVP designation constituted an ex post facto punishment. We observe that the Indiana Supreme Court has twice held that the “by operation of law” provision of the SVP statute did not constitute an ex post facto law as applied to defendants similarly situated to Wilson. Specifically, the Court addressed the “by operation of law” amendment to the SVP statute in *Jensen v. State*, 905 N.E.2d 384 (Ind. 2009), and again in *Lemmon v. Harris*, 949 N.E.2d 803 (Ind. 2011). In both cases, as here, the criminal conduct that supported the convictions occurred when the SVP statute was in place but before the “by

operation of law” provision was added. *See Jensen*, 905 N.E.2d at 388-389; *Harris*, 946 N.E.2d at 808-809.

[8] The Court in both *Jensen* and *Harris* thoroughly addressed the SVP statutory amendment and rejected the defendants’ claims that the “by operation of law” provision constitutes an ex post facto law as applied. The Court considered whether the effects of the statute as applied to the defendants were so punitive in nature as to constitute a criminal penalty and evaluated seven factors identified in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S. Ct. 554 (1963). *See Jensen*, 905 N.E.2d at 391-394; *Harris*, 949 N.E.2d at 809-813. The Court, citing Ind. Code § 35-38-1-7.5(g), found that the defendants were able to petition the court after ten years for reconsideration of his status as a SVP and concluded that the factors in *Mendoza-Martinez*, including the seventh factor which is “whether it appears excessive in relation to the alternative purpose assigned,” weighed in favor of treating the SVP statute as nonpunitive when applied to the defendants. *Jensen*, 905 N.E.2d at 391-394; *Harris*, 949 N.E.2d at 812-813. Wilson’s ex post facto claim fails for the same reasons the defendants’ claims failed in *Jensen* and *Harris*. *See Harlan v. State*, 971 N.E.2d 163, 169 (Ind. Ct. App. 2012) (citing *Harris* and rejecting claim that SVP designation by operation of law constituted ex post facto punishment); *Vickery v. State*, 932 N.E.2d 678, 683 (Ind. Ct. App. 2010) (citing *Jensen* and finding defendant did

not show the “by operation of law” SVP designation violated the Indiana constitutional prohibition against ex post facto laws).²

[9] For the foregoing reasons, we affirm the trial court.

[10] Affirmed.

Bailey, J., and Weissmann, J., concur.

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² To the extent Wilson cites *Gonzalez v. State*, the Court in that case held:

Here, unlike defendants Jensen and Harris, the defendant is not an SVP. . . . Here, the defendant neither had a hearing to determine SVP status under [Ind. Code § 35-38-1-7.5(a)], nor committed a qualifying offense under [Ind. Code § 35-38-1-7.5(b)]. Rather, his lifetime registration requirement arose under Indiana Code Section 11-8-8-19(c) due to the nature of his offense and the fact that, when committed, the defendant was at least eighteen years of age and the victim less than twelve years of age. Thus, unlike Jensen and Harris, the defendant has no available channel through which he may petition the trial court for review of his future dangerousness or complete rehabilitation. . . .

* * * * *

Thus, as to this defendant, we find that the retroactive imposition of a lifetime registration requirement appears excessive in relation to the purpose of protecting the public from repeat sexual crime offenders. For these reasons, we find this seventh factor weighs slightly in favor of treating the enhanced registration period as punitive rather than non-punitive.

Gonzalez, 980 N.E.2d at 319-321. Wilson was an SVP by operation of law similar to the defendants in *Jensen* and *Harris* and, like the defendants in those cases, may petition the court for reconsideration of his status as an SVP pursuant to Ind. Code § 35-38-1-7.5(g). We find *Gonzalez* distinguishable.

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