

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ronald Leroy Dolak, Jr.,
Appellant-Defendant,

v.

Indiana Department of
Correction,
Appellee-Plaintiff.

March 16, 2022

Court of Appeals Case No.
21A-MI-2243

Appeal from the Marion Superior
Court

The Honorable Patrick J. Dietrick,
Judge

Trial Court Cause No.
49D12-2105-MI-15665

Bailey, Judge.

Case Summary

- [1] Ronald Dolak, Jr. (“Dolak”) appeals the order dismissing his petition seeking removal from the Indiana Sex Offender Registry. He raises two constitutional issues, but we address only the dispositive issue of whether the requirement that he register for life due to his age and the age of the victim violates the Ex Post Facto clause of the Indiana Constitution as applied to him. We hold that it does, and we reverse that part of the trial court’s order and remand.

Facts and Procedural History

- [2] On July 9, 1997, the State charged Dolak with four counts of child molesting for conduct that allegedly occurred in December 1996, at which point Dolak was at least eighteen years of age and his victim was less than twelve years of age. Dolak pleaded guilty to two counts of child molesting as Class B felonies,¹ and the other charges were dismissed. The court sentenced Dolak to twenty years of imprisonment with five years suspended and three years of probation. Upon Dolak’s release from confinement on or about February 13, 2004, he registered as a sex offender as required by the Indiana Sex Offender Registration Act. I.C. § 11-8-8-1 through 11-8-8-22.
- [3] On May 10, 2021, Dolak filed a verified petition for removal from the Sex Offender Registry. Specifically, Dolak noted that he was required to register for

¹ Ind. Code § 35-42-4-3(a) (1997).

life both as a Sexually Violent Predator (“SVP”) per Indiana Code Section 11-8-8-19(b) and per Indiana Code Section 11-8-8-19(c). The latter subsection, enacted in 2006 and hereinafter referred to as the “age provision,” requires a sex or violent offender—regardless of whether he is a SVP—to register for life if, at the time he offended, he was at least eighteen years of age and the victim was less than twelve years of age. Dolak requested that the court “remove[him] from the sex offender registry and [from] the lifetime parole and GPS requirements,” appoint two psychologists to examine him, and conduct a hearing. App. at 12. The State responded with a Motion to Dismiss or Deny Dolak’s petition. Dolak filed a response to the State’s motion to dismiss and a motion for partial judgment on the pleadings.²

[4] The court conducted a hearing on July 26, 2021, at which two court-appointed psychologists testified regarding their examinations of Dolak. Both psychologists testified that Dolak did not meet the statutory definition of a SVP—i.e., “a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense.” I.C. § 35-38-1-7.5(a).

[5] In an order dated October 1, 2021, the trial court dismissed Dolak’s petition for removal from the sex offender registry. In so ruling, the trial court specifically

² Although Dolak purported to move only for “partial” judgment on the pleadings, it is not clear what part of his petition was not addressed by his motion for judgment on the pleadings. Moreover, as indicated in the Notice of Appeal, the trial court’s decision was a final order disposing of Dolak’s petition for removal from the sex offender registry by dismissal.

noted that Dolak had requested relief under “I.C. § 11-8-8-22 and I.C. § 35-38-1-7.5(g)[,]” both of which relate to petitions to remove a SVP designation.³ Appealed Order. This appeal ensued.

Discussion and Decision

[6] Dolak raises only claims challenging the constitutionality of state statutes. We review such claims de novo. *See, e.g., Himsel v. Himsel*, 122 N.E.3d 935, 945 (Ind. Ct. App. 2019) (citing *Tyson v. State*, 51 N.E.3d 88, 90 (Ind. 2016)), *trans. denied*.

Statutes come before us “clothed with the presumption of constitutionality until clearly overcome by a contrary showing.” *Zoeller v. Sweeney*, 19 N.E.3d 749, 751 (Ind. 2014). “The party challenging the constitutionality of a statute bears the burden of proof, and all doubts are resolved against that party and in favor of the legislature.” *Id.*

Id.

³ Thus, the trial court heard evidence and argument not just about the age provision and Dolak’s Ex Post Facto claim, but also about whether Dolak met the definition of a SVP. And, contrary to Dolak’s assertion on appeal, the trial court addressed his requests to be removed from the registry—both as a SVP and per the age provision—by dismissing those requests. On appeal, Dolak challenges only the decision to dismiss his petition for removal based on the age provision; therefore, Dolak has waived his appeal of the dismissal of his petition based on his SVP status. *See* Appellate Rule 46(A)(8) (requiring contentions on the issues presented and cogent reasoning in support of those contentions); *Burnell v. State*, 110 N.E.3d 1167, 1171 (Ind. Ct. App. 2018) (noting we will not review undeveloped arguments); *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005) (noting an issue may not be raised for the first time in a reply brief).

[7] Dolak contends that the age provision, as applied to him retroactively, violates the Ex Post Facto clause of the Indiana Constitution. Ind. Const. art. 1, § 24. At the time Dolak committed his crimes, Indiana law required him to register as a sex offender for ten years. I.C. §5-2-12-13 (1996) (currently I.C. § 11-8-8-7). In 1998, the legislature created the classification of “Sexually Violent Predator” (“SVP”), which it defined as “an individual who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any” of certain specified offenses, including child molesting. I.C. § 5-2-12-4.5 (1998). In addition, the 1998 amendment required SVPs to register for an “indefinite period.” I.C. § 5-2-12-13 (1998). In 2003, the registration period for SVPs was extended to life. I.C. § 5-2-12-13 (2003). In 2006, the legislature passed the “age provision,” i.e., a law imposing a lifetime registration requirement on sex or violent offenders—whether or not they were SVPs—who were at least eighteen years of age and whose victims were less than twelve years of age at the time of the offense. I.C. § 5-2-12-13(c) (2006) (currently I.C. § 11-8-8-19(c)). While a SVP may seek removal from the registry once each year after a ten year period, a person who must register per the age provision does not have any means to petition for relief from the duty to register for life. I.C. § 35-38-1-7.5(g).

[8] As the State concedes, the retroactive application of the age provision to Dolak violates the Indiana Constitution as an ex post facto law. As the Indiana Supreme Court noted in *Gonzales v. State*, 980 N.E.2d 312 (Ind. 2013), unlike the lifetime registration requirement that applies to SVPs, the lifetime

registration requirement imposed upon an individual per the age provision does not provide any “channel through which he may petition the trial court for review of his future dangerousness or complete rehabilitation.” *Id.* at 320. Therefore, the age provision’s lifetime registration requirement is punitive and, as such, cannot be applied retroactively. *Id.* (applying the seven factors of the “intent-effects” test, and concluding the lifetime registration requirement of the age provision was punitive and therefore could not be applied retroactively consistent with the Ex Post Facto clause of the Indiana Constitution); *cf.* *Lemmon v. Harris*, 949 N.E.2d 803, 812 (Ind. 2011) (holding the lifetime registration requirement applicable to SVPs was not punitive—and, therefore, did not violate Indiana’s Ex Post Facto clause—under the factors of the intent-effects test, “most importantly” because the ability to annually seek removal from the registration requirement after ten years showed the requirement was not “excessive” in relation to its legitimate purpose of protecting the public from repeat offenders).

[9] We hold that the retroactive application of the age provision’s lifetime registration requirement to Dolak is a violation of the Ex Post Facto clause of

the Indiana Constitution.⁴ Therefore, Dolak may not be required to register for life as a sex offender pursuant to Indiana Code Section 11-8-8-19(c).⁵

Conclusion

[10] Because the retroactive application of the lifetime registration requirement of the age provision, I.C. § 11-8-8-19(c), violates the Ex Post Facto clause of the Indiana Constitution, we reverse the trial court's order insofar as it applies to the age provision.

[11] Reversed in part and remanded for further proceedings consistent with this decision.

Mathias, J., and Altice, J., concur.

⁴ Because we decide this case under the Ex Post Facto clause of the Indiana Constitution, we do not address Dolak's additional constitutional claim that the lifetime registration requirement of the age provision violates the Privileges and Immunities clause of the Indiana Constitution. *See, e.g., Girl Scouts of S. Ill. v. Vincennes Ind. Girls Inc.*, 988 N.E.2d 250, 254 (Ind. 2013) (“[W]e generally avoid addressing constitutional questions if a case can be resolved on other grounds.”).

⁵ However, as the State points out, Dolak is still required to register for life as a SVP, with the ability to annually petition the trial court to consider whether he should no longer be considered a SVP. *See* I.C. § 35-38-1-7.5(g).