

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jonathan L. Sims,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

September 27, 2023

Court of Appeals Case No.
23A-MI-764

Appeal from the Madison Circuit
Court

The Honorable Scott A. Norrick,
Judge

Trial Court Cause No.
48C05-2208-MI-349

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

- [1] Jonathan L. Sims filed a petition for an order of reclassification on the Indiana Sex and Violent Offender Registry (the Registry). He then filed a motion for judgment on the pleadings, and the State filed a motion to dismiss the petition. The trial court granted the State’s motion, and Sims now appeals. We affirm.
- [2] In 2015, Sims pled guilty to level 4 felony child molesting, and thus he became a sexually violent predator (SVP) by operation of law. *See* Ind. Code § 35-38-1-7.5(b)(1)(C) (stating that a person who commits an offense described in Ind. Code § 35-42-4-3, i.e., child molesting, as a level 4 felony “is a sexually violent predator” and that, with certain exceptions not relevant here,¹ “a person is a sexually violent predator by operation of law if an offense committed by the person satisfies the conditions set forth in subdivision [(b)(1) or (b)(2)] and the person was released from incarceration, secure detention, probation, or parole for the offense after June 30, 1994.”).
- [3] Indiana Code Section 35-38-1-7.5(d) provides, “At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under subsection (b).” At Sims’s January 2016 sentencing hearing, the court did not make such an indication on the record. The court sentenced Sims to six years, with four years

¹ Indiana Code Section 35-38-1-7.5(h) provides that “[a] person is *not* a sexually violent predator by operation of law under subsection (b)(1) if *all* of [seven enumerated] conditions are met[,]” including “(2) [t]he person is not more than four (4) years older than the victim.” (Emphases added.) It is undisputed that Sims was more than four years older than the victim. Also, the court in Sims’s criminal case did not “(7) ... find[] that [Sims] should not be considered a sexually violent predator.”

suspended, two years in community corrections, and two years of probation. Sims's suspended sentence was revoked in January 2018, and he was committed to the Department of Correction. He was released from that commitment in October 2021. As an SVP, Sims was required to register with law enforcement authorities within seventy-two hours, Ind. Code § 11-8-8-7(h), and he is required to register for life. Ind. Code § 11-8-8-19(b).

[4] In August 2022, Sims filed a petition for an order of reclassification on the Registry. Sims alleged that because the sentencing court “did not indicate that [he] was a sexually violent predator” under Indiana Code Section 35-38-1-7.5, he “cannot be placed on the sexually violent predator registry by operation of law[,]” and he requested to be assigned to the Registry for ten years as a less restrictive measure. Appellant's App. Vol. 2 at 41-42. He then filed a motion for judgment on the pleadings. The State filed a motion to dismiss Sims's petition, asserting that Sims is an “SVP by operation of law[.]” *Id.* at 38 (citing, *inter alia*, *Stockert v. State*, 44 N.E.3d 78 (Ind. Ct. App. 2015), *trans. denied* (2016)). The trial court granted the State's motion without a hearing.

[5] On appeal, Sims argues that the trial court erred. We disagree. As we said almost a decade ago in *Stockert*, a defendant's SVP status under Indiana Code Section 35-38-1-7.5(b) is determined by operation of the statute, not by the trial court. 44 N.E.3d at 82. Sims suggests that the sentencing court's failure to indicate his SVP status on the record pursuant to Indiana Code Section 35-38-1-7.5(d) deprived him of due process, but he offers no cogent argument in this regard, and he failed to raise the issue in his petition, so it is waived. *See Terpstra*

v. State, 138 N.E.3d 278, 286 (Ind. Ct. App. 2019) (finding appellant’s due process claims waived because they were raised for first time on appeal), *trans. denied* (2020). Therefore, we affirm the trial court’s dismissal of Sims’s petition.²

[6] Affirmed.

Brown, J., and Felix, J., concur.

² In his petition, Sims also requested relief under Indiana Code Section 11-8-8-22 based on the sentencing court’s failure to indicate on the record that he is an SVP. *See* Ind. Code § 11-8-8-22(c) (providing that person may petition court to “require the person to register under less restrictive conditions”). For the reasons given above, Sims is not entitled to such relief.