

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Andrew J. West,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 2, 2024

Court of Appeals Case No.
23A-CR-1956

Appeal from the Whitley Circuit Court

The Honorable Matthew J. Rentschler, Judge

Trial Court Cause No.
92C01-2302-F5-180

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

- [1] Andrew J. West appeals his conviction for failing to register as a sex or violent offender, a Level 5 felony, claiming that the trial court erred in denying his motion for a directed verdict. In the alternative, West challenges the sufficiency of the evidence, arguing that no evidence was presented establishing that West was not living at the location he had listed on the sex offender registry.
- [2] We affirm.

Facts and Procedural History

- [3] West committed sexual misconduct with a minor, a Class C felony, on January 1, 2008. He was convicted of that offense and sentenced on August 27, 2009, to four years in the Indiana Department of Correction (DOC), with two years suspended to probation. Additionally, West was required to register as a sex offender.¹
- [4] Thereafter, West had several additional convictions and periods of incarceration. More specifically, West was charged and convicted of failing to register as a sex offender and was sentenced to one-and-one-half years with one year suspended to probation on May 12, 2011. Then, on August 27, 2012,

¹ In accordance with Ind. Code § 11-8-8-7, sex or violent offenders who reside in Indiana must register as a sex offender. And the offender is required to live at the address he provides on the registry. *See* I. C. § 11-8-8-17(a)(5).

West was sentenced to 180 days in jail for false informing. And on September 7, 2012, West was sentenced to four years in the DOC for again failing to register as a sex offender. Thereafter, on October 21, 2015, West was sentenced to three years for dealing in methamphetamine and was released from custody on November 6, 2018.

[5] On August 21, 2019, West was sentenced to two-and-one-half years, with one-and-one-half years suspended to probation, for identity deception and failure to register as a sex offender. Following a violation of probation hearing, the trial court sentenced West to 180 days in jail on May 12, 2020, for criminal mischief. The following day, West was sentenced to 60 days for battery. On July 20, 2022, West was sentenced to one year in jail for committing battery that resulted in moderate bodily injury. And on November 7, 2022, West was sentenced to 266 days (with credit for 133 days) in jail, again for failing to register as a sex offender.

[6] Turning to the facts of this case, Mavis Whitehead was living on her property on Elder Road in Whitley County in 2023. Sometime prior to February 2023, Whitehead allowed two acquaintances to leave their camper on her land. During the first week of February, West and his wife, Heather (collectively, the Wests), asked Whitehead if they could reside on her property. Whitehead agreed to allow the Wests to live in the camper that was parked on her lot.

[7] Sometime between February 1 and February 17, West visited his grandfather, Roger, who also lived in Whitley County. West told Roger that he had

originally planned to reside on Sellar's Lake in Kosciusko County, but that never transpired. Roger's former wife—who owned the residence—did not want West to live there, so Roger made it clear that West could not move into the house. West stayed with Roger for one night and then returned to the camper on Elder Road.

[8] On February 17, 2023, West went to the Whitley County Sheriff's Department (Sheriff's Department), registered as a sex offender, and listed Roger's address as his residence. During the registration process, Bethany Schrader, an administrator with the Sheriff's Department, reviewed the registry documents. West initialed the paperwork, confirmed that Roger's Whitley County address was his primary residence, and agreed that he was required to be registered as a sex offender until December 22, 2026.

[9] On February 26, 2023, Sheriff's Deputy Scott Schmitt, who oversees compliance with Whitley County's sex offender registry, drove to Roger's residence to determine whether West was, in fact, living there. After speaking with Roger, Deputy Schmitt determined that West was not residing there. Deputy Schmitt then went to the Elder Road property, where he confirmed that West's minivan was parked near the camper. When Deputy Schmitt called the numbers that West had listed on the registry documents, no one answered, and no one returned his voicemail.

[10] On February 28, 2023, West was charged with Level 5 felony failure to register as a sex or violent offender.² The State alleged that West “knowingly or intentionally failed to reside at the address or location that [West] registered with the sex . . . offender registration as required under Indiana Code Chapter 11-8-8.” *Appellant’s Appendix Vol. 2* at 18. The State also alleged that West was a habitual offender.

[11] A bench trial commenced on August 3, 2023. Following the presentation of the State’s case-in-chief, West moved for a directed verdict, arguing that his registration requirement had ceased sometime in August 2021. After hearing the State’s objection that West’s incarceration for offenses committed after his conviction for the sexual misconduct offense tolled the registration period,³ the trial court denied the motion for a directed verdict.

[12] West then presented his own evidence, and the trial court thereafter found him guilty as charged and determined that he was a habitual offender. West was

² The offense was elevated from a Level 6 felony to a Level 5 felony in light of West’s prior convictions. *See* I.C. § 11-8-8-17(a)(5).

³ In accordance with I.C. § 11-8-8-19, the sex offender registration requirement applies until the expiration of ten years after the date that the offender is either released from a penal facility; placed in a community corrections program; placed on parole or placed on probation for the sex offense requiring registration, whichever occurs last. The statute further provides that “*the registration period is tolled during any period that the sex or violent offender is incarcerated.*” (Emphasis added).

then sentenced to three years of incarceration for failing to register as a sex offender with an enhancement of three years for being a habitual offender.

[13] West now appeals.

Discussion and Decision

[14] West argues that the trial court erred in refusing to grant his motion for a directed verdict, claiming that he was not required to register as a sex offender on February 26, 2023, because the ten-year registration requirement expired in 2021.

[15] When a defendant moves for a directed verdict/judgment on the evidence, the trial court is required to grant the motion if: (1) the record is devoid of evidence on one or more elements of the offense; or (2) the evidence presented is without conflict and subject to only one inference, which is favorable to the defendant. *Pavlovich v. State*, 6 N.E.3d 969, 980 (Ind. Ct. App. 2014). We note, however, that because West presented evidence in his defense following the trial court's denial of his motion, he has waived appellate review of this issue. *See Cox v. State*, 19 N.E.3d 287, 290 (Ind. Ct. App. 2014) (explaining that a defendant who presents evidence after a denial of a motion for a directed verdict made at the end of the State's case waives appellate review of the denial of that motion). Thus, we address West's sole challenge to the sufficiency of the evidence that his conviction must be set aside because the State failed to show that he was not living at Roger's address, i.e., the location that he had listed on the registry. *See id.*

[16] A claim challenging the sufficiency of the evidence warrants a deferential standard of appellate review, in which we neither reweigh the evidence nor judge witness credibility. *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023). Rather, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is not necessary that the evidence overcomes every reasonable hypothesis of innocence. *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007). It is the factfinder’s job to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court’s ruling. *Willis v. State*, 27 N.E.3d 1065, 1066-67 (Ind. 2015). To prove that West failed to register as a sex offender, a Level 5 felony, the State had to show that he was previously convicted of a sex crime, and that he knowingly or intentionally failed to reside at the registered location or address. *See* I.C. § 11-8-8-17(a)(5).

[17] As West was convicted and sentenced for sexual misconduct with a minor, a class C felony, on August 27, 2009, he was required to register the address of his principal residence with local law enforcement. *See* I.C. § 11-8-8-17(a)(5). The State showed that West reported to the Sheriff’s Office on February 17, 2023, that Roger’s address was his principal place of residence. But Roger testified at trial that West stayed with him for “only one night, sometime in February.” *Transcript* at 10-11. The State also established that West lived on

Whitehead's Elder Road property from February 2023 until he was arrested in April. And from mid-February through February 26—the day that Deputy Schmitt attempted to verify West's residence—West had failed to report any address change to the Sheriff's Department. Inasmuch as West was not residing at the address he had listed on the sex offender registry, we conclude that the evidence was sufficient to prove that he knowingly or intentionally failed to register as a sex offender.

[18] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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