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**IN THE
COURT OF APPEALS OF INDIANA**

RAYMOND SHOOK,)
)
 Appellant-Petitioner,)
)
 vs.) No. 49A05-1007-PC-461
)
 STATE OF INDIANA,)
)
 Appellee-Respondent.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
The Honorable Stanley E. Kroh, Commissioner
Cause No. 49G03-0508-PC-138771

May 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Raymond Shook appeals the denial of his motion to remove his status as a sexually violent predator (“SVP”). Because Shook failed to follow the requirements for challenging one’s status as a sex offender pursuant to Indiana Code Section 11-8-8-22, we affirm.

Facts and Procedural History

On October 22, 2004, in Marion County, thirty-seven-year-old Shook engaged in sexual intercourse with the twelve-year-old daughter of his friend. On August 17, 2005, the State charged Shook with class A felony and class C felony child molestation. On January 26, 2006, Shook pled guilty to committing class B felony child molestation,¹ and in exchange, the State dismissed the class A and class C felony child molestation charges. On February 10, 2006, the trial court sentenced Shook to an executed term of fifteen years.² Shook is incarcerated at the New Castle Correctional Facility, which is located in Henry County. His earliest possible release date is May 21, 2011.

At some point, the Indiana Department of Correction (“IDOC”) classified Shook as an SVP, and Shook learned of such classification at his annual review. On March 25, 2010, Shook filed, pro se, in the Marion Superior Court under his conviction’s cause number, an unverified motion to remove his SVP status. Appellant’s App. at 58-60. On April 13, 2010, the State filed a response. On April 22, 2010, the trial court issued an order denying Shook’s motion. *Id.* at 10-13. On April 26, 2010, Shook filed a reply to the State’s response, which

¹ Ind. Code § 35-42-4-2.

² Shook claims that he received an eighteen-year sentence with three years suspended, but provides no citation to the record. Our review of the record before us does not reveal his sentence. Therefore, his sentencing information is taken from the Indiana Offender Database provided by the Indiana Department of Correction. See www.in.gov/apps/indcorrection/ofs/ofs.

the trial court treated as a motion to reconsider. On June 15, 2010, the trial court held a hearing on the matter and denied Shook's motion to reconsider. Shook appeals.

Discussion and Decision

Shook argues that the trial court erred in denying his motion to remove his status as a SVP. He asserts that Indiana Code Section 35-38-1-7.5 (governing findings regarding SVPs), amended in 2006 to trigger SVP status for a person convicted of child molesting and Section 11-8-8-19(b) (governing duty of sex and violent offenders to register), requiring SVPs to register for life, violate the federal and state constitutional prohibitions against ex post facto laws as applied to him.³ According to Shook, he should be designated a "sex offender" who is required to register for ten years. *See* Ind. Code §§ 11-8-8-4.5, -5, and -19(a).

The State urges us to affirm the denial because Shook failed to file his motion in accordance with the requirements of Indiana Code Section 11-8-8-22, which provides in relevant part as follows:

(a) As used in this section, "offender" means a sex offender (as defined in section 4.5 of this chapter) and a sex or violent offender (as defined in section 5 of this chapter).

....

(c) A person to whom this section applies may petition a court to:

- (1) remove the person's designation as an offender; or
- (2) require the person to register under less restrictive conditions.

³ For a complete discussion of the evolution of Indiana's Sex Offender Registration Act, see *Wallace v. State*, 905 N.E.2d 371, 376-77 (Ind. 2009).

....

(d) *A petition under this section shall be filed in the circuit or superior court of the county in which the offender resides. If the offender resides in more than one (1) county, the petition shall be filed in the circuit or superior court of the county in which the offender resides the greatest time. If the offender does not reside in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is employed the greatest time. If the offender does not reside or work in Indiana, but is a student in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is a student. If the offender is not a student in Indiana and does not reside or work in Indiana, the petition shall be filed in the county where the offender was most recently convicted of a crime listed in section 5 of this chapter.*

(e) After receiving a petition under this section, the court may:

- (1) summarily dismiss the petition; or
- (2) give notice to:

- (A) the [IDOC];
- (B) the attorney general;
- (C) the prosecuting attorney of:

- (i) the county where the petition was filed;
- (ii) the county where offender was most recently convicted of an offense listed in section 5 of this chapter;
- and
- (iii) the county where the offender resides; and

- (D) the sheriff of the county where the offender resides;

and set the matter for hearing. The date set for a hearing must not be less than sixty (60) days after the court gives notice under this subsection.

....

(h) The petitioner has the burden of proof in a hearing under this section.

....

(j) An offender may base a petition filed under this section on a claim that the application or registration requirements constitute ex post facto punishment.

(k) A petition filed under this section must:

(1) be submitted under the penalties of perjury;
(2) list each of the offender's criminal convictions and state for each conviction:

- (A) the date of the judgment of conviction;
- (B) the court that entered the judgment of conviction;
- (C) the crime that the offender pled guilty to or was convicted of; and
- (D) whether the offender was convicted of the crime in a trial or pled guilty to the criminal charges; and

(3) list each jurisdiction in which the offender is required to register as a sex offender or a violent offender.

(Emphasis added.)

The statute is clear that an offender who seeks to change his status on the sex offender registry must file a petition with the appropriate court. Ind. Code § 11-8-8-22(d). At the time Shook filed his motion in Marion County, he resided (and we presume continues to reside) in New Castle Correctional Facility, which is in Henry County, not Marion County. Additionally, a petition to remove SVP status, or any document purported to be or construed as a petition, must (1) be submitted under the penalties of perjury, (2) for each criminal conviction list the offense, the court and date of judgment, and whether the offender pled guilty or was convicted by trial, and (3) list each jurisdiction in which the offender must register. Ind. Code § 11-8-8-22(k). Shook's motion also fails to comply with these requirements. Therefore, we affirm the denial of Shook's petition. *See In re State of Ohio*

Conviction Against Gambler, 939 N.E.2d 1128, 1131 (Ind. Ct. App. 2011) (reversing trial court's order that removed Gambler's name from Indiana sex offender registry where Gambler's motion "was not submitted under penalties of perjury, did not list the required details for each conviction, and did not explicitly state in which jurisdictions he is required to register as a sex offender"); *Wiggins v. State*, 928 N.E.2d 837, 840 (Ind. Ct. App. 2010) (affirming denial of offender's motion to remove status as SVP and directing him to file amended petition in compliance with Indiana Code Section 11-8-8-22).

Affirmed.

NAJAM, J., and ROBB, C.J., concur.