

Floyd Whitlock (“Whitlock”) filed in Marion Superior Court a pro se motion to be removed from the Indiana Sex Offender Registry. The trial court removed Whitlock from the registry, but also ordered that Whitlock may have to register as a condition of parole. Whitlock appeals. Concluding that Whitlock’s claim is not ripe for adjudication, we affirm.

Facts and Procedural History

Whitlock is currently incarcerated in the Department of Correction for a Class D felony theft conviction. His earliest release date from the Department of Correction is November 14, 2010. In 1980, Whitlock was convicted of Class B felony rape and adjudicated an habitual offender and has served that sentence in its entirety. On some date, Whitlock was placed on the Indiana Sex Offender Registry.

On February 12, 2010, Whitlock filed a pro se motion to be removed from the Sex Offender Registry. Whitlock’s motion was denied on April 29, 2010. Shortly thereafter, Whitlock filed a motion to correct error. In the motion, he argued that requiring him to register as a sex offender violated the prohibition against ex post facto laws. On May 25, 2010, the Department of Correction moved to intervene and filed a response in opposition to Whitlock’s motion to correct error.

That same day, the trial court entered an “Order Superceding Previous Order on Indiana Sex Offender Registry as Applied to Defendant.” In the order, the court granted Whitlock’s motion to remove him from the Indiana Sex Offender Registry. Appellant’s App. p. 107. However, the order also states: “This Order does not relinquish any

requirement Defendant has or may have to register as directed by the Indiana Parole Board pursuant to its Legislative Authority.” Id. Whitlock now appeals.

Discussion and Decision

Whitlock argues that granting the Parole Board discretion to require him to register as a sex offender subjects him to punishment on an ex post fact basis. In response, the State contends that the issue is not yet ripe for consideration.

The resolution of whether this case is ripe for consideration is controlled by a recent decision of our court:

Provisions of the Indiana Sex Offender Registration Act have been declared in violation of the ex post facto clause contained in the Indiana Constitution, as applied to persons who had committed their crimes prior to the imposition of any registration requirement. See Wallace v. State, 905 N.E.2d 371, 384 (Ind. 2009) (defendant’s conviction for failing to register as a sex offender reversed because the registration statute, as applied to him, added punishment beyond that which could have been imposed when he committed his crime), reh’g denied. See also State v. Pollard, 908 N.E.2d 1145, 1154 (Ind. 2009) (trial court properly dismissed charge that Pollard violated the residency restriction provision of the Sex Offender Registration Act when he had served his sentence before the Act was enacted and application to him would add punishment beyond that possible when his crime was committed). However, the registration statute did not violate the Indiana constitutional ban on ex post facto laws as applied to the appellant in Jensen v. State, 905 N.E.2d 384, 394 (Ind. 2009) (appellant who had pled guilty to child molesting while the registration statute included a ten-year reporting requirement, and was subsequently adjudicated a sexually violent predator and ordered to register for life, did not demonstrate a violation of ex post facto prohibition).

Here, however, unlike the litigants in Wallace, Pollard, and Jensen, Gardner presents no claim that is ripe for adjudication. See Ind. Dep’t of Env’tl. Mgmt. v. Chem. Waste Mgmt., Inc., 643 N.E.2d 331, 336 (Ind. 1994) (Ripeness, as an aspect of subject matter jurisdiction “relates to the degree to which the defined issues in a case are based on actual facts rather than on abstract possibilities, and are capable of being adjudicated on an adequately developed record.”). There is no evidence that Gardner has been court-ordered to register as a violent offender, or that he has been

notified by any correctional authority or registry coordinator that he will be required to register.

Gardner v. State, 923 N.E.2d 959, 960 (Ind. Ct. App. 2009) (footnote omitted), trans. denied.

Whitlock is not currently under any court order to register as a sex offender. In fact, in its May 25, 2010 order, the trial court granted Whitlock's motion to remove him from the Indiana Sex Offender Registry. There is also no evidence in the record that the Parole Board will require Whitlock to register when he is eventually released on parole.

An ex post facto analysis cannot begin without an actual, retroactive application of law. As of yet, there is no such application before us. See Gardner, 923 N.E.2d at 960. Accordingly, the question of whether the Parole Board may require Whitlock to register as a sex offender as a condition of parole is not ripe for adjudication, and the trial court properly denied his motion in that respect.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.