

IN THE INDIANA COURT OF APPEALS

CAUSE No. 76A03-1711-MI-2681

NATHAN HEALEY,	)	Appeal from the Steuben Circuit Court
	)	
Appellant,	)	
	)	Cause No. 76C01-1705-MI-00116
v.	)	
	)	The Hon. Allen N. Wheat, Judge
ROBERT CARTER,	)	
COMMISSIONER OF THE INDIANA	)	
DEPARTMENT OF CORRECTIONS;	)	
JEREMY T. MUSSER, STEUBEN	)	
COUNTY PROSECUTING ATTORNEY;	)	
AND TIM R. TROYER, STEUBEN	)	
COUNTY SHERIFF,	)	
	)	
Appellees.	)	

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**APPELLANT’S BRIEF**

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**ISSUE PRESENTED FOR REVIEW**

Whether the trial court improperly denied Appellant Nathan Healey’s (“Healey”) motion for declaratory judgment seeking relief from the Indiana Department of Correction’s (“IDOC”) determination that he must register as a “sex offender” when the court ruled that it did not have authority to review IDOC’s sex offender registry decisions for constitutionality under the Sixth Amendment.

**STATEMENT OF THE CASE**

On July 5, 2007, Healey was charged in the Steuben County Superior Court 1 under cause number 76D01-0707-CM-000750 with Count I: Criminal Confinement, Ind. Code § 35-42-3-3(b)(1), a Class C felony; and Count II: Battery, I.C. 35-42-2-1(2)(b), a Class D felony. (Appellant’s App. Vol. II pp. 25-26). He was later charged by separate information filed on December 30, 2008 with Count III: Criminal Confinement, I.C. 35-42-3-3(a)(1), a Class D felony. (Appellant’s App. Vol. II p. 27). Healey pleaded guilty to Count III pursuant to a written plea agreement on May 11, 2009. (Appellant’s App. Vol. II p. 28). Counts I and II were dismissed. (Appellant’s App. Vol. II p. 28). Pursuant to the agreement, Healey was sentenced to a period of imprisonment of three years with all but 270 days suspended. (Appellant’s App. Vol. II p. 28).

After serving his executed sentence, the IDOC required Healey to register as a sex offender pursuant to the Indiana Sex Offender Registration Act. (Appellant’s App. Vol. II p. 22). This was based on the IDOC’s determination that the victim of Healey’s offense was less than 18

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years of age. (Appellant's App. Vol. II. p. 30). Healey complied and began registration on June 16, 2009. (Appellant's App. Vol. II p. 30).

On May 3, 2017, Healey filed a verified petition for declaratory judgment ("Petition") in the Steuben County Circuit Court under cause number 76C01-1705-MI-000116. (Appellant's App. Vol. II p. 3). The Petition sought relief from the IDOC's determination that Healey must register as a sex offender. (Appellant's App. Vol. II p. 12). The Petition named the commissioner of the IDOC ("Commissioner"), the Steuben County prosecutor, and the Steuben County sheriff as respondents. (Appellant's App. Vol. II p. 2).

The Commissioner responded by his counsel, the Indiana Attorney General, on July 10, 2017. (Appellant's App. Vol. II p. 5). The response sought dismissal of the Petition, or, in the alternative, denial of relief. (Appellant's App. Vol. II p. 14). The Steuben County prosecutor and sheriff did not file a response.

On July 26, 2017, the trial court held a telephonic pretrial conference. (Appellant's App. Vol. II p. 5). At that time, it was agreed that the material facts were not in dispute. Consequently, the parties agreed to submit a joint stipulation of facts which was later filed on August 28, 2017. (Appellant's App. Vol. II pp. 6, 21-31). A memorandum of law in support of Healey's Petition was filed the next day. (Appellant's App. Vol. II pp. 6, 32-38).

On September 6, 2017, the trial court issued an order of Findings of Fact and Conclusions of Law. (Appellant's App. Vol. II pp. 6, 39-42). This order denied declaratory relief and also denied the Commissioner's motion to dismiss. (Appellant's App. Vol. II p. 42).

Healey timely filed a motion to correct error on September 28, 2017. (Appellant's App. Vol. II pp. 7, 43-46). This was followed by the Commissioner's Response in Opposition filed on October 4, 2017. (Appellant's App. Vol. II pp. 7, 47-51). Healey filed a reply on October 11,

2017. (Appellant's App. pp. 7, 52-56). The trial court entered its final order denying Healey's Motion to Correct Error on October 18, 2017. (Appellant's App. Vol. II pp. 7, 57). The order did not specify the trial court's reasoning. (Appellant's App. Vol. II p. 57). This appeal ensued.

### **STATEMENT OF FACTS**

On July 5, 2007, Healey was charged in Steuben County Superior Court 1 under cause number 76D01-0707-CM-000750 with Count I: Criminal Confinement, Ind. Code § 35-42-3-3(b)(1), a Class C felony; and Count II: Battery, I.C. 35-42-2-1(2)(b), a Class D felony. (Appellant's App. Vol. II p. 25-26). The State later added Count III: Criminal Confinement, I.C. 35-42-3-3(a)(1), a Class D felony, on December 30, 2008. (Appellant's App. Vol. II p. 27). Count I alleged that Healey confined a child under the age of 14, while Count III alleged general confinement that did not contain an age element.<sup>1</sup> (Appellant's App. Vol. II pp. 25, 27). Moreover, the official information contained in the court's file redacted the identity of the child Healey was alleged to have confined in Count I. (Appellant's App. Vol. II p. 25). Count III, by contrast, identified the victim by the initials Z.M. but contained no allegation of Z.M.'s age. (Appellant's App. Vol II p. 27).

Healey entered into a plea agreement on May 11, 2009 pursuant to which he pleaded guilty to Count III. (Appellant's App. Vol. II p. 28). Counts I and II were dismissed. (Appellant's App. Vol. II p. 28). It is undisputed that Healey's plea did not require testimony of Z.M.'s age. (Appellant's App. Vol. II p. 22 at ¶6). Healey was sentenced pursuant to the plea to a fixed term of three (3) years with all but 270 days suspended. (Appellant's App. Vol. II p. 29).

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<sup>1</sup> It is the difference in the presence of an age element that caused Count I to be an elevated charge from the Class D felony level of basic Criminal Confinement.

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On June 16, 2009, the IODC required Healey to begin registering as a sex offender due to this conviction. (Appellant’s App. Vol. II p. 30). This was based on the IDOC determination that he had committed the offense of “35-42-3-3 – Criminal Confinement, if the Victim is Less than Eighteen (18) Years of Age.”<sup>2</sup> (Appellant’s App. Vol. II p. 30).

On May 3, 2017, Healey filed his Verified Petition for Declaratory Judgment (“Petition”) in which he sought a declaratory order from the Steuben County Circuit Court that he no longer be required to register. (Appellant’s App. Vol. II pp. 3, 10-13). The basis of this Petition was that his registration requirement was based on the IDOC’s finding of “fact” that Z.M. was under the age of 18 years at the time of Healey’s offense. (Appellant’s App. Vol. II p. 10-13). Healey argued that sex offender registration was a penalty outside of the scope of punishment authorized by the General Assembly for Class D felony Confinement. (Appellant’s App. Vol. II p. 12 at ¶9). And this penalty was triggered based on a fact that was not found by a jury or admitted by Healey as part of a factual basis of his guilty plea. (Appellant’s App. Vol. II p. 12 at ¶9).

The commissioner for the IDOC filed his response on July 10, 2017. (Appellant’s App. Vol. II pp. 5, 14-20). Included within the response, the commissioner stated the following:

By including the sex or violent offender registry within Title 11 of the Indiana Code, the General Assembly gave the Department of Correction the obligation of administering and enforcing the sex or violent offender registry.

The General Assembly could have placed the registry in Title 35 of the Indiana Code, Criminal Law and Procedure, but it did not do so. Instead, it charged the Department of Correction with the oversight of the registry in Title 11, Corrections. (Appellant’s App. Vol. II p. 18 at ¶23-24).

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<sup>2</sup> A plea of guilty to Class C felony Criminal Confinement would be an “automatic” registration offense because it demands, as part of the factual basis, that the offender admit the victim of the offense was under 14 years of age.



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In its order denying declaratory relief, the trial court acknowledged that “Ind. Code 35-42-3-3(a)(1) does not set forth the age of the victim as an element of the offense....” (Appellant’s App. Vol. II p. 41 at ¶11). It also acknowledged that the same provision “does not set forth the relationship of the Defendant [sic] to the victim as being an element of the offense....” (Appellant’s App. Vol. II p. 41 at ¶12). Finally, the court also recognized, “It is true that the State’s charging information regarding Count III was silent as to the age of Z.M., and to [Healey’s] relationship to Z.M.” (Appellant’s App. Vol. II p. 41 at ¶10). But the trial court found that the legislature’s delegation of authority to the IDOC on registration decisions took the matter out of the trial court’s hands. (Appellant’s App. Vol II p. 41-42). The trial court quoted *Nichols v. State*, 947 N.E.2d 1011, 1017 (Ind. Ct. App. 2011):

Placement on the Registry is mandatory, and the Act affords neither the trial court nor the DOC any discretion in the matter of the registration requirement. ...Plea agreements have no effect on operation of the Act... (Appellant’s App. Vol. II p. 42)

Consequently, the trial court concluded:

In accordance with existing Indiana Law [sic] the moment the trial court entered judgment upon Healey’s plea of guilty to the crime of criminal confinement his fate was sealed regarding whether he was or was not required to register as a sex offender all in accordance with law barring any constitutional infirmities with the enacted legislation. (Appellant’s App. Vol. II p. 42 at ¶14).

The Sixth Amendment claim was never addressed. Healey submitted two filings in support of a motion to correct error emphasizing this. Healey stated:

The General Assembly cannot transfer power that supersedes checks and balances. It is not a question of whether the IDOC acted within the scope of its duties. It is a question of whether those duties permitted the IDOC to make factual findings protected by the 6<sup>th</sup> Amendment. (Appellant’s App. Vol. II p. 53).

The trial court ultimately denied Healey's Motion to Correct Error without laying out its reasoning. (Appellant's App. Vol. II pp. 7, 57).

### **SUMMARY OF ARGUMENT**

The Sixth Amendment to the United States Constitution requires that all facts used to impose a penalty beyond that authorized for the offense be found by a jury beyond a reasonable doubt or admitted by the defendant as part of a guilty plea. Here, the IDOC subjected Appellant Nathan Healey to sex offender registration under SORA based on administrative authority granted it by the General Assembly. Healey's conviction was not for an offense specifically listed by the General Assembly under I.C. 11-8-8-4.5. Instead, the IDOC determined that the victim of Healey's offense was under 18 years of age. This "fact" was not found by a jury and was not part of the factual basis for the offense to which Healey pleaded. Consequently, the IDOC's mandate that Healey register as a sex offender was made contrary to Healey's Sixth Amendment protections.

Nevertheless, the trial court denied Healey declaratory relief based on its belief that the court did not have the authority to review the IDOC's registration decisions. As a corollary, the trial court effectively ruled that it has no power to issue orders to prevent the IDOC from violating the constitutional rights of SORA registrants. This is a clear misunderstanding of judicial authority and contrary to the fundamental role and duties of the judiciary. For this reason, the decision should be reversed.

### **STANDARD OF REVIEW**

Pursuant to Ind. Trial Rule 52, the trial court issued findings of fact and conclusions of law in its order denying Healey declaratory relief. Findings of fact and conclusions of law are to

be set aside when clearly erroneous. *Stout v. Underhill*, 734 N.E.2d 717, 719 (Ind. Ct. App. 2000). A reviewing court should not reweigh the evidence and is to consider the evidence most favorable to the judgment with all reasonable inferences to be drawn in favor of the judgment. *Id.* The judgment should be disturbed when there is no evidence supporting the factual findings, or when the findings fail to support the judgment. *Id.*

In addition, this is an appeal from a negative judgment. A negative judgment is to be reversed if the judgment is contrary to law. *Mann v. Jonson Memorial Hospital*, 611 N.E.2d 676, 677 (Ind. Ct. App. 1993). This occurs when the evidence is without conflict and all reasonable inferences drawn from the evidence lead to a result opposite that reached by the trial court. *Id.*

## **ARGUMENT**

### **II. THE TRIAL COURT’S RULING THAT IT DID NOT HAVE AUTHORITY TO RULE ON THE CONSTITUTIONALITY OF A SEX OFFENDER REGISTRATION DECISION MADE BY THE INDIANA DEPARTMENT OF CORRECTION’S WAS CONTRARY TO LAW.**

This appeal presents a basic question of checks and balances involving the judicial branch’s authority to review an IDOC administrative decision for constitutionality. The trial court denied Healey declaratory relief from sex offender registration finding that the authority to make registration decisions rested entirely with the IDOC. Healey asserts that the IDOC’s decision imposed a greater penalty than prescribed for his offense based on a factual finding made outside of the judicial process, thus violating his Sixth Amendment.

Healey asserts that the trial court’s order denying his declaratory judgment was contrary to law. The material facts are not in dispute. Nevertheless, as an initial matter, an overview of the history and structure of the law governing sex offender registration is helpful.

#### **A. The Indiana Sex Offender Registration Act**

The General Assembly enacted the Indiana Sex Offender Registration Act (“SORA”) in 1994. *Wallace v. State*, 905 N.E.2d 371, 374 (Ind. 2009). This Act was comprised of a set of statutes codified in Ind. Code § 5-2-12-1 through 5-2-12-13 (1994). *Id.* at 375. Initially, SORA applied to offenders convicted of child molesting on or after June 30, 1994. *Id.* at 373. Thus, the original form of SORA applied only to eight offenses. *Id.* at 374. These statutes required registrants to take “affirmative steps” to keep law enforcement informed of their whereabouts and registration terminated once the offender was released from probation or parole. *Id.* at 375. The offender location information was retained by law enforcement and updated twice per year. The information was then shared with “a few select agencies”, although a public version with the registrants’ addresses redacted was available upon request. *Id.* at 374.

Over time, SORA was amended to increase the number of offenses that qualify for registration. In addition, the length of the registration period has also increased. There are now 21 offenses that trigger registration requirements which now last for either ten years or life. *Id.* at 375. Moreover, registrants are now required to register any address where they spend more than seven days, and are required to register the name and address of their employer and school. *Id.* Home addresses are subject to verification by law enforcement through a confirmation form mailed to the registrant that the registrant must execute and return. *Id.* at 376. Law enforcement is also permitted by statute to conduct an annual home visit to confirm the registrant’s address. *Id.* New legislation took advantage of the advent of the internet as a means to broaden sex offender monitoring. Registrant’s home and work addresses are now available online, as well as “links to maps of their locations” and a “search-by-name feature.” *Id.* Furthermore, registrants are required to disclose all email addresses as well as user names for all instant messenger, chat room, and social networking websites. *Id.* If any of these services are used, the registrant is

obligated to execute a consent form authorizing search of the registrant's personal computer or any other device with internet capability. *Id.* Finally, the registrant is also required to permit installation of hardware and software to monitor the registrant's online activity. *Id.*

The General Assembly has delegated administrative authority over SORA to the Indiana Department of Correction. I.C. § 11-8-8. To identify registrants, IDOC reviews available case records and judgments of conviction to make registration decisions. *Nichols*, 947 N.E.2d at 1017 (Ind. Ct. App. 2011). These decisions include both the general duty to register, as well as the duration of registration. Once an offender has been deemed by the IDOC to be a "sex offender," the SORA requirements are enforced the prosecuting attorney for the jurisdiction(s) where the offender must register. *Id.* at 376; I.C. § 11-8-8-17 (2017) (defining offense for failure to register as a sex offender). Specifically, the Indiana Code defines an array of felony offenses for different types of SORA violations. *Id.*

Effective July 1, 2007, SORA was amended to include Criminal Confinement, I.C. § 35-42-3-3 as a sex offense "if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian." I.C. § 11-8-8-4.5 (2007). At this time, the Criminal Confinement statute read, "A person who knowingly or intentionally confines another person without the other person's consent commits criminal confinement." I.C. § 35-42-3-3. At its base level, Criminal Confinement was a Class D felony. *Id.* However, I.C. § 35-42-3-3(b)(1)(A) elevated the offense to a Class C felony if the victim of the offense was less than fourteen (14) years of age.

It is important to emphasize here that there are two "categories" that create a duty to register as a sex offender based on a conviction for Criminal Confinement involving a child victim. First, the duty may be "automatic." This occurs when the offender is convicted by a jury

or pleads guilty to Class C felony Criminal Confinement under subsection (b)(1)(A). *See* I.C. §§ 11-8-8-4.5, 35-42-3-3(b)(1)(A). It is automatic because a finding that the victim was under 14 years of age, and therefore also under 18 years of age, is part of the factual basis necessary to sustain the conviction. The second category involves offenders convicted of general Criminal Confinement where the age of the victim is not an element of the offense. For those in this category, registration is not automatic. Instead, it is dependent on a further factual finding—i.e. the IDOC must determine this for each offender whose victim was 14, 15, 16, or 17 years old at the time of the offense. *Id.*

### **B. Constitutional Review of IDOC’s Administrative Decisions**

The Indiana Department of Correction is an administrative agency charged with the power to implement, enforce, and adjudicate agency rules and other statutory prerogatives delegated to it by the General Assembly. *See* I.C. § 11-8-2-5 (defining IDOC commissioner’s powers and duties). As an administrative agency, the IDOC is governed generally by the Indiana Administrative Order and Procedure Act, also known as IAOPA. *Pierce v. State Dept. of Correction*, 885 N.E.2d 77, 88 (Ind. Ct. App. 2008). Under this act, decisions made by administrative agencies are subject to review and reversal by the judiciary if those actions are contrary to any constitutional right, power, privilege, or immunity. *Id.*

The IAOPA expressly exempts “certain agency actions” of the IDOC from administrative judicial review. I.C. § 4-21.5-2-5(6) (exempting “[a]n agency action related to an offender within the jurisdiction of the department of correction.”). However, the Indiana Supreme Court has ruled that this provision does not divest the judiciary from reviewing claims of constitutional violations. *Ratliff v. Cohn*, 693 N.E.2d 530, 548 (Ind. 1998). Thus, courts retain subject-matter jurisdiction to resolve controversies alleging an IDOC interference with a constitutional right,

privilege, or immunity. *Id.*; *Montgomery v. Indiana Department of Correction*, 794 N.E.2d 1124, 1127 (Ind. Ct. App. 2003) (“[t]he statute exempting certain DOC actions from the AOPA does not divest the judiciary of subject-matter jurisdiction over alleged violations of... constitutional rights.”).

Review may be accomplished by petition for declaratory judgment. I.C. § 34-14-1-1 (2017) grants all Indiana “courts of record within their respective jurisdictions... the power to declare rights, status, and other legal relations.” This statute further states that the “declaration may be either affirmative or negative in form and effect.” A declaratory judgment decision “has the force and effect of a final judgment or decree.” *Id.*

Declaratory judgment is available to challenge or question the construction or validity of a statute, or to determine what rights and status the statute affords an individual. *See State ex rel. Indianapolis v. Brennan*, 109 N.E.2d 409, 213 Ind. 492 (Ind. 1952). It has been used to declare the validity of a law regulating terms in office. *Robinson v. Moser* 179 N.E. 270, 203 Ind. 66 (Ind. 1931). Declaratory relief is also appropriate for constitutional review. *See Waste Systems, Inc. v. Board of Comm’rs*, 389 N.E.2d 52, 180 Ind. App. 385 (Ind. Ct. App. 1979); *see also Hammond v. Red Top Trucking Co.*, 409 N.E.2d 655 (Ind. Ct. App. 1980).

### **C. The Trial Court Decision to Deny Declaratory Relief was Premised on a**

#### **Misunderstanding of Law**

In denying Healey’s petition for declaratory relief, the trial court issued findings of fact and conclusions of law pursuant to T.R. 52. Paragraphs 13 and 14 set forth the rationale for the denial of the Petition. These paragraphs read:

13. In the case of *Nichols v. State*, 947 N.E.2d 1011 (Ind.App. 2011) [sic] the Court at page 1017 held: “The Sex Offender Registration Act requires that the DOC maintain a registry of sex offenders, and requires that offenders register with the Department.

Placement on the Registry is mandatory, and the Act affords neither the trial court nor the DOC any discretion in the matter of the registration requirement. ...Plea agreements have no effect on operation of the Act..." (Parentheticals omitted)

14. In accordance with existing Indiana Law [sic] the moment the trial court entered judgment upon Healey's plea of guilty to the crime of criminal confinement[,] his fate was sealed regarding whether he was or was not required to register as a sex offender[,] all in accordance with law barring any constitutional infirmities with the enacted legislation.

The trial court therefore made its decision based on its reading of *Nichols*. Consequently, a detailed analysis *Nichols* is warranted.

*Nichols* involved a defendant charged with Child Molesting in two separate cases: one in Hamilton County, and the other in Tipton County. *Nichols*, 947 N.E.2d at 1013. The Hamilton County matter involved a victim identified as W.B. and alleged conduct occurring in May 2002. *Id.* The Tipton County matter involved a victim identified as C.M. and alleged conduct occurring during 2003. *Id.* at 1014. After the Tipton County judge recused himself, the Tipton case was reassigned to the judge presiding over the Hamilton County cause. *Id.*

*Nichols* ultimately entered into a plea agreement where he pleaded to two counts of Child Molesting in the Hamilton case and one count of Child Molesting in the Tipton case. *Id.* The agreement contained "the statutory requirements for sex offender registration for a ten-year period or for life." *Id.* *Nichols* initialed these provisions. *Id.*

The trial court accepted the plea agreement. *Id.* Later, the court issued an order on the plea and sentencing hearing that stated that *Nichols* would be required to register for ten years. *Id.* Afterward, the IDOC sent a letter to the trial court stating that it had determined that *Nichols* was required to register for life based on the fact that his Child Molest conviction for Tipton was "unrelated" to the Child Molest offenses in the Hamilton case. *Id.* The DOC thereafter classified



Nichols as a lifetime registrant. *Id.* Nichols filed a motion to correct error “requesting that the trial court order the DOC to revise his status” to a ten-year period. *Id.* This motion was denied and Nichols appealed. *Id.*

On appeal, the Court held that the legislature prescribed the registration period for various offenders at either ten years or for life. *Id.* Thus, a trial court cannot impose a sentencing order that reduces or enhances the required registration period, nor may the parties agree to a lesser or greater period as part of a negotiated plea (“the Act affords neither the trial court nor the DOC any discretion in the matter of the registration requirements.”). *Id.* at 1017.

The trial court in Healey’s case applied this language to find that the court may not review *how* the IDOC reaches its determination. This is wrong for two reasons. First, *Nichols* itself *did* address *how* the IDOC reached its decision that Nichols register for life. In fact, the preceding section of the *Nichols* opinion discusses this precise issue. Nichols was determined by the IDOC that he was a lifetime registrant based on the fact that he was convicted of two “unrelated” sex offenses. *Id.* at 1015. Nichols challenged this determination and argued on appeal that his offenses were not “unrelated.” *Id.* The Court of Appeals considered this argument by interpreting the term “unrelated.” *Id.* at 1015-16. The Court concurred in the IDOC’s finding. *Id.* The Court then addressed Nichols second claim in light of having already decided his two offenses were “unrelated.” With this established, the only question was whether the trial court could order a 10-year period despite the now verified IDOC conclusion that the law required lifetime registration. *Id.* at 1016-17.

Second, *Nichols* did not involve a question of constitutionality. As has been stated, the IDOC is an administrative agency and its decisions are subject to constitutional review. The Declaratory Judgment Act is a proper means of bringing a constitutional issue before the Court

to determine the rights, privileges, and immunities of the litigant. The power to render declaratory judgments as to constitutional questions of IDOC administrative action now being established, the only question remaining for this appeal is whether Healey raised a true constitutional claim.

**D. Healey’s Petition for Declaratory Judgment Raised a Constitutional Claim under the Sixth Amendment to the United States Constitution.**

In his petition for declaratory judgment, Healey made it clear that his prayer for relief was based upon the extra-judicial fact-finding by the IDOC. Specifically, Healey claimed that “[t]he crime to which [he] pled did not contain the age of the victim as an element of the offense.” (Appellant’s App. Vol. II p. 11 at ¶4). Further, Healey noted that his registration requirement was “based on the ‘fact’ that the victim of [his] offense was under eighteen (18) years of age at the time of the offense.” (Appellant’s App. Vol. II p. 11 at ¶6). This finding was made by the IDOC and not as part of a jury verdict or a factual admission made during his guilty plea. Healey made it clear that he was arguing registration constituted a penalty beyond that prescribed for Class D felony Criminal Confinement. The Petition states at ¶7:

The United States Supreme Court has held in numerous opinions that the 6<sup>th</sup> Amendment prohibits a criminal defendant’s sentence from being enhanced above the statutory maximum based upon a fact that the defendant did not admit to, or that was not found by a jury beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, 542 U.S. 296 (2004); *United States v. Booker*, 543 U.S. 220 (2005). (Appellant’s App. Vol. II p. 11).

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A brief in support of the Petition was later filed prior to the trial court’s initial order denying relief. This brief sought to clarify the issue after Commissioner filed a response that apparently did not understand the simple argument.<sup>3</sup> After doing so, Healey stated,

[T]his action is simply a question of constitutionality under the 6<sup>th</sup> Amendment to the United States Constitution. This Amendment guarantees criminal defendants the right to a trial by impartial jury, including the right for a jury to determine any fact that may be used to impose a punishment beyond that prescribed by the legislature. (Appellant’s App. Vol. II p. 34).

The trial court issued its order denying declaratory judgment on September 6, 2017 based on the reasoning previously discussed. At that point, Healey addressed the misreading of *Nichols* specifically stating:

*Nichols v. State* did not address the threshold question regarding sex offender qualification. Nichols registration requirement was not based upon extrajudicial fact finding. It was based on a conviction for a crime that, standing alone, triggered a duty to register. Conversely, a conviction for Class D Confinement does not. Registration duties are only triggered by the establishment of facts outside of the elements of the offense—the victim’s age. Petitioner’s qualification is, under the circumstances of this case, a 6<sup>th</sup> Amendment issue because it was based on facts that Petitioner had a right for a jury to determine. (Appellant’s App. Vol. II p. 44 at ¶3(b)).

The trial court denied the motion to correct error without reasoning. Thus, the issue was properly presented and preserved. The trial court’s decision, finding that it lacked authority to review for constitutionality the IDOC’s administrative finding that Healey must register for a sex offender, was contrary to law.

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<sup>3</sup> The Commissioner’s response misinterpreted or misstated the issues in several ways. For example, ¶16 states that Healey concluded that Class C felony Criminal Confinement Against a Child “would have been the only basis upon which he could be required to register...” The response also misunderstood the manner in which Healey sought to apply the “intents-effects” test for determining whether a legislative scheme is criminal or civil in nature. This is so even after Healey filed his brief in support of declaratory judgment clarifying the issues.

**CONCLUSION**

Our system of governance is rooted in the ideal of checks and balances. This ensures that no branch of government abuses its power at the expense of the rights and privileges of those governed. When executive power infringes on our constitutional protections, it is the duty and purpose of the judicial branch to curtail official overreach. The failure of the judicial branch to police constitutional violations of law enforcement is a failure of fundamental government principles.

Here, the trial court incorrectly determined that it was without power to check the IDOC's executive decision that Healey must register as a sex offender despite the claim that this decision violated the United States Constitution. The trial court's denial of declaratory judgment should therefore be reversed and remanded for further proceedings.

Respectfully submitted,



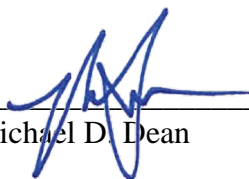
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of April, 2018, service of a true and complete copy of the foregoing was made upon the following parties or counsel(s) of record by e-service utilizing the Indiana E-Filing System:

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