

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

PER CURIAM:

2020-C-00976

MARK A. DAVIDSON VS. STATE OF LOUISIANA, JERRY JONES, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF OUACHITA PARISH; AND LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS (Parish of East Baton Rouge)

AFFIRMED. SEE PER CURIAM.

Hughes, J., dissents and assigns reasons.

Genovese, J., dissents.

Griffin, J., dissents.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-C-00976

MARK A. DAVIDSON

versus

**STATE OF LOUISIANA, JERRY JONES, IN HIS OFFICIAL CAPACITY
AS DISTRICT ATTORNEY OF OUACHITA PARISH; AND LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

PER CURIAM:

The question presented is one of statutory interpretation. Is applicant Mark A. Davidson relieved of his duty to register and provide notice as a sex offender, in accordance with La. R.S. 15:540 et seq., after the district court set aside his convictions pursuant to La.C.Cr.P. art. 893 following a period of probation? We find that dismissal pursuant to La.C.Cr.P. art. 893 after a probationary period does not relieve applicant of his duty to register and provide notice as a sex offender. Accordingly, we affirm the ruling of the court of appeal, which reversed the district court's ruling, which had granted applicant's motion for summary judgment on his claim for declaratory judgment.

On October 31, 2005, Mr. Davidson pleaded guilty in Ouachita Parish to two counts of video voyeurism, La. R.S. 14:283, which crimes were committed on June 22, 2005. The district court sentenced him to two concurrent terms of two years imprisonment at hard labor. The district court deferred execution of the sentences and placed Mr. Davidson on three years probation. After he completed his probation, the

district court granted Mr. Davidson’s motion to dismiss his convictions pursuant to La.C.Cr.P. art. 893. The district ordered “a dismissal of all charges be entered in the record of this matter pursuant to the provisions of Article 893 of the Louisiana Code of Criminal Procedure as extended to Mover at the time of his plea.”

In 2016, applicant, anticipating his return to Louisiana from Florida, sought declaratory judgment and injunctive relief from his obligation to register and give notice as a sex offender, which the district court ultimately granted in part following applicant’s motion for summary judgment. The procedural history in the district court is long and complex, but it does not bear on our decision. Accordingly, we omit it for the sake of clarity. Instead, we begin with the ruling of the court of appeal.

The court of appeal reversed the district court’s ruling and assessed costs against applicant. *Davidson v. State*, 2019-1180 (La. App. 1 Cir. 7/2/20), 308 So.3d 325. It found that there were no material facts in dispute. Instead, the parties only disagreed on which version of the sex offender registration and notification laws applies—the one in effect at the time of the dismissal or the present one as amended in 2017—and how the correct version should be interpreted and applied under the circumstances presented.

Regarding which version of the law applies, the court of appeal reasoned that it did not ultimately matter. The court of appeal determined that La. R.S. 15:541(4), in effect in 2007 when the district court entered its order of dismissal pursuant to La.C.Cr.P. art. 893, defined a “conviction or other disposition adverse to the subject” to exclude a dismissal except when the dismissal was entered after a period of probation, as occurred here. *Davidson*, 2019-1180, p. 7, 308 So.3d at 329. The court of appeal also determined that the current version of that subsection, now La. R.S. 15:541(7) (as amended by 2017 La. Acts 307), provides that “[a] dismissal entered after a period of probation, suspension, or deferral of sentence shall be included in the

definition of ‘conviction’ for purposes of this Chapter.” *Id.* Thus, the court of appeal found under present law too that applicant’s Article 893 dismissal, which was entered after a period of probation, constitutes a conviction for purposes of the sex offender registration and notification law.

Therefore, the court of appeal concluded that whichever statutory path applicant follows, he reaches the same destination and has a duty to comply with the sex offender registration and notification requirements when he returns to Louisiana. The court of appeal acknowledged that while La.C.Cr.P. art. 893(E)(2) provides that “[t]he dismissal of the prosecution shall have the same effect as acquittal,” and arguably conflicts with these other provisions in the sex offender registration and notification law, the former La. R.S. 15:541(4) and present La. R.S. 15:541(7) are controlling because they are the more specific statutes pertaining to the duty to register and notify as a sex offender.

The court of appeal also addressed the question of whether 2017 La. Acts 307 applies retroactively. It found this amendment was a clarifying interpretative change only, and therefore it applies retroactively. Specifically, the court of appeal determined that, although the former law was somewhat unclear, the amendment did not alter the duty of a sex offender with an Article 893 dismissal to register and notify.

Applicant contends that the court of appeal erred in its interpretation of the law as it existed in 2007, and in finding the 2017 amendment is interpretative and therefore it applies retroactively. Specifically, applicant argues that the court of appeal erred in ignoring the plain language of La. R.S. 15:544(A), which relieves those with “convictions that were reversed, set aside, or vacated” from the obligation to register. Applicant also argues the court of appeal erred in interpreting La. R.S. 15:541, as it existed in 2007, as imposing a duty to register and notify following an Article 893

dismissal. Finally, applicant contends the 2017 amendment was substantive because it imposed a new duty to register following an Article 893 dismissal, and therefore it applies prospectively only.¹

The State responds by arguing that the 2017 amendment did not alter the law that an Article 893 dismissal is a conviction for purposes of the sex offender registration and notification requirements, and therefore it does not matter whether the 2017 amendment applies retroactively. It also argues that applicant's reliance on the phrase "reversed, set aside, or vacated" in La. R.S. 15:544(A) removes this language from its context and ignores other pertinent provisions of the sex offender registration and notification law. Finally, the State observes that applicant has not yet returned to Louisiana, and argues that the 2017 amendment, under which he has a duty to register and give notice as a sex offender, will apply when he does return. We agree.

This court has summarized the guiding principles of statutory interpretation as follows:

The function of statutory interpretation and the construction given to legislative acts rests with the judicial branch of the government. The rules of statutory construction are designed to ascertain and enforce the intent of the Legislature. Legislation is the solemn expression of legislative will and, thus, the interpretation of legislation is primarily the search for the legislative intent. We have often noted the paramount consideration in statutory interpretation is ascertainment of the legislative intent and the reason or reasons which prompted the Legislature to enact the law.

The starting point in the interpretation of any statute is the language of the statute itself. "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La. Civ.Code. art. 9. However, "when the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of

¹ In addition, applicant now also claims his duty to register and give notice as a sex offender terminated previously, and that he now has a "vested right" that cannot be altered by any subsequent statutory changes. It does not appear that applicant presented this claim to the district court, and therefore it is not properly before this court. *See Segura v. Frank*, 93-1271 (La. 1/14/94), 630 So.2d 714, 725 ("appellate courts will not consider issues raised for the first time" in appellate court). Regardless, it lacks merit.

the law.” La. Civ.Code art. 10; Moreover, “when the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole.” La. Civ.Code art. 12.

It is also well established that the Legislature is presumed to enact each statute with deliberation and with full knowledge of all existing laws on the same subject. Thus, legislative language will be interpreted on the assumption the Legislature was aware of existing statutes, well established principles of statutory construction and with knowledge of the effect of their acts and a purpose in view. It is equally well settled under our rules of statutory construction, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter. La. Civ.Code art. 13.

State v. Brignac, 2017-0448, p. 7 (La. 10/18/17), 234 So.3d 46, 53–54 (internal citations omitted), quoting *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 2007-2371, pp. 12–14 (La. 7/1/08), 998 So.2d 16, 26–27, amended on reh’g (La. 9/19/08).

At the time applicant committed the crimes, the video voyeurism statute provided:

A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541(14.1). Whoever commits the crime of video voyeurism shall be required to register as a sex offender as provided for in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

La. R.S. 14:283(F) (added by 2003 La. Acts 690 as 14:283(E), and re-designated (F) by the Louisiana State Law Institute). Although portions of La. R.S. 14:283 have undergone substantial amendments in 2016, 2018, and 2020, La. R.S. 14:283(F) has remained the same save for the amendment of “R.S. 15:541(14.1)” to “R.S. 15:541.” Thus, when applicant committed the crimes in 2005, his duty to register and notify as a sex offender was clear, and that duty remains unchanged.

Code of Criminal Procedure art. 893 has also undergone numerous revisions since 2005. However, at all relevant times, this article declared that dismissal of certain felony convictions has the “same effect as acquittal,” except that they may be used as

predicate offenses for subsequent recidivist sentence enhancement pursuant to the Habitual Offender Law, and they shall be considered as a first offense for any other laws relating to cumulation of offenses. In addition, this court found in *Louisiana State Bar Ass'n v. Porterfield*, 550 So.2d 584 (La. 1989), that an Article 893 dismissal following a probationary period, although declared to have the same effect as an acquittal, can still count as a conviction for purposes of lawyer disciplinary proceedings because there has been an adjudication of guilt. *See Porterfield*, 550 So.2d at 588. Thus, it is clear that a distinction has been recognized between an acquittal and an Article 893 dismissal following a probationary period.

Louisiana's sex offender registration and notification law has from its beginning also distinguished between acquittals and dismissals entered after a period of probation. As originally enacted by 1992 La. Acts 388 (eff. June 18, 1992), La. R.S. 15:541(2) provided that the following definition applied to the entirety of Title 15, Chapter 3-B:

(2) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal except when the acquittal is due to a finding of not guilty by reason of insanity and the person was committed. However, a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

The definition set forth originally in R.S. 15:541(2) remained the same, but had been re-designated as R.S. 15:541(4), when applicant pleaded guilty in 2005 and when he obtained his Article 893 dismissal in 2007. It also remained the same when he commenced his declaratory judgment action in 2016, but had been re-designated R.S. 15:541(7).

Since the time applicant pleaded guilty in 2005, La. R.S. 15:542 ("Registration of sex offenders") has required "[a]ny adult residing in this state who has pled guilty to . . . any sex offense" to (among other requirements) register with the sheriff of the

parish of residency. At the time of his 2005 guilty pleas and when he obtained his Article 893 dismissals in 2007, La. R.S. 15:542.1(H)(1) (“Duty to register”) provided:

A person required to register under this Section as a sex offender or child predator shall register and maintain his registration pursuant to the provisions of this Section for a period of ten years after the date on which the person was released from prison, placed on parole, supervised release, or probation for a conviction giving rise to the requirement to register, unless the underlying conviction is reversed, set aside or vacated. The requirement to register shall apply to an offender who is pardoned.

The 2005 version of R.S. 15:544(A) and the 2007 version of La. R.S. 15:544 both stated:

A person required to register and give notice under R.S. 15:542 shall comply with the requirement for a period of ten years after the conviction of the sex offense requiring registration and notification, if not imprisoned during that period in a penal institution, full-time residential treatment facility, hospital, or other facility or institution pursuant to a felony conviction. If the person required to register and give notice is imprisoned or confined to a penal institution, full-time residential facility, hospital, or other facility or institution pursuant to a felony conviction, he shall comply with the registration and notice provisions for a period of ten years after release from his confinement or imprisonment. A convicted sex offender’s duty to register and give notice terminates at the expiration of ten years from the date of initial registration, provided that during the ten-year period the convicted sex offender does not again become subject to this Chapter.

In 2007 La. Acts 460 (eff. Jan. 1, 2008), reorganized this State’s statutory scheme governing sex offender registration and notification. The revised La. R.S. 15:544 (“Duration of registration and notification period”) provided:

A. Except as provided for in Subsection B of this Section, a person required to register and provide notification pursuant to the provisions of this Chapter shall comply with the requirement for a period of fifteen years from the date of the initial registration, unless the underlying conviction is reversed, set aside or vacated. The requirement to register shall apply to an offender who is pardoned.

Applicant relies on this latter provision to contend that his duty to register and provide notice terminated when the Article 893 dismissals were entered because they “set aside” the convictions. The State responds by arguing that interpretation ignores

the other provisions in the sex offender registration and notification law specifically pertaining to dismissal following a probationary period. The State also argues that applicant's interpretation creates an unusually brief period during which a sex offender with an Article 893 dismissal is required to register and provide notice, which frustrates the purpose of the law. Both of the State's contentions have merit.

In *State v. Cook*, 2016-1518, p. 5 (La. 5/3/17) (per curiam), 226 So.3d 387, 390, this court observed, "A finding of not guilty by reason of insanity is a determination that defendant undoubtedly committed the charged criminal act but he cannot be punished for it because he was legally insane at the time of his actions." This court relied on La. R.S. 15:541(7):

"Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or an acquittal, except when the acquittal is due to a finding of not guilty by reason of insanity and the person was committed. However, a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

In interpreting this provision, this court determined:

While La.R.S. 15:541(7) could be better drafted, we cannot say its meaning is unclear. It defines conviction to include any disposition of the charges other than those specifically excluded, such as an acquittal, and further excludes from acquittals those that result from a finding of not guilty by reason of insanity when the person is committed. Thus, a conviction, for purposes of the sex offender registration and notification law, is specifically defined to include a finding of not guilty by reason of insanity, provided the person was also committed. Therefore, the word "conviction" throughout that law should be read to encompass not only those convicted but also "persons found not guilty by reason of insanity and committed," as the legislature has directed.

Cook, 2016-1518, p. 7, 226 So.3d at 391.

Shortly after this court decided *Cook*, the Legislature amended La. R.S. 15:541(7). It now provides:

"Conviction" means any disposition of charges adverse to the defendant, including a plea of guilty, deferred adjudication, or adjudication withheld for the perpetration or attempted perpetration of or conspiracy to commit

a “sex offense” or “criminal offense against a victim who is a minor” as those terms are defined by this Section. “Conviction” shall not include a decision not to prosecute, a dismissal, or an acquittal, except when the acquittal is due to a finding of not guilty by reason of insanity and the person was committed. A dismissal entered after a period of probation, suspension, or deferral of sentence shall be included in the definition of “conviction” for purposes of this Chapter.

While this court interpreted the first portion of the statute in *Cook*, that interpretation also holds for the second portion of the statute. The plain language of this provision declares that a dismissal entered after a period of probation counts as an adverse disposition, under the version before the 2017 amendment, or as a conviction, under present law.

While applicant argues the 2017 amendment changed the law in this area, and therefore cannot be applied to him retroactively, we find that the law is unchanged with regard to his duty to register and provide notice, and that the amendment only clarified the law. Furthermore, applicant has yet to reestablish his residency in Louisiana. In *Panaro v. Landry*, 2018-1725, p. 6 (La. App. 1 Cir. 9/27/19), 286 So.3d 1049, 1052, writ denied, 2019-01885 (La. 1/22/20), 291 So.3d 1046, the circuit court, citing this court’s jurisprudence,² found “that the duty of registration for an out-of-state sex offender begins once he establishes residency in this state.” The circuit court further found that the sex offender registry laws in effect at the time the offender establishes residency in Louisiana apply. *Id.*, 2018-1725, p. 9, 291 So.3d at 1053–54. Applicant here, who has not yet returned to Louisiana, does not face retroactive application of the amended law; he faces its prospective application if and when he decides to return to Louisiana.

In conclusion, we find that the sex offender registration and notification law has imposed a duty, to register and provide notice, on a person convicted of certain sex

² *State v. Clark*, 2012-1296 (La. 5/7/13), 117 So.3d 1246; *State v. Rutherford*, 2015-0636 (La.

offenses despite an order of dismissal after a probationary period from its original enactment. While subsequently amended in 2017, the amendment only clarified the law. Regardless, current law will not be applied to defendant retroactively if and when he returns to Louisiana. It will be applied prospectively because his duty to register and provide notice in this jurisdiction will only be triggered once he establishes residency here. We do not believe that either La.C.Cr.P. art. 893 or La. R.S. 15:544(A) displace the specific framework established in the sex offender registration law. Accordingly, we affirm the ruling of the court of appeal, and we uphold the reversal of the district court's ruling, which had granted applicant's motion for summary judgment on his claim for declaratory judgment.

AFFIRMED

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-C-00976

MARK A. DAVIDSON

VS.

**STATE OF LOUISIANA, JERRY JONES, IN HIS OFFICIAL CAPACITY
AS DISTRICT ATTORNEY OF OUACHITA PARISH; AND LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS**

On Writ of Certiorari to the 1st Circuit Court of Appeal, Parish of East Baton
Rouge

HUGHES, J., dissents with reasons.

Louisiana Code of Criminal Procedure article 893(E)(2) provides that “[t]he dismissal of the prosecution shall have the same effect *as acquittal*.” (emphasis added).

The per curiam references “more specific” statutes that would supersede the “general” law, but this is a concept for civil analysis, not criminal. Criminal statutes are to be strictly construed against overly broad and untimely enforcement, and the rule of lenity should apply.