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IN THE
COURT OF APPEALS OF INDIANA

DARRYL D. HOPKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 54A01-0909-CR-448
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-8902-CF-15

February 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Darryl D. Hopkins, serving a fifty-year sentence for Rape[1] and Criminal Deviate Conduct[2] committed in Montgomery County in 1989,[3] when registration as a sex offender was not required, sought a declaratory judgment from the Montgomery Circuit Court to the effect that prospective application of the registration requirements of Indiana Code Section 11-8-8-7 would subject him to punishment on an ex post facto basis. Finding the matter not ripe for adjudication, the trial court entered an order denying Hopkins declaratory relief, and Hopkins appeals. We affirm.

Discussion and Decision

Indiana Code Section 11-8-8-7 provides that sex or violent offenders must register with local law enforcement authority. Indiana Code Section 11-8-8-5(a) defines a "sex or violent offender" to include a person convicted of Rape or Criminal Deviate Conduct. The registration statute contains no exclusion for those, like Hopkins, whose crimes occurred

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[1] Ind. Code § 35-42-4-1.

[2] Ind. Code § 35-42-4-2.

[3] On January 8, 1989, while he was on parole following a Texas conviction for aggravated sexual abuse, Hopkins abducted P.J. from a parking lot in Montgomery County, Indiana. He raped P.J. and compelled her to perform oral sex on him. Four days later, he abducted a second victim from a parking lot in Madison County, Indiana, raped her, and compelled her to perform oral sex on him. He pleaded guilty to Rape and Criminal Deviate Conduct and was sentenced to fifty years imprisonment, with fifteen years suspended to probation. Meanwhile, on February 27, 1989, Hopkins was charged in Montgomery County with one count of Rape, three counts of Criminal Deviate Conduct, and one count of Confinement. On November 21, 1990, he pleaded guilty to one count of Rape and one count of Criminal Deviate Conduct, Class A felonies. On February 1, 1991, Hopkins was sentenced to fifty years imprisonment on each conviction, with the sentences to be served concurrently with each other, but consecutive to any sentence to be served as a result of the parole violation. The sentences were also to be concurrent to the sentence imposed in Madison County. Hopkins v. State, No. 54A01-0701-CR-52, slip op. at 1 (Ind. Ct. App. July 11, 2007).

before the date of enactment.[4]

Here, Hopkins presents no claim that is ripe for adjudication. See Ind. Dep't of Envtl. 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.") Hopkins is incarcerated serving a fifty-year sentence (consecutive to any sentence to be served as a result of his parole violation). Although he asserts that his release is imminent, there is no evidence of record to support this assertion.[5] Furthermore, there is no evidence that Hopkins 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. It is a matter of speculation as to what registration requirements, if any, will impact Hopkins upon his release.

Hopkins has not demonstrated his contemporaneous entitlement to a declaratory judgment. Accordingly, we affirm the trial court.

Affirmed.

BAKER, C.J., and ROBB, J., concur.

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[4] The Indiana General Assembly adopted its first version of a sex offender registration statute in July 1994. Subsequently, the registration requirements were expanded to include those convicted of certain specified crimes, including murder.

[5] While the State cites the Department of Correction website for the assertion that Hopkins will not be released from prison until March 2010, this was not part of the record before the trial court nor does it appear to be a steadfast date as the website labels the date as the "Earliest Possible Release Date" and "Projected Release Date." Thus, it is not relevant to our review. See Washburn v. State, 868 N.E.2d 594, 598 n.1 (Ind. Ct. App. 2007). ("As we may consider only evidence that has been introduced and properly admitted by the trial court, we will ignore all references" to material not before the trial court.), trans. denied.