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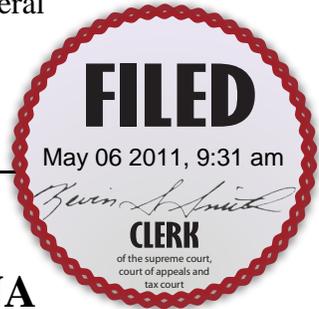
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**IN THE
COURT OF APPEALS OF INDIANA**

JAMIE L. VIDA,)
)
Appellant-Petitioner,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

No. 20A03-1012-PL-664

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George Biddlecome, Judge
Cause No. 20D03-1008-PL-52

May 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Jamie L. Vida appeals from the denial of his verified petition for removal from the Indiana Sex Offender Registry (“the Registry”). Vida asserts, and the State properly concedes, that the Indiana Sex Offender Registration Act (“the Act”) as applied to him violates the ex post facto clause of the Indiana Constitution because he committed the sex offenses at issue before the Act became effective. Therefore, we reverse and remand with instructions to grant Vida’s petition.

Facts and Procedural History

The relevant facts are undisputed. On June 13, 1994, the State filed an information charging Vida with one count of class B felony rape. Ten days later, the State filed an amended information adding two counts of class B felony criminal deviate conduct. All three crimes were alleged to have been committed on June 7, 1994. The Act and its attendant registration and notification requirements became effective on July 1, 1994.¹ On May 27, 1995, a jury found Vida guilty as charged. On June 26, 1995, Vida was sentenced to thirty years, with four years suspended to probation. Vida was released to probation in May 2004.

In August 2005, Vida was arrested for promoting prostitution, which resulted in the filing of a notice of probation violation. Vida admitted to violating his probation and was

¹ For a detailed history and description of the Act, see *Wallace v. State*, 905 N.E.2d 371, 374-77 (Ind. 2009). When initially adopted in 1994, the Act “required persons convicted of certain sex crimes to register as ‘sex offender[s]’” and “contained both registration and notification provisions, i.e., sex offenders were required to take affirmative steps to notify law enforcement authorities of their whereabouts, and that information was then disseminated to the public.” *Id.* at 375. “In 1994, eight crimes triggered status as a sex offender and the statute applied only to offenders who resided or intended to reside in Indiana.” *Id.* Since that time, “the Act has expanded in both breadth and scope.” *Id.*

ordered to serve the balance of his suspended sentence. Vida pled guilty to class A misdemeanor prostitution, for which he received a one-year executed sentence to be served consecutive to his sentence for the felony offenses.

In February 2008, Vida was released from incarceration and ordered to register as a sex offender and sexually violent predator pursuant to the Act based on the class B felony sex offenses that he had committed in June 1994. *See generally* Ind. Code §§ 11-8-8-1 through -22 (defining “sex offender,” “sexually violent predator,” and “sex offenses,” which include rape and criminal deviate conduct, and specifying registration and notification requirements).² Vida remained on parole until August 7, 2009.

On August 5, 2010, Vida filed a verified petition for removal from the Registry pursuant to Indiana Code Section 11-8-8-22, claiming that the Act as applied to him violated the ex post facto clause of the Indiana Constitution because he committed the sex offenses before the Act became effective.³ On October 6, 2010, the trial court held a hearing on Vida’s petition, during which only documentary evidence was submitted. On November 24, 2010, the trial court issued an order denying Vida’s petition. The court concluded that the date that Vida committed the sex offenses was not dispositive for ex post facto purposes and noted that he

² Class A misdemeanor prostitution is not a sex offense for purposes of the Act, but class B felony promoting prostitution is. *See* Ind. Code §§ 11-8-8-5.2 and -4.5(a)(14) (listing latter as “sex offense” for purposes of the Act).

³ *See* Ind. Code § 11-8-8-22(c) (authorizing the filing of a petition to remove a “person’s designation as [a sex] offender”), -(j) (providing that an offender may base a petition for removal from the Registry “on a claim that the application or registration requirements constitute ex post facto punishment”).

had not yet even been convicted when the Act went into effect. In these circumstances where [Vida's] charges, convictions, and sentences did not predate the enactment of the ... Act, requiring him to register as a sex offender upon his release from prison does not violate the constitutional prohibition against ex post facto laws.

Appellant's App. at 36-37. Vida now appeals.

Discussion and Decision

Vida contends that the trial court erred in denying his petition. "Where the facts are undisputed and the issue presented is a pure question of law, we review the matter *de novo*."

Miller v. Yedlowski, 916 N.E.2d 246, 249 (Ind. Ct. App. 2009), *trans. denied* (2010).

In *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009), our supreme court observed,

The United States Constitution provides that "[n]o State shall ... pass any ... ex post facto Law." U.S. Const. art. I, § 10. The Indiana Constitution provides that "[n]o *ex post facto* law ... shall ever be passed." Ind. Const. art. I, § 24. Among other things "[t]he ex post facto prohibition forbids the Congress and the States to enact any law 'which imposes a *punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.*'" *Weaver v. Graham*, 450 U.S. 24, 28, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981) (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325-26, 18 L. Ed. 356 (1867)) (footnote omitted). The underlying purpose of the Ex Post Facto Clause is to give effect to the fundamental principle that persons have a right to fair warning of that conduct which will give rise to criminal penalties. *Armstrong v. State*, 848 N.E.2d 1088, 1093 (Ind. 2006).

Id. at 377 (second emphasis added).

In *Wallace*, the defendant was "charged, convicted, and served the sentence" for his sex offense before the Act became effective in July 1994. *Id.* at 384. In 2003, local authorities told Wallace that he had to register as a sex offender. When he did not do so, he was charged with and convicted of failing to register as a sex offender as a class D felony.

On appeal, he argued that the Act violated “the ex post facto provisions of both the Indiana and federal Constitutions.” *Id.* at 373. Our supreme court ultimately concluded that, as applied to Wallace, the Act violated “the prohibition on ex post facto laws contained in the Indiana Constitution because it imposes burdens that have the effect of adding punishment beyond that which could have been imposed *when his crime was committed.*” *Id.* at 384 (emphasis added).

In this case, the trial court determined that *Wallace* was inapplicable to Vida because, unlike Wallace, he “had not completed service of his sentences when the registration requirement was imposed. Indeed, he had not yet even been convicted when the [Registration] Act went into effect.” Appellant’s App. at 36. Vida asserts, and the State properly concedes, that “*Wallace* makes clear that the date to consider is the date on which the crime was committed, when determining whether registration under [the Act] constitutes an Ex Post Facto violation.” Appellee’s Br. at 3. Because Vida committed his sex offenses before the Act became effective, the Act is unconstitutional as applied to him. *Wallace*, 905 N.E.2d at 384; *see also Hevner v. State*, 919 N.E.2d 109, 112-13 (Ind. 2010) (“Between October and November of 2005, *when Hevner committed the crime of possession of child pornography*, only persons convicted of a prior possession offense were required to register as sex offenders under the Act. By the time of Hevner’s trial and sentencing the Legislature had amended the Act making it applicable to first time offenders. As applied to Hevner the Act violates the prohibition on ex post facto laws contained in the Indiana Constitution because it imposes burdens that have the effect of adding punishment beyond that which

could have been imposed *when the crime was committed.*”) (emphases added). Therefore, we reverse and remand with instructions to grant Vida’s verified petition for removal from the Registry.

Reversed and remanded.

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