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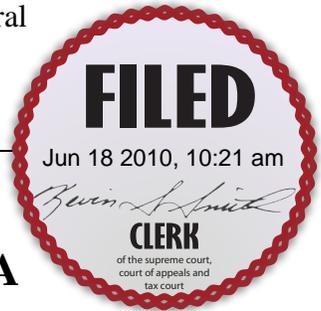
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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES HUESMAN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 70A03-0911-CR-514

APPEAL FROM THE RUSH CIRCUIT COURT
The Honorable David E. Northam, Judge
Cause No. 70C01-9203-CF-012

June 18, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James Huesman (“Huesman”) appeals from the Rush Circuit Court’s denial of his Motion to Remove Defendant From Indiana’s Sex Offender Registry (“the Motion”). Huesman appeals, and argues that the trial court erred when it denied his motion. We consolidate and restate the issues raised by Huesman as whether the trial court erred in determining that the issues were not ripe for determination.

We affirm.

Facts and Procedural History

In cause number 70C01-9203-CF-012 (“Cause 012”), Huesman was convicted of Murder and sentenced on July 13, 1993 to forty years executed. In cause number 70C01-9110-CR-052 (“Cause 052”), Huesman was convicted of sexual battery and sentenced on July 19, 1994 to two years executed.

On September 29, 2008, Huesman was paroled on Cause 012 and began to serve his two-year sentence under Cause 052. On September 14, 2009, Huesman filed his “Motion to Remove Defendant From Indiana’s Sex Offender Registry” under Cause 012. On October 13, 2009, the State filed its objection to Huesman’s motion. The trial court denied Huesman’s motion on October 14, 2009. Huesman filed his notice of appeal on October 26, 2009.

On November 15, 2009, Huesman was paroled on Cause 052. The next day he signed his conditional parole release agreement that included sex offender stipulations.

Discussion and Decision

Huesman argues that the trial court erred when it denied his motion for removal of his name from Indiana’s sex offender registry, specifically, his motion under Cause 012

seeking removal from the sex and violent offender registry. Our supreme court's decision in Wallace v. State, 905 N.E.2d 371 (Ind. 2009), reh'g denied, determined that application of the 1994 Indiana Sex Offender Registration Law ("the Act") to persons who committed a sex offense prior to enactment of that law constitutes a violation of the ex post facto clause of the Indiana Constitution. Id. at 384 (citing Ind. Const. Art I, § 24.)¹ Huesman's argument assumes that he would be required to register upon his release from incarceration because of his murder conviction; however, the record before us is unclear as to whether Huesman is required to register because of this conviction, his parole conditions, or his conviction under Cause 052. Without a more established record, we are unable to address Huesman's claim.

Wallace itself did not set forth any procedures or guidelines for implementation of the newly announced principle to other persons seeking relief from the ex post facto punishment of sex and violent offender registration requirements. However, in the 2010 session of the Indiana General Assembly, Indiana Code section 11-8-8-22 was amended to provide guidance on the appropriate procedures for challenging a person's status as a sex or violent offender. Recent panels of our court have recognized and adopted the changes set forth in this amendment in similar cases. See Wiggins v. State, No. 45A03-0912-CR-613, 2010 WL 2031772, (Ind. Ct. App. May 24, 2010); Clampitt v. State, No. 49A04-0912-CR-686, 2010 WL 2031770, (Ind. Ct. App. May 24, 2010); Brogan v. State, No. 57A04-0910-CR-592, 2010 WL 2031772, (Ind. Ct. App. May 6, 2010).

Indiana Code section 11-8-8-22 as amended now provides:

¹ Article I, Section 24 of the Indiana Constitution provides that "[n]o ex post facto law . . . shall ever be passed."

- (a) As used in this section, “offender” means a sex offender (as defined in section 4.5 of this chapter) and a sex or violent offender (as defined in section 5 of this chapter).
- (b) Subsection (g) applies to an offender required to register under this chapter if, due to a change in federal or state law after June 30, 2007, an individual who engaged in the same conduct as the offender:
 - (1) would not be required to register under this chapter; or
 - (2) would be required to register under this chapter but under less restrictive conditions than the offender is required to meet.
- (c) A person to whom this section applies may petition a court to:
 - (1) remove the person’s designation as an offender; or
 - (2) require the person to register under less restrictive conditions.
- (d) A petition under this section shall be filed in the circuit or superior court of the county in which the offender resides. If the offender resides in more than one (1) county, the petition shall be filed in the circuit or superior court of the county in which the offender resides the greatest time. If the offender does not reside in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is employed the greatest time. If the offender does not reside or work in Indiana, but is a student in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is a student. If the offender is not a student in Indiana and does not reside or work in Indiana, the petition shall be filed in the county where the offender was most recently convicted of a crime listed in section 5 of this chapter.
- (e) After receiving a petition under this section, the court may:
 - (1) summarily dismiss the petition; or
 - (2) give notice to:
 - (A) the department;
 - (B) the attorney general;

- (C) the prosecuting attorney of:
 - (i) the county where the petition was filed;
 - (ii) the county where offender was most recently convicted of an offense listed in section 5 of this chapter; and
 - (iii) the county where the offender resides; and
- (D) the sheriff of the county where the offender resides;

and set the matter for hearing. The date set for a hearing must not be less than sixty (60) days after the court gives notice under this subsection.

- (f) If a court sets a matter for a hearing under this section, the prosecuting attorney of the county in which the action is pending shall appear and respond, unless the prosecuting attorney requests the attorney general to appear and respond and the attorney general agrees to represent the interests of the state in the matter. If the attorney general agrees to appear, the attorney general shall give notice to:

- (A) the prosecuting attorney; and
- (B) the court.

- (g) A court may grant a petition under this section if, following a hearing, the court makes the following findings:

- (1) The law requiring the petitioner to register as an offender has changed since the date on which the petitioner was initially required to register.

- (2) If the petitioner who was required to register as an offender before the change in law engaged in the same conduct after the change in law occurred, the petitioner would:

- (A) not be required to register as an offender; or
- (B) be required to register as an offender, but under less restrictive conditions.

- (3) If the petitioner seeks relief under this section because a change in law makes a previously unavailable defense available to the petitioner, that the petitioner has proved the defense.

The court has the discretion to deny a petition under this section, even if the court makes the findings under this subsection.

- (h) The petitioner has the burden of proof in a hearing under this section.
- (i) If the court grants a petition under this section, the court shall notify:
 - (1) the victim of the offense, if applicable;
 - (2) the department of correction; and
 - (3) the local law enforcement authority of every county in which the petitioner is currently required to register.
- (j) An offender may base a petition filed under this section on a claim that the application or registration requirements constitute ex post facto punishment.
- (k) A petition filed under this section must:
 - (1) be submitted under the penalties of perjury;
 - (2) list each of the offender's criminal convictions and state for each conviction:
 - (A) the date of the judgment of conviction;
 - (B) the court that entered the judgment of conviction;
 - (C) the crime that the offender pled guilty to or was convicted of; and
 - (D) whether the offender was convicted of the crime in a trial or pled guilty to the criminal charges; and
 - (3) list each jurisdiction in which the offender is required to register as a sex offender or a violent offender.

- (1) The attorney general may initiate an appeal from any order granting an offender relief under this section.

The procedures set out in the amended statute allow the trial court, and this court on appeal, to be fully informed of a sex or violent offender's circumstances, including the offender's full criminal history, dates of offenses, and reason(s) for being required to register. Further, all interested parties are given notice of the proceedings. For all of these reasons, we believe that if Huesman wishes to challenge his registration requirements, he must file a petition pursuant to the amended Indiana Code Section 11-8-8-22.

Conclusion

We affirm the trial court's denial of Huesman's motion. Because of the General Assembly's amendment of Indiana Code section 11-8-8-22, effective March 24, 2010, if Huesman chooses to do so, he may file an amended petition pursuant to Indiana Code section 11-8-8-22.

Affirmed.

RILEY, J., and BRADFORD, J., concur.