

Gerald Mitchell appeals the denial of his Motion to Remove Sexually Violent Predator Status. As Mitchell's remedy is to file an amended petition under Ind. Code § 11-8-8-22, which established procedures for challenging one's status as a sex offender, we affirm.

FACTS AND PROCEDURAL HISTORY

In 1998, Mitchell entered a plea of guilty to Class A Felony child molesting¹ and was sentenced to thirty years, with ten years suspended. Mitchell twice violated his probation, resulting in additional incarceration, and was released on June 16, 2010. During his incarceration, Mitchell discovered his listing on the Indiana Sex Offender Registry indicates he is a Sexually Violent Predator. On November 20, 2009, Mitchell filed a motion to remove that sexually violent predator status. The motion was denied.

DISCUSSION AND DECISION

Mitchell asserts he should not have been classified as a sexually violent predator by the Department of Correction without notice or hearing. *See* Ind. Code chapter 11-8-8 (governing sex offender registration) and Ind. Code § 35-38-1-7.5 (governing findings regarding sexually violent predators). According to Mitchell, when he committed his offense, "the term 'sexual violent predator' did not exist and there was no statute in effect that provided a procedure to determine him as a sexually violent predator." (Appellant's Br. at 8.) He cites *Wallace v. State*, 905 N.E.2d 371, 374-76 (Ind. 2009), and *Jensen v. State*, 905 N.E.2d 384 (Ind. 2009), arguing the application of the sexually violent predator statutes to him violates the prohibition against *ex post facto* laws.

¹ Ind. Code § 35-42-4-3.

Mitchell's appeal is controlled by our recent decision in *Wiggins v. State*, 928 N.E.2d 837 (Ind. Ct. App. 2010), where we addressed a virtually identical situation. Wiggins, while incarcerated, filed a *pro se* motion to remove his status on the Indiana Sex Offender Registry as a sexually violent predator. He noted that when he committed his offenses, the term "sexual violent predator" did not exist and there was no statute in effect that provided a procedure to determine he was a sexually violent predator. The later application of that status to him, he argued, violated the prohibition against *ex post facto* laws. The trial court denied Wiggins' motion.

On appeal, we noted the 2010 session of the General Assembly enacted Ind. Code § 11-8-8-22, which established procedures for challenging one's status as a sex offender. "The procedures set out in the amended statute allow the trial court, and this court on appeal, to be fully informed of a sex offender's circumstances, including the offender's full criminal history, dates of offenses, and reason for being required to register. Further, all interested parties are given notice of the proceedings." *Id.* at 840. We accordingly directed Wiggins to file a petition pursuant to Ind. Code § 11-8-8-22.

For the same reasons, we affirm the denial of Mitchell's petition. Mitchell may file an amended petition in compliance with Ind. Code § 11-8-8-22. We direct the trial court in that county to consider such petition in light of the amended Ind. Code § 11-8-8-22.

Affirmed.

ROBB, J., and VAIDIK, J., concur.