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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID S. HEALEY, )  
 )  
Appellant-Petitioner, )  
 )  
vs. ) No. 33A04-1202-MI-107  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Respondent. )

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APPEAL FROM THE HENRY CIRCUIT COURT  
The Honorable Mary G. Willis, Judge  
Cause No. 33C01-1111-MI-61

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**November 29, 2012**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SULLIVAN, Senior Judge**

David S. Healey appeals the trial court's denial of his Verified Petition to Remove Designation as Offender ("Verified Petition"). We affirm.

In 1995, Healey pleaded guilty to committing child molesting as a Class C felony in 1994. The Indiana Sex Offender Registration Act ("SORA") was in effect at the time he committed his crime, and Healey concedes that he was subject to SORA's requirements. Subsequently, the General Assembly amended SORA to strengthen its terms, including adding a requirement in 1995 that a person who commits a sex crime must register as a sex offender for a period of ten years. Healey disputes that this requirement applies to him.

In 2010, the State charged Healey with three counts of failing to register as a sex offender. The trial court determined that he was guilty and sentenced him accordingly. Healey appealed, and this Court affirmed his convictions.<sup>1</sup> Healey v. State (Healey I), 969 N.E.2d 607 (Ind. Ct. App. 2012), trans. denied.

The current case began when Healey filed his Verified Petition, asserting that SORA's ten-year reporting requirement, as applied to him, violates Indiana's constitutional prohibition against ex post facto punishment. The State filed a response, and the court held a hearing. The court denied Healey's petition, and this appeal followed.

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<sup>1</sup> In addition, Healey had previously pleaded guilty to failure to register as a sex offender in a separate case. He did not appeal, but he later filed a petition for post-conviction relief. The post-conviction court denied his petition, and he appealed, arguing that the registration requirement at issue was an unconstitutional ex post facto punishment. A panel of this Court affirmed the post-conviction court's judgment in an unpublished Memorandum Decision. See Healey v. State, No. 02A03-1107-PC-356 (Ind. Ct. App. Aug. 2, 2012).

Healey argues that the trial court erred by denying his Verified Petition.<sup>2</sup> Pursuant to Indiana Code section 11-8-8-22 (2010), a sex offender may petition a court to remove the person's designation as an offender. The statute specifically authorizes an offender to argue in the petition that a registration requirement is an ex post facto punishment. Ind. Code § 11-8-8-22(j). We review a trial court's decision on a petition to remove a sex offender designation for abuse of discretion. Lucas v. McDonald, 954 N.E.2d 996, 998 (Ind. Ct. App. 2011). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and inferences supporting the petition for relief. Id. The movant bears the burden to demonstrate that removal is necessary and just. Id.

Healey raised a claim identical to his current claim in Healey I. Specifically, he argued then, as he argues now, that the 1995 amendments to SORA, as applied to him, are an ex post facto punishment in violation of the Indiana Constitution. In Healey I, this Court applied the "intent-effects" test to Healey's ex post facto claim. 969 N.E.2d at 612. First, this Court found no punitive intent on the part of the General Assembly in amending SORA. Second, this Court applied the Mendoza-Martinez factors to decide whether the 1995 amendments had a punitive effect upon Healey. Id. at 613 (citing Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963)). Weighing these factors, this Court determined that the amendments did not have a

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<sup>2</sup> The State raises a separate claim, namely that Healey is collaterally estopped from presenting his ex post facto argument. When an issue is not presented to the trial court, appellate review of that issue is waived. Miller v. Owens, 953 N.E.2d 1079, 1083 (Ind. Ct. App. 2011), trans. denied. Here, the State did not present its collateral estoppel argument to the trial court, so the matter is waived and we proceed to the merits of Healey's claim.

punitive effect on Healey. Id. at 616. Thus, his ex post facto claim was found to be without merit.

In the current case, Healey again argues that the 1995 amendments to SORA, as applied to him, violate the Indiana Constitution's prohibition against ex post facto laws. In addition, he asks this Court to apply the "intent-effects" test to the 1995 SORA amendments. Appellant's Br. p. 7.

The author of this opinion, in Harlan v. State, 971 N.E.2d 163, 169 (Ind. Ct. App. 2012), expressed a substantial attraction to the merits of the views of the dissenting justices in Jensen v. State, 905 N.E.2d 384, 396-97 (Ind. 2009) (Boehm, J., dissenting, with then-Justice Dickson), and Lemmon v. Harris, 949 N.E.2d 803, 816 (Ind. 2011) (Dickson, J., dissenting). It was reasoned by the dissenters that the extended period for registration was in fact an increase in the punitive impact of the registration for life requirement. However, as noted, the Harlan court felt compelled to follow the lead of the Supreme Court majority in those two cases.

In addition, it may be noted that my two colleagues in this case were on the panel of this Court that decided Healey I. At this juncture it would ill behoove us to forge a different path to a contrary result. Accordingly, we affirm the judgment of the Henry Circuit Court.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.