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**IN THE
COURT OF APPEALS OF INDIANA**

DASHAWN CURRY,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-0701-CR-39
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49F09-0506-FD-105316

July 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Dashawn Curry appeals his conviction for class D felony failure to submit a change of address as a registered sex offender. We reverse.

Issue

We restate the issue as whether the State presented sufficient evidence to sustain Curry's conviction.

Facts and Procedural History

The facts most favorable to the judgment indicate that in 2004, Curry was convicted of sexual battery and was required to register as a sex offender. On February 16, 2005, Curry was released from prison in Indianapolis, Indiana. On February 25, 2005, Curry registered as a sex offender and informed his parole officer, Joseph Sweat, that he would be living at 2338 Fox Hill Court in Indianapolis. Sweat informed Curry that the residence would have to be approved before he could move. Sweat did not approve the Fox Hill residence because it was within 1,000 feet of a daycare or school. Sweat told Curry to report to the Wheeler Mission in Indianapolis until a new residence was approved.

On March 7, 2005, pursuant to Indiana Code Section 5-2-12-8, Curry registered his address as the Wheeler Mission or 7811 Darrien Court, both in Indianapolis. Sweat told Curry that he could not stay at the Darrien Court address because it had not been approved, so he should remain at the Wheeler Mission until the other address was approved. Curry told Sweat that he had been staying at the mission. People who receive a bed and those who are placed on the waiting list at the Wheeler Mission are checked in and their personal information is entered into a database. This database provides a report to track when the

client stayed at the mission. According to the case management supervisor of Wheeler Mission, Curry stayed at the mission only five times in 2005. There is no evidence that the State checked to see if Curry was residing at Darrien Court.

Sweat alleged that Curry violated his parole by changing his residence without approval, failing to attend counseling, and failing to report to his parole officer. As a result of Curry's violations, he was returned to the Department of Correction in May 2005 and was released in June 2005. On June 28, 2006, the State charged Curry with class D felony failure to submit a change of address as a sex offender, specifically alleging that he "failed to notify local Law Enforcement Authority within seven days of a change of (residence)." Appellant's App. at 15. On November 20, 2006, the trial court found Curry guilty as charged. Curry now appeals.

Discussion and Decision

Indiana Code Section 5-2-12-8(a) states that when a sex and violent offender who is required to register under this chapter changes his home address, the sex and violent offender shall provide written notice not more than seven days after the address change to the local law enforcement authority with whom the sex and violent offender last registered.¹ "A sex and violent offender who knowingly or intentionally fails to register under this chapter commits a class D felony." Ind. Code § 5-2-12-9.² Curry alleges that the State's evidence

¹ Under the new version of this statute, the sex offender has seventy-two hours after the address change to register with the local law enforcement authority. Ind. Code § 11-8-8-11.

² The new version of this statute is codified at Indiana Code Section 11-8-8-17.

was insufficient to prove that he failed to provide written notice of his change of home address within seven days of that change.

When reviewing sufficiency of the evidence claims, we will not reweigh evidence or judge witness credibility. *Dennis v. State*, 736 N.E.2d 300, 303 (Ind. Ct. App. 2000). We will affirm a conviction if the probative evidence and reasonable inferences could have led the factfinder to find the defendant guilty beyond a reasonable doubt. *Id.* The State established that Curry left the Wheeler Mission in March. However, the State failed to prove that Curry was not residing at the Darrien Court address, which he listed as his alternative address.

The State contends that Curry violated the statute in that Sweat specifically told Curry that he could not live at the Darrien Court address because it had not been approved. After leaving Wheeler Mission, Curry did not submit any change of address notification. However, Curry did list Darrien Court as his alternative address when he registered the Wheeler Mission address with law enforcement authority.³ Wheeler Mission's policy is that people can be turned away if there are not any available beds. The State failed to prove that Curry was not residing at Darrien Court when there were no available beds at Wheeler Mission. The statute does not require that law enforcement authority approve an address; it states only that there must be notification of a change of address.

It is just as important to recognize what a statute does not say as it is to recognize what it does say. Criminal statutes cannot be enlarged by construction, implication, or intendment beyond the fair meaning of the

³ Although Indiana Code Section 5-2-12-8 appears to contemplate only one "home address," the State has never claimed that Curry's use of two home addresses violated the statute.

language used. Moreover, criminal statutes are strictly construed against the State. Even though an act may fall within the spirit of a statute, it will not constitute a crime unless it is also within the words of the statute.

Herron v. State, 729 N.E.2d 1008, 1010 (Ind. Ct. App. 2000) (citations omitted).

Curry notified Sweat of the Darrien Court address; the fact that Sweat did not approve Curry to live at Darrien Court does not constitute a violation of the statute because the statute does not require approval. While changing a residence without approval from a law enforcement authority may be a parole violation, it is not necessarily a violation of the criminal statute. Under the unique facts and circumstances of this case, we must conclude that the State failed to prove beyond a reasonable doubt that Curry violated Indiana Code Section 5-2-12-8(a). We therefore reverse Curry's conviction.

Reversed.

BAKER, C. J., and FRIEDLANDER, J., concur.