

No. 1-13-0150

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 5699
	)	
JOHN LEGG,	)	The Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* Conviction reversed and caused remanded for a new trial on finding of ineffective assistance of trial counsel.

¶ 2 Following a bench trial, defendant John Legg was convicted of violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2012)) for failing to register within three days of establishing a residence or temporary domicile, and sentenced to two years' imprisonment. On appeal, defendant contends that his counsel provided ineffective assistance by establishing an element of the charged offense, requiring reversal of his conviction.

¶ 3 The record filed on appeal shows that defendant was convicted of rape and deviant sexual assault in 1982, and upon his release from prison for that offense in 1993, he was required to annually register under the Act for a period of 10 years. During this 10-year period, the Act was amended to provide that failure to comply with the Act will result in a 10-year extension of the registration requirement. 730 ILCS 150/7 (West 2012), P.A. 91-48, § 5, eff. July 1, 1999. Because defendant failed to register annually during the initial 10-year period, his registration period was extended in 1999 for another 10 years. Defendant continually failed to register, and the registration period was extended multiple times so that he is currently extended to March 2019.

¶ 4 On February 21, 2012, defendant was arrested and charged with the instant offense of failing to register as a sex offender from February 22, 2009, through February 21, 2012, pursuant to section 3(a)(1) of the Act. This section provides that the sex offender "shall" register in the municipality in which he resides or is temporary domiciled for a period of time of three or more days (730 ILCS 150/3(a)(1), (b) (West 2012)). Section 3(b) of the Act further provides that defendant "shall" register within 3 days of establishing a residence or temporary domicile. Defendant was specifically charged with violating the Act, in that he "knowingly" failed to register in person with the Chicago Police Department (CPD) within three days of establishing a residence in Chicago under section 3(a)(1) of the Act.

¶ 5 On March 16, 2012, defendant filed a motion to dismiss the charges, citing this court's decision on March 2, 2007 (*People v. Legg*, No. 1-05-0986 (Mar. 2, 2007) (unpublished order under Supreme Court Rule 23)). In that case, defendant appealed his 2004 conviction of failing to report his change of address and sentence of 18 months' imprisonment, and we reversed, holding that in August 2004, he was no longer required to register under the Act. *Legg*, No. 1-05-

0986, at 4. On September 14, 2007, we modified our order, holding that the State failed to prove defendant guilty of failing to report a change of address beyond a reasonable doubt, and removed the finding that defendant was no longer required to register as of August 2004. *Legg*, No. 1-05-0986 (Sept. 14, 2007) (modified Rule 23 order upon denial of petition for rehearing). The trial court denied defendant's motion to dismiss and the cause proceeded to trial.

¶ 6 Bart Toennies, a correctional counselor at Centralia Correctional Center, testified that his duties include, among other things, advising sex offenders of the requirement that they register with the Illinois State Police. The record reflects that defendant was incarcerated from December 27, 2007, to February 9, 2009, and Toennies testified that when he met with defendant on February 9, 2009, defendant told him he was going to live at 5467 West Washington Boulevard in Chicago, upon release. Toennies then advised him that he was required to register in Chicago under the Act, and gave him the Illinois Sex Offender Notification Registration form (notification form), which provides that defendant must register within three days of changing his address. Toennies read the form to defendant, and asked him to sign it; but defendant refused, claiming that he did not believe he had a duty to register.

¶ 7 The parties stipulated that Tracie Newton, supervisor of the Sex Offender Registration Unit for the Illinois State Police, would testify that she is the keeper of records under the Act. According to those records, defendant's initial registration period was December 30, 1993, through December 30, 2003. Defendant registered for the first time on January 30, 1996, and his duty to register annually was included on the notification form. In July 1999, defendant was notified that if he failed to register on time, his registration period would be administratively extended an additional 10 years. Because he registered late on September 27, 1999, defendant was administratively extended to 2009. Defendant registered on time in September 2000, but

failed to register from 2001 through 2003. He was arrested on August 12, 2004, for failing to report a change of address, and ultimately sentenced to 18 months' imprisonment. Defendant was incarcerated from March 18, 2005, to May 12, 2005, and next registered on May 17, 2005. From June 26, 2005, to December 8, 2005, defendant was again incarcerated for failure to report his change of address, and the record indicates that this charge was *nolle prossed*.

¶ 8 The parties further stipulated that Newton would testify that the Illinois State Police sent letters to defendant dated December 28, 2005, and January 11, 2006, notifying him that his registration had been administratively extended. The January 2006 letter was returned and the envelope was stamped, "vacant."

¶ 9 Defendant next registered on October 31, 2006, listing a new address, but was late by 10 months, and his duty to register was extended 10 years, to 2016. In September 2007, the Illinois State Police notified defendant of his duty to register, and in November 2007, sent a letter to defendant notifying him that he was in violation of the Act and was administratively extended. The record showed that defendant was incarcerated from December 21, 2007, to February 19, 2009, on a conviction for aggravated driving under the influence, and the letter was returned. On June 16, 2008, while incarcerated, defendant sent a letter to the Illinois State Police providing documentation that the appellate court reversed his conviction for failure to report a change of address, and requested a hearing before the Illinois State Police to have his name removed from the Sex Offender Registry. When defendant was released from prison in February 2009, he refused to sign the notification form, and on March 3, 2009, the Illinois State Police notified defendant that he was noncompliant with the registration requirements and his reporting period was extended another 10 years.

¶ 10 Defendant again requested a hearing with the Illinois State Police on his duty to register, and a hearing was held on May 24, 2010. On July 3, 2010, the administrative law judge (ALJ) for the Illinois State Police issued a Recommendation Order and Decision, denying defendant's request to have the extension removed. The ALJ found that defendant's reliance on the appellate court decision of March 2, 2007, was misplaced because a criminal prosecution has a substantially higher burden on the State, and thus the judgment reversing his conviction was not binding. In addition, although the March 2, 2007, order stated that in August of 2004, defendant was no longer required to register, it was vacated and superseded by the modified order of September 14, 2007, which reversed defendant's conviction and removed the statement that in August 2004, defendant was no longer required to register. *Legg*, No. 1-05-0986, at 5. The ALJ also found that if defendant believed that he was not required to register after August 2004, he would not have registered as he had done on May 17, 2005, and October 31, 2006. The ALJ further found that although defendant insisted that he did not register during certain times because he was incarcerated, defendant contradicted himself on what dates he was actually incarcerated, and his multiple felony convictions undermined his credibility. The ALJ noted that defendant's multiple arrests, incarcerations and convictions were perhaps too numerous to keep straight, but that this factor did not relieve him of his burden to register when not incarcerated.

¶ 11 On August 3, 2010, the director of the Illinois State Police ordered that defendant's petition to rescind the extension be denied, and ordered defendant to register until March 3, 2019. Newton would further testify that there is no record that defendant registered after the hearing.

¶ 12 Chicago police detective Andrew Perostianis testified that on February 21, 2012, defendant was arrested for violation of the registration requirement under the Act. Defendant was

shown his refusal to sign the February 2009 notification form, and he told the detective that he believed he had no duty to register. Defendant was aware of the Illinois State Police decision following the hearing requiring him to register, but he was going to "rest" on the prior decisions entered by the appellate court. Defendant told the detective that he disagreed with the Illinois State Police opinion, and upon his arrest, he handed police the appellate court decisions as well as his letters to the Illinois State Police requesting his removal from the registration requirement.

¶ 13 On cross-examination by defense counsel, the detective was asked if defendant was arrested at his current residence, and responded that he would have to review the arrest report to confirm that, but will trust counsel if that is true. Detective Perostianis further testified that he did not learn exactly where defendant was residing in Chicago, and that he was unable to confirm defendant's actual residency, where he was sleeping and where he was keeping his belongings. The detective noted that defendant did not have in his possession the decision from the Illinois State Police, and indicated that he was confused by the appellate court decisions, and handed them over to the Assistant State's Attorney to review.

¶ 14 Defendant then moved for a directed finding, arguing that the issue here is one of knowledge, and that even the detective did not know what to make of the appellate court decisions. Counsel commented that many lawyers might not know what to make of the decisions as well, and therefore defendant's interpretation of them was reasonable. Counsel argued that defendant did not willfully fail to register or knowingly fail to register. The court denied defendant's motion noting that he had a duty to register by statute but refused to do so.

¶ 15 The defense then called defendant's girlfriend Patricia Birts, who testified that in 2006 defendant moved in with her at 5467 West Washington Boulevard in Chicago, and received his mail at that address. In 2010, Birts accompanied defendant to a hearing before the Illinois State

Police on whether defendant was still required to register under the Act. No one informed them of the result of the hearing afterwards, and they never received the recommended order and decision of the Illinois State Police.

¶ 16 Defendant testified that in June 2008, he sent the appellate court decisions to the Illinois State Police because he believed they indicated he no longer had to register under the Act. He also sought a hearing from the Illinois State Police to remove his name from the required sex offenders registration requirement. He attended a hearing on May 24, 2010, but was not told the results, and never received the recommended order and decision entered. Defendant called the Illinois State Police several times to find out the decision, but they just told him to wait.

¶ 17 Defendant further testified that he has resided at 5467 West Washington Boulevard since 2006, and lists that address as his residence on his state issued identification and tax returns. He also had previously registered a vehicle at the Washington address, and was arrested there on the instant offense.

¶ 18 Counsel then entered into evidence certified copies of the disposition entered on a 2003 charge that defendant violated the Act and was found not guilty. Counsel also notified the court that the 2006 charge of failing to report a change of address was *nolle prossed* by the State.

¶ 19 During closing arguments, counsel argued that although it might not have been legally correct, defendant believed he did not have to register based on the appellate court decisions and the not guilty finding in 2003 by the circuit court. Counsel explained that defendant's belief and opinion are important because the State specifically charged him with "knowingly" failing to register, and that the issue is not whether he was legally required to register. Counsel noted that the State might point to *People v. Molnar*, 222 Ill. 2d 495 (2006), in which the supreme court found there was absolute liability, but maintained that the statute in that case was irrelevant to

defendant's case because it did not have a knowledge element but, rather, was an absolute liability offense.

¶ 20 The State responded that defendant's "alleged lack of knowledge" is refuted by the record. The State explained that defendant "had knowledge" that he was required to register where, when he was released from prison, he was notified that he had to register, and later received notification that his registration period had been administratively extended. The State maintained that just because defendant believed he did not need to register, it does not mean that he was not required to do so.

¶ 21 The court found defendant guilty of failing to register under the Act. In doing so, the court noted that defendant was informed that he was required to register and that the registration requirement was later extended for another 10 years. The court also noted that the appellate court found defendant not guilty of not registering, and upon his last release from prison, defendant refused to sign the notification form that he was required to register as a sex offender, and there was no doubt that he believed that he should not have to register. The court explained that there are a lot of things we do not believe in that we have to do because we are bound by the law. It further noted that defendant sought a hearing from the Illinois State Police on whether he was still required to register, and after they concluded that he was, the registration period was extended to March 3, 2019. Thus, the court concluded, defendant was required to register and did not do so, and was therefore guilty of failing to register beyond a reasonable doubt.

¶ 22 On appeal, defendant contends that he received ineffective assistance of counsel because counsel's questioning of his girlfriend and himself provided the only evidence that he had established a residency or temporary domicile, an element of the charged offense. Defendant thus requests that his conviction be reversed and the matter remanded for a new trial.



¶ 23 Under the two-prong test for examining a claim of ineffective assistance of counsel, defendant must establish that his attorney's performance fell below an objective standard of reasonableness, and that but for counsel's deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). The scrutiny of defense counsel's performance is highly deferential due to the inherent difficulties of making the evaluation, and the reviewing court must indulge in a strong presumption that counsel's conduct fell within the range of reasonable professional assistance. *People v. Robinson*, 299 Ill. App. 3d 426, 433 (1998).

¶ 24 In this case, defendant was specifically charged with "knowingly" failing to register under section 3(a)(1) of the Act and found guilty of failing to register within 3 days of establishing a residency in Chicago. That section, however, provides that defendant "shall" register in the municipality in which he resides or is temporarily domiciled for a period of three or more days. 730 ILCS 150/3(a)(1) (West 2012). Section 3(b) of the Act further provides that defendant "shall" register within three days of establishing a residence or temporary domicile. 730 ILCS 150/3(b) (West 2012). There is no reference to knowledge being an element of this offense (730 ILCS 150/3(a)(1) (West 2012)), and this court has held that violation of the Act is a strict liability offense (*People v. Dodds*, 2014 IL App (1st) 122268, ¶38).

¶ 25 In *People v. Molnar*, 222 Ill. 2d 495, 520-21 (2006), the supreme court observed that the plain language of section 10 of the Act (730 ILCS 150/10 (West 2002)), provides for absolute liability, and that clear legislative purpose to impose absolute liability is evident upon reading section 10 in its entirety. The statute reviewed in *Molnar* provided that any person who is required to register under this Act who violates any of its provisions is guilty of a Class 4 felony, and any person who is required to register under this Act who knowingly or willfully gives

material information required by this Act that is false is guilty of a Class 3 felony. 730 ILCS 150/10 (West 2002). Since 2002, the Act has been modified to also include, in relevant part, that any person who is convicted for violation of this Act for a second or subsequent time is guilty of a Class 2 felony. The supreme court observed that by specifically including a culpable mental state within the same statutory section, and excluding it in other parts of the section, the legislature indicated that different results were intended. *Molnar*, 222 Ill. 2d at 521. To hold otherwise, the supreme court found would render the knowingly and willfully language "meaningless surplusage." *Molnar*, 222 Ill. 2d at 521.

¶ 26 Here, defendant was specifically charged with "knowingly" failing to register in person with the CPD within three days of establishing a residence in Chicago under section 3(a)(1) of the Act (730 ILCS 150/3(a)(1) (West 2012)), even though the statute did not include a culpable mental state. Nonetheless, during the trial, counsel and the State focused on whether defendant had knowledge of the requirement that he register, indicating their understanding that knowledge was an element of the offense. However, as set forth above, defendant was charged with a strict liability offense where no element of knowledge is stated or required to be proved. *Dodds*, 2014 IL App (1st) 122268, ¶38. The statute merely provides that the sex offender "shall" register in the municipality in which he resides or is temporary domiciled for a period of time of three or more days. 730 ILCS 150/3(a)(1), (b) (West 2012).

¶ 27 The State did not seriously probe the residency matter, and it was defense counsel who established the element of residency through her questioning of defendant and his girlfriend. Both testified that defendant resided at the Washington address since 2006. *People v. Bailey*, 374 Ill. App. 3d 608, 615 (2007). It is counsel's responsibility to know the law, and her

misinterpretation of the law in this case amounted to ineffective assistance. *People v. Bonslater*, 261 Ill. App. 3d 432, 442-43 (1994); *People v. Hayes*, 229 Ill. App. 3d 55, 64 (1992).

¶ 28 In addition, defendant was clearly prejudiced by this evidence where the State had only presented evidence showing that defendant planned to live in Chicago at the Washington address upon his release from prison, and did not establish defendant's residency or temporary domicile in Chicago or to trigger the requirement that he register. Since evidence on this element was only elicited by defense counsel through the testimony of defendant and his girlfriend, the inquiries were clearly prejudicial to defendant's case, establishing the prejudice prong of the *Strickland* test. We thus reverse defendant's conviction and remand for a new trial. *Bailey*, 374 Ill. App. 3d at 615; *People v. Moore*, 356 Ill. App. 3d 117, 130 (2005).

¶ 29 In so concluding, we find no double jeopardy bar to retrial where the evidence presented against defendant was such that a rational trier of fact could have concluded that he was proved guilty beyond a reasonable doubt. *People v. Fillyaw*, 409 Ill. App. 3d 302, 316 (2011). When deciding if the evidence was sufficient to sustain a conviction, this court may consider all the evidence admitted at trial, even if it was erroneously admitted. *Fillyaw*, 409 Ill. App. 3d at 316.

¶ 30 Here, the evidence presented at trial showed that defendant had resided at the Washington address in Chicago since 2006, and the Illinois State Police records showed that defendant did not register following his release from prison in 2009, and defendant told the detective that he believed he had no duty to register. The elements for failing to register within three days of establishing a residence or temporary domicile were therefore established and there is no double jeopardy bar to retrial. *People v. Lawson*, 163 Ill. 2d 187, 218 (1994). We note that our determination on the evidence is not binding on retrial, and does not indicate this court's decision as to defendant's guilt or innocence. *People v. Jackson*, 2012 IL App (1st) 102035, ¶21.

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¶ 31 For the reasons stated, we reverse the judgment of the circuit court of Cook County and remand for retrial.

¶ 32 Reversed and remanded.