

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).

2016 IL App (4th) 140841-U

NO. 4-14-0841

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 11, 2016

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
RICK L. HALL,)	No. 13CF493
Defendant-Appellant.)	
)	Honorable
)	Mitchell K. Shick,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Any error that may have resulted from an erroneous denial of defendant's motion to dismiss was harmless.

¶ 2 Defendant, Rick L. Hall, appeals his July 2014 conviction for unlawful failure to register as a sex offender in violation of section 3(a) of the Sex Offender Registration Act (Act) (730 ILCS 150/3(a) (West 2012)). In September 2014, the trial court sentenced him to eight years in prison. On appeal, defendant argues the Coles County circuit court erred by denying his motion to dismiss, or alternatively, to transfer for improper venue. Defendant asserts Coles County was not a proper venue because no unlawful act occurred in Coles County; rather, his failure to register occurred in Cook County. The State argues venue was proper, or in the

alternative, the failure to dismiss or transfer was harmless error. We affirm.

¶ 3

I. BACKGROUND

¶ 4

After a bench trial on July 1, 2014, defendant was found guilty of unlawful failure to register as a sex offender in violation of section 3(a) of the Act (*id.*), a Class 3 felony. In September 2014, the trial court sentenced him to eight years in prison.

¶ 5

In 2002, defendant was convicted of two counts of predatory criminal sexual assault and sentenced to 20 and 7 years in prison, to be served concurrently. After serving his sentence and mandatory supervised release term in prison, defendant was released on December 9, 2013. On that day, defendant reviewed the Act with a field services representative. When asked what his address was, defendant stated he was homeless. Because defendant asserted he was homeless, he was driven to Coles County, where he lived before his conviction and where he was convicted of the crimes prompting his prison sentence. Defendant was given a light jacket and \$10 by Illinois Department of Corrections (IDOC) officials and was dropped off on the steps of the Coles County courthouse.

¶ 6

The same day he was dropped off in Coles County, defendant took a bus to Cook County and lived on and off in two different homeless shelters for approximately two weeks before taking up residence at the Pacific Garden Mission in Chicago, Illinois, where he lived for a couple of months. During that time, defendant applied for and received Social Security payments. With those proceeds, he was then able to rent a room at a motel by the month. Defendant resided at this motel until his arrest on March 26, 2014. It appears defendant never left Cook County between his arrival on December 9, 2013, and his arrest in March 2014. Defendant did not register as a sex offender in either Coles County or Cook County or have any

contact with any municipality regarding his status as sex offender.

¶ 7 On December 26, 2013, a warrant for defendant's arrest was issued in Coles County for unlawful failure to register as a sex offender. That arrest warrant was executed in Cook County on March 26, 2014, and defendant was transported to and jailed in Coles County until his trial. At trial, defendant waived his right to a jury trial and timely raised a motion arguing venue in Coles County was improper. Defendant argued Cook County was the proper venue for the case because the failure to register occurred in Cook County, not Coles County. Defendant cited section 3(b) of the Act, which provides a three-day window to establish a residence and register with the county of residence. 730 ILCS 150/3(b) (West 2012). Defendant's argument rests on the following proposition: because the three-day window to register expired while he was living in Cook County and because he resided only in Cook County from the date of his release, his failure to register occurred only in Cook County.

¶ 8 The State argued venue in Coles County was proper because defendant's homeless status created the reasonable expectation that defendant would reside in the county of his last known address, which was Coles County. This reasonable expectation, the State argued, gave Coles County jurisdiction over defendant, thereby requiring defendant to register there and rendering Coles County a proper venue for the failure to register. The State did not dispute Cook County would be a proper venue but maintained Coles County was likewise a proper venue.

¶ 9 The trial court denied the motion to dismiss, stating nothing before the court supported the assertion "Coles County [was] an improper or inappropriate venue." Defendant and the State stipulated to all remaining facts; defendant did not dispute his failure to register or

that he knew he was required to register as a sex offender in his county of residence. The trial court found defendant guilty following a bench trial on July 1, 2014. On September 16, 2014, defendant was sentenced to eight years in prison. This appeal followed.

¶ 10

II. ANALYSIS

¶ 11 On appeal, defendant argues Coles County was an improper venue under the Criminal Code of 2012 (Criminal Code), which states venue is proper "in the county where the offense was committed, except as otherwise provided by law." 720 ILCS 5/1-6(a) (West 2012). According to defendant, he did not violate the Act until December 12, 2013. Defendant argues, by that time, he was in Cook County and residing at a homeless shelter, meaning the offense—the failure to register in his county of residence—occurred in Cook County. Defendant further argues, because no part of the offense occurred in Coles County (*i.e.*, he was never required to register in Coles County because he did not reside there either permanently or temporarily following his release), Coles County was not a proper venue.

¶ 12

The State argues the trial court did not err because (1) defendant failed to make a *prima facie* showing of improper venue, (2) defendant was required to register in Coles County despite leaving Coles County the day he arrived there, and (3) venue is proper under the Act in any county where the defendant is located. The State did not dispute Cook County would also have been a proper venue, but it maintains the action could have been tried in either Cook or Coles County. The State further argues, in the alternative, if venue in Coles County was improper, the trial court's error was harmless because defendant was not prejudiced by the case being tried in Coles County rather than Cook County. The State asserts both parties at the bench trial stipulated to the facts concerning defendant's guilt under the Act, and there was no

reasonable doubt the defendant was, in fact, guilty.

¶ 13 Defendant replied to the State's argument and asserted only Cook County could be the proper venue in this case because (1) the offense occurred in Cook County and (2) defendant was located in Cook County at the time of his arrest. Defendant further argues a *prima facie* showing of improper venue was made at trial and in his appellate brief by showing no acts constituting an offense occurred in Coles County and by showing defendant's absence from Coles County at the time the warrant was issued and executed. In response to the State's harmless-error argument, defendant argues the alleged improper denial of his motion to dismiss for improper venue prejudiced Cook County's ability to prosecute a crime occurring within its borders. Defendant also argues he is now subject to double jeopardy because Cook County can charge him for the failure to register in Cook County.

¶ 14 A. Standard of Review

¶ 15 Where, as here, there is no factual dispute, the court reviews *de novo* the ruling on a motion to dismiss for improper venue. *People v. Daniels*, 187 Ill. 2d 301, 307, 718 N.E.2d 149, 155 (1999); *People v. Leavell*, 388 Ill. App. 3d 283, 288, 905 N.E.2d 849, 854 (2009).

¶ 16 B. Venue

¶ 17 Pursuant to section 1-6(a) of the Criminal Code, venue is proper in any "county where the offense was committed, except as otherwise provided by law." 720 ILCS 5/1-6(a) (West 2012). The Act provides any person who fails to register in compliance with the Act "may be arrested and tried in any Illinois county where the sex offender can be located." 730 ILCS 150/10(a) (West 2012). Accordingly, where an individual fails to register in compliance with the Act, venue is proper either in the county where the individual is located and arrested or in the

county where the individual should have registered but failed to do so. In many cases, these counties will be the same.

¶ 18 The Act requires sex offenders to register with the chief of police of the municipality where the individual resides within three days of establishing a permanent or temporary residence there. 730 ILCS 150/3(a)(1) (West 2012). If the sex offender resides in the City of Chicago, the individual must register with the Chicago police department headquarters rather than with the chief of police, and the registration must occur within the same three-day period. *Id.* Neither the State nor defendant dispute the fact defendant's residence in Cook County between December 12, 2013, and March 26, 2014, required him to register with the Chicago police department headquarters under the Act, rendering Cook County a proper venue in this case under section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 2012)). Additionally, defendant was located in Cook County at the time of his arrest, which also makes Cook County a proper venue under section 10(a) of the Act (730 ILCS 150/10(a) (West 2012)).

¶ 19 Prior to release from IDOC, a sex offender is required to inform authorities where he or she intends to reside upon release. 730 ILCS 150/5 (West 2012). This information is passed to the Illinois State Police, who inform the municipality having jurisdiction over the location where the sex offender is expected to reside. *Id.* The statute does not explicitly give a protocol for sex offenders who are homeless upon release. Perhaps it should. We proceed with our analysis assuming venue in Coles County was improper.

¶ 20 C. Harmless Error

¶ 21 The failure to dismiss for improper venue in this case would have been harmless error regardless of where the case was heard. "In a harmless-error analysis, which applies where

*** the defendant has made a timely objection, it is the State that 'bears the burden of persuasion with respect to prejudice.' " *People v. Thurow*, 203 Ill. 2d 352, 363, 786 N.E.2d 1019, 1025 (2003) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)). "[T]he State must prove beyond a reasonable doubt that the *** verdict would have been the same absent the error." *Thurow*, 203 Ill. 2d at 363, 786 N.E.2d at 1025.

¶ 22 Here, defendant made a timely objection to venue, meaning the harmless-error analysis applies. Had this case been heard in Cook County, or anywhere else for that matter, the case would have produced the same outcome. All the facts in this case, excepting the propriety of venue, were stipulated to by both defendant and the State. Defendant's concerns about Cook County's right to prosecute a crime occurring within its borders and the community's right to participate in the trial are not present on these facts because defendant does not dispute his guilt. The issue of prejudice relates to the prejudice of the defendant, not the prosecution, and defendant was not prejudiced by the case being heard in Coles rather than Cook County.

¶ 23 Defendant's argument he is prejudiced by the possibility of double jeopardy is also misguided. "The double jeopardy clauses of the federal and Illinois constitutions prohibit twice subjecting a defendant to 'jeopardy of life or limb' for the same offense. [Citations.] This constitutional principle bars *** prosecution for the identical offense after a conviction[.]" *People v. Gray*, 214 Ill. 2d 1, 6, 823 N.E.2d 555, 558 (2005). Under this principle, Cook County would be precluded from charging and prosecuting defendant for his failure to register his residence between December 12, 2013, and March 26, 2014, because defendant has been convicted for that same offense regarding that particular conduct. Even if we assumed defendant was prejudiced by the potential of double jeopardy, this prejudice is not the type that would have

produced a different outcome for this case and is therefore not the type of prejudice that would allow us to find harmful error. Thus, assuming, *arguendo*, the motion to dismiss was improperly denied, the error would have been harmless, not reversible, error.

¶ 24

III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 26

Affirmed.