2018 IL App (3d) 150016-U

Order filed March 28, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois.
Plaintiff-Appellee,	)	
	)	
v.	)	Appeal No. 3-15-0016
	)	Circuit No. 08-CF-719
LEON A. FRANKLIN,	)	
	)	Honorable Sarah F. Jones,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Presiding Justice Carter specially concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant failed to prove that defense counsel provided ineffective assistance. (2) Defendant's subjection to SORA and other sex offender statutes is proportionate punishment. (3) SORA and other sex offender statutes do not facially violate sex offenders' procedural or substantive due process rights.

¶ 2 In 2008, a jury convicted defendant on two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2006)). A panel of this court reversed defendant's conviction and remanded for a new trial. *People v. Franklin*, 2012 IL App (3d) 100618, abrogated, *People v. Downs*, 2015 IL 117934. At defendant's second trial in 2014, the jury convicted him on one of

the two counts. The trial court sentenced defendant to five years' imprisonment, two years of mandatory supervised release (MSR), and lifetime registration pursuant to the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2014)). As a convicted sex offender, defendant is subject to additional lifetime restrictions, including not residing or being present within 500 feet of a school or 100 feet of a school bus stop (720 ILCS 5/11-9.3 (West 2014)), not residing or being present within 500 feet of a public park (720 ILCS 5/11-9.4-1 (West 2014)), having his registered information shared publicly under the Sex Offender Community Notification Law (730 ILCS 152/101 *et seq.* (West 2014)), annually renewing his driver's license (730 ILCS 5/5-5-3(o) (West 2014)), and being prohibited from petitioning to change his name (735 ILCS 5/21-101 (West 2014)). For ease of reference, we refer to this statutory scheme collectively as "SORA" below.

¶ 3 Defendant now appeals his 2014 conviction. He argues that defense counsel provided ineffective assistance by failing to impeach the State's witnesses with their previous trial testimony. Defendant also claims that his subjection to SORA and designation as a "sexual predator" constitutes grossly disproportionate punishment, as applied to him, under the state and federal constitutions. Finally, he argues that SORA facially violates his constitutional rights to procedural and substantive due process. We affirm defendant's conviction and sentence.

¶ 4 BACKGROUND

¶ 5 The State charged defendant with two counts of aggravated criminal sexual abuse after witnesses told police that defendant had sexual intercourse with his friend's 16-year-old daughter, S.R. Count I of the State's criminal complaint alleged that defendant (age 35) had sexual intercourse with S.R in December 2007. Count II alleged that defendant had sexual

intercourse with S.R. on February 23, 2008. Defendant's second trial—the trial relevant to this appeal—commenced on March 31, 2014. The jury convicted defendant on count II.

¶ 6 In the State's case, S.R. testified that on February 23, 2008, she lived in Sonya Johnson's Joliet apartment with Sonya, Sonya's daughter, and defendant. S.R. and Sonya's daughter shared a bedroom; defendant slept on the couch. Defendant and S.R.'s father were longtime friends; S.R. knew defendant her whole life.

¶ 7 On February 23, S.R. believed Sonya and her friend, Adrian Brown, planned to go out for the day. After Sonya and Adrian left the apartment, Sonya called S.R. and asked her to clean Sonya's bedroom. Defendant sat on the couch waiting for S.R. to finish her chores. While S.R. cleaned Sonya's bedroom, defendant entered the bedroom and pulled down his pants. Defendant walked toward her, pushed her onto the bed, and began having sexual intercourse with her. Approximately 10 minutes later, Sonya and Adrian returned to the apartment. When defendant sat up, S.R. left the bedroom.

¶ 8 Sonya Johnson testified that she dated S.R.'s father for two years. After they broke up in 2007, Sonya agreed to care for S.R. Sonya and S.R.'s father signed a guardianship letter, but Sonya never obtained a court order for legal guardianship.

¶ 9 Sonya used the guardianship letter to receive S.R.'s school information and make necessary decisions regarding her education. Sonya testified that S.R. read at a fifth or sixth grade level as a sophomore in high school due to her learning disabilities. Although she worked evening shifts, S.R. called Sonya for homework assistance or stayed awake until Sonya returned from work. Defendant "helped [Sonya] out" while she worked by making sure S.R. returned home from school, picking up Sonya's daughter from daycare, and making dinner for the children.

¶ 10 On February 23, 2008, Sonya and Adrian planned to go shopping. They asked defendant to take Sonya's daughter, Adrian's son, and S.R. out for the day—defendant already planned to take his daughter to Haunted Trails or Chuck E. Cheese's. Adrian gave defendant $100 and her car keys to drive the children. Sonya asked S.R. to finish her chores and get dressed so she could go with defendant to chaperone the children. Sonya testified that she and Adrian left the apartment between 1 and 2 p.m. However, she stated, "I'm not precise on time—what time we left, but we left probably maybe about 30 minutes after [Adrian] got there." At the first trial, Sonya testified that she and Adrian left between 3 and 4 p.m.

¶ 11 Shortly after they left, Sonya called S.R. and asked her to clean the bedroom. At the first trial, Sonya testified that her bedroom was normally "off limits" to everyone, including S.R., unless Sonya was present. At the second trial, Sonya testified that S.R. could enter the bedroom with Sonya's permission.

¶ 12 From the apartment, Sonya and Adrian went to buy lottery tickets for Adrian's mother. They took the tickets to Adrian's mother in Plainfield, approximately 30 to 45 minutes away. Sonya and Adrian then drove to a Wal-Mart in Plainfield. Because of the large crowd at Wal-Mart, they decided to return to Sonya's apartment and have a drink instead of shopping. They drove back to the liquor store across the street from Sonya's apartment, another 30 to 45 minute drive.

¶ 13 Sonya saw Adrian's car parked in front of Sonya's apartment when she and Adrian arrived at the liquor store. They called Sonya's landline, S.R.'s cell phone, and defendant's cell phone—no answer. They decided to go back to Sonya's apartment to see why defendant had not yet left with the children. Adrian entered the apartment first and walked toward Sonya's bedroom, directly across from the front door. Sonya walked over to her bedroom doorway after

she heard Adrian yell. She saw defendant sitting on the bed with his pants around his ankles. Sonya testified that she asked defendant why he would "do that" to S.R. He responded, "I don't know; it just happened; I didn't mean for it to happen." After a brief argument, Sonya walked away to fetch a baseball bat. Defendant left the apartment before she returned.

¶ 14 Sonya briefly talked to S.R. and told her to take a bath. Sonya then attempted to contact S.R.'s father for two or three hours before she called the police. The responding officer took S.R.'s and Sonya's statements, then escorted them to a nearby hospital. Sonya admitted that she forged S.R.'s father's signature on the admission documents. However, the hospital refused to administer a sexual assault kit without S.R.'s biological parent or legal guardian present.

¶ 15 When Sonya spoke to police prior to defendant's first trial, she had an outstanding arrest warrant. The record does not specify the offense underlying the warrant. The State quashed Sonya's warrant prior to defendant's first trial. Defense counsel at the first trial questioned Sonya regarding the warrant. Defense counsel at the second trial failed to address Sonya's warrant during cross-examination.

¶ 16 Adrian's testimony largely corroborated Sonya's. Specifically, Adrian testified that she and Sonya left Sonya's apartment between 1 and 2 p.m. Like Sonya, however, Adrian testified at the first trial that they left between 3 and 4 p.m. During cross-examination at the second trial, defense counsel specifically asked Adrian whether they left between 1 and 2 or between 3 and 4 p.m. She responded, "I'm not—I'm not sure. It could have been—I know it was the afternoon." She and Sonya left the apartment for approximately two hours.

¶ 17 When Adrian returned to the apartment, she saw S.R. exit Sonya's bedroom looking "flushed or red." Adrian walked to the bedroom's doorway to find defendant sitting on Sonya's bed pulling his underwear up while his pants remained around his ankles. After defendant briefly

argued with Sonya, Adrian told him that he needed to leave. She stayed at Sonya's apartment most of the night. She testified that defendant called several times and asked to speak with S.R.

¶ 18 Anthony Adams, the police officer who responded to Sonya's call, testified that dispatch reported the call as a "past tense sexual assault." Adams arrived at the apartment around 7 p.m. He obtained a statement from S.R. and Sonya. S.R. told Adams that defendant laid on top of her without permission and "turned her over" after she attempted to push him away. Counsel never asked about Sonya's statement to Adams. However, at the first trial, the parties disputed whether Sonya reported defendant's "admission" (where he allegedly stated, "I don't know; it just happened; I didn't mean for it to happen") to Adams.

¶ 19 The crime scene investigator, Nicholas Amelio, testified that an ultraviolet light showed stains on Sonya's bedspread. He collected the bedspread and S.R.'s clothes as evidence. He later sent Sonya's bedspread to the crime lab, but the lab refused to test it. Because no doctor administered a sexual assault kit, the lab could not compare S.R.'s deoxyribonucleic acid (DNA) samples to the bedspread's stains. Amelio never determined the stains' composition or date of origin.

¶ 20 Although defendant declined to testify at the first trial, he opted to testify on his own behalf at the second trial. He stated that he and his family members planned to take their children to Chuck E. Cheese's on February 23, 2008. He agreed to take Sonya's daughter and Adrian's son along if S.R. helped chaperone the children. He claimed that he arrived at Sonya's apartment around 3:20 p.m. Sonya and Adrian left approximately 10 minutes later. Before they left, defendant walked into Sonya's bedroom to use her landline phone—he did not want to use the minutes remaining on his cell phone. He needed to call his family members and tell them that he would be late to Chuck E. Cheese's. He stated that Sonya watched him enter her bedroom.

¶ 21 Defendant also stated that S.R. never entered Sonya's bedroom. She cleaned dishes in the kitchen after Sonya and Adrian left. She came to the bedroom door to notify defendant that Sonya and Adrian returned approximately 20 to 30 minutes after they left. When he walked into the living room, Sonya yelled at him for being in her bedroom. They argued for 10 minutes before defendant left. He claimed that Sonya never retrieved a baseball bat. He also denied ever having sexual intercourse with S.R. On cross-examination, defendant failed to explain why Sonya yelled at him for being in her bedroom when she saw him enter the bedroom before she left.

¶ 22 The jury convicted defendant on count II. On May 28, 2014, the trial court sentenced defendant to five years' imprisonment, which he had already served, two years' MSR, and subjected defendant to SORA for life. On January 5, 2015, the trial court denied defendant's motion for a new trial. This appeal followed.

¶ 23 ANALYSIS

¶ 24 Defendant first argues that counsel provided ineffective assistance by failing to adequately impeach the State's witnesses during the second trial. He claims that the cumulative effect of counsel's errors undermined confidence in the trial's outcome because the case turned on the witnesses' credibility. Second, defendant argues that his lifetime subjection to SORA constitutes grossly disproportionate punishment as applied to him. Finally, defendant argues that SORA is facially unconstitutional because it violates procedural and substantive due process rights protected by the state and federal constitutions (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2). We address each argument in turn.

¶ 25 I. Ineffective Assistance of Counsel

¶ 26 Although defendant argues that counsel provided ineffective assistance by inadequately impeaching the State's occurrence witnesses, he does not challenge the trial court's *Krankel* determination (*People v. Krankel*, 102 Ill. 2d 181 (1984)), that counsel provided constitutionally sufficient assistance. We review defendant's ineffective assistance claim *de novo*. *People v. Hale*, 2013 IL 113140, ¶ 15.

¶ 27 Both the United States and Illinois Constitutions grant defendants the right to effective assistance of counsel in criminal cases. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). The familiar *Strickland* test requires defendants to prove that counsel's representation fell below an objective standard of reasonableness and, but for counsel's deficient performance, the trial or proceeding probably would have resulted differently. *Strickland*, 466 U.S. at 690, 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* Courts' "ultimate inquiry must concentrate on 'the fundamental fairness of the proceeding.' " *Weaver v. Massachusetts*, 582 U.S. ____, ____ (2017) (quoting *Strickland*, 466 U.S. at 696).

¶ 28 Effective assistance of counsel refers to competent, not perfect, representation. *People v. Stewart*, 104 Ill. 2d 463, 491-92 (1984). To constitute incompetent representation, counsel's deficiencies must be "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687. Mistakes in trial strategy or in judgment do not, by themselves, render legal representation incompetent. *Id.*; *People v. Hillenbrand*, 121 Ill. 2d 537, 548 (1988). Whether or how counsel cross-examines a witness is typically a matter of trial strategy. *People v. Salgado*, 263 Ill. App. 3d 238, 246 (1994). When

courts judge counsel's cross-examination, "[t]he value of the potentially impeaching material must be placed in perspective." *People v. Jimerson,* 127 Ill. 2d 12, 33 (1989).

¶ 29 Defendant cites several occasions where counsel allegedly provided ineffective assistance during the second trial. He claims counsel failed to impeach several aspects of Sonya's testimony, failed to impeach Sonya and Adrian's February 23, 2008, timeline, and failed to impeach S.R.'s testimony that defendant pushed her onto Sonya's bed. Defendant claims that counsel's deficient performance deprived the jury of any valid basis to reject the witnesses' testimony. Because the State presented no physical or forensic evidence, the jury's determination relied solely upon the witnesses' credibility. We reject defendant's argument.

¶ 30 A. Defendant's Alleged Admission

¶ 31 Sonya testified that, at the scene, she asked defendant how he could "do this" to S.R., and he replied, "I don't know; it just happened; I didn't mean for it to happen." At the first trial, Officer Adams testified that his report never mentions defendant's "admission." He added that he certainly would have recorded the admission if Sonya reported it. At the second trial, counsel failed to ask whether Sonya reported defendant's alleged admission to Adams.

¶ 32 Defendant argues that Sonya's response to cross-examination would have undermined her credibility. Thus, counsel's failure to impeach Sonya's testimony undermined confidence in the jury's verdict; confessions and admissions "frequently constitute the most persuasive evidence against a defendant." *People v. Clay*, 349 Ill. App. 3d 24, 30 (2004).

¶ 33 Counsel exercised trial strategy by electing not to question Sonya about defendant's admission. This strategy was not incompetent. As the State points out, cross-examining Sonya about whether she reported defendant's admission would have allowed the State to reinforce other statements that Sonya made to police—namely that she walked in on defendant having

sexual intercourse with S.R. Counsel could have reasonably concluded that the risk outweighed the reward.

¶ 34 Defendant also fails to prove that counsel's deficient performance undermined confidence in the jury's verdict. The jury heard Adams testify about his report. Defendant testified that he never made the admission. Despite defendant's testimony, the jury found him guilty. The evidence sufficiently supported the verdict.

¶ 35 As a corollary argument, defendant contends that counsel unreasonably failed to cross-examine Sonya regarding her motivation to testify. Before defendant's first trial, the State quashed Sonya's outstanding arrest warrant. Defendant claims that Sonya fabricated defendant's alleged admission in exchange for the State quashing her warrant. However, the record lacks evidence that Sonya fabricated her testimony. Counsel could have reasonably believed that attacking Sonya's motivation to testify without sufficient corroborating evidence would curry disfavor with the jury. We find no merit in this argument.

¶ 36 B. Sonya and Adrian's Timeline

¶ 37 At the first trial, Sonya and Adrian testified that they left the apartment between 3 and 4 p.m. At the second trial, they stated that they left the apartment between 1 and 2 p.m. They returned two hours later. Sonya testified that she called the police "three, four hours" after she and Adrian returned. The police report states that Officer Adams arrived at the apartment around 7 p.m. Sonya and Adrian's timeline from the first trial could not have been correct.

¶ 38 Defendant argues that counsel failed to cross-examine Sonya and Adrian about the timeline discrepancy. We disagree. Defense counsel asked Adrian at the second trial whether she and Sonya could have left at 3 or 4 p.m. She responded, "I'm not sure. It could have been—I know it was the afternoon." This exchange sufficiently addressed the issue.

¶ 39 Regardless, Sonya and Adrian's timeline carried little evidentiary weight. Defendant does not dispute that Adams came to Sonya's apartment; nor does defendant claim that either timeline affected his ability to commit this crime. The timeline testimony simply shows that neither Sonya nor Adrian remembered the precise moment that they left the apartment. This mild memory lapse does not undermine confidence in the jury's verdict.

¶ 40 C. S.R.'s Testimony

¶ 41 Next, defendant argues that counsel provided ineffective assistance by failing to impeach S.R.'s testimony.

¶ 42 During the second trial, S.R. testified that defendant pushed her down onto Sonya's bed. At the first trial, S.R. never testified that defendant pushed her. Officer Adams's police report corroborated S.R.'s testimony at the second trial—S.R. told Adams that she tried to push defendant off of her, then defendant "turned her over." In any event, S.R.'s testimony did not affect defendant's guilt or innocence. Regardless of whether defendant pushed S.R. onto the bed, the alleged sexual act itself satisfies the charged crime's elements. Counsel's decision not to impeach S.R. on this issue reflected reasonable trial strategy.

¶ 43 Defendant attempts to bolster his argument by emphasizing that counsel failed to object when Officer Adams and the prosecutor used the term "sexual assault" during the second trial. Defendant argues that S.R.'s testimony supported these references to "sexual assault" and improperly implied that defendant committed a more serious offense. We disagree.

¶ 44 Officer Adams merely stated that dispatch reported a "past tense sexual assault" on the police radio. The State never charged defendant with sexual assault. The court never issued a jury instruction on sexual assault. The jury never considered the elements of sexual assault.

Defendant cannot show that counsel's failure to object to the term "sexual assault" undermines confidence in the verdict.

¶ 45 D. Sonya's Testimony Regarding Her Bedroom

¶ 46 Finally, defendant argues that counsel unreasonably failed to impeach Sonya's testimony regarding S.R.'s access to Sonya's bedroom. At the first trial, Sonya testified that S.R. could not enter the bedroom when Sonya left the apartment. At the second trial, Sonya testified that S.R. could enter the bedroom if Sonya gave her permission. Defendant argues that this "inconsistency" called Sonya's credibility into question.

¶ 47 Counsel had no evidence with which to impeach Sonya. Arguably, she provided consistent testimony. Of course S.R. could enter the bedroom with Sonya's permission. Any attempt to impeach this "inconsistency" would have, at best, gone nowhere.

¶ 48 Regardless, defendant's position cannot pass the prejudice prong. Adrian testified that S.R. looked "flushed" when Sonya and Adrian returned to the apartment. Defendant's own testimony placed S.R. in Sonya's bedroom or at its threshold when Sonya and Adrian returned. The witnesses agree that S.R. walked away from Sonya's bedroom just as Adrian testified. S.R.'s permission to enter the bedroom is irrelevant to any other incriminating testimony. Defendant cannot show that counsel's performance undermined confidence in the jury's verdict.

¶ 49 Collectively, counsel's performance did not deprive defendant of a fundamentally fair trial. See *Weaver v. Massachusetts*, 582 U.S. ____, ____ (2017) (citing *Strickland*, 466 U.S. at 696). Even if counsel performed deficiently, defendant cannot show that counsel's performance undermined confidence in the jury's verdict. The lack of prejudice is fatal to defendant's ineffective assistance claim. *Hale*, 2013 IL 113140, ¶ 17.

¶ 50 II. Disproportionate Punishment

¶ 51 Defendant argues that his subjection to SORA's statutory scheme constitutes grossly disproportionate punishment, as applied to him, in violation of the U.S. Constitution (amend. VIII) and Illinois Constitution (art. I, § 11). We review defendant's as-applied challenge *de novo*. *People v. Fisher*, 184 Ill. 2d 441, 448 (1998).

¶ 52 A panel of this court recently held in *People v. Tetter*, 2017 IL App (3d) 150243, that our SORA constitutes "punishment" that implicates the U.S. Constitution, amend. VIII, and the Illinois Constitution, art. I, § 11. Defendant challenges the same statutes we addressed in *Tetter*. Regardless of whether SORA constitutes punishment, defendant's sentence is not grossly disproportionate to his conviction.

¶ 53 Only "greatly disproportioned" sentences are prohibited under the Eighth Amendment. *Weems v. United States*, 217 U.S. 349, 371 (1910); see also *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003). In *Tetter*, we applied the test set forth in *Solem v. Helm*, 463 U.S. 277, 290-91 (1983), to determine whether SORA constituted grossly disproportionate punishment. *Tetter*, 2018 IL App (3d) 150243, ¶ 73. Under that test, we assess the gravity of defendant's offense compared to the harshness of his lifetime subjection to SORA and whether more serious crimes are subject to a lesser or similar penalty. See *Solem*, 463 U.S. at 290-91.

¶ 54 Defendant points out that he has no prior sex crime convictions; "based on his single conviction for a non-forcible sexual offense, [he] must register as a sexual predator and live a severely restricted existence for the rest of his life." He also claims that he should be exempt from SORA as credit for serving more prison time than his sentence required. After his first trial, the court sentenced defendant to a 10-year prison term. Defendant remained in prison pending his second trial's result. After the second trial, the court sentenced defendant to five years in prison; he had already served over six years when the court held the second sentencing hearing.

¶ 55 As to the gravity of defendant's offense and the harshness of his sentence, we recognize that he served his prison sentence and then some. We are also cognizant that defendant faces lifetime subjection to SORA. However, the record suggests that this punishment is not grossly disproportionate to his crime. Defendant was nearly 20 years older than S.R. on the date of the alleged offense. This age difference supports defendant's subjection to SORA. Its restrictions and duration are not grossly disproportionate to all first-time sex offenders' crimes.

¶ 56 Evidence other than defendant's age suggests that his punishment falls within constitutional boundaries. Defendant maintained a longtime friendship with S.R.'s father and regularly went to Sonya's apartment where S.R. lived; she knew and trusted defendant. On the date of the offense, Sonya and Adrian entrusted defendant to care for S.R. and two young children. The gravity of defendant's offense outweighs the harshness of his punishment.

¶ 57 The second *Solem* factor also suggests that his punishment is constitutional. Although defendants convicted of more serious sex crimes are also subject to SORA's registration and restrictions for life, these more serious crimes and their punishments do not represent a sentencing gauge to which all lesser crimes must be calibrated. Instead, we must determine whether defendant's punishment is "extreme." See *Lockyer*, 538 U.S. at 73.

¶ 58 The jury convicted defendant of sexually abusing his longtime friend's 16-year-old daughter with whom he established a quasi familial relationship. S.R. enrolled in special education courses in high school, read at approximately a fifth or sixth grade level as a high school sophomore, and never consented to any physical contact with defendant. Defendant's sex offender evaluation deemed him a moderate-low risk to recidivate and recommended a residential, rather than outpatient, sex offender rehabilitation program. These facts demonstrate

that defendant's lifetime subjection to SORA is not extreme, even compared to offenders who commit sex crimes that warrant longer prison terms.

¶ 59 Alternatively, defendant argues that reducing his registration period to 10 years "would adequately protect society, while also allowing [defendant] a chance to rehabilitate himself and reintegrate into society." Defendant fails to support this argument with any law or evidence. He also cites no authority indicating that he is eligible or should be eligible for a 10-year SORA term. We reject defendant's unsupported argument. His lifetime subjection to SORA is not extreme or grossly disproportionate to his crime.

¶ 60 III. Due Process

¶ 61 Defendant's final argument claims that SORA facially violates procedural and substantive due process rights guaranteed by the U.S. Constitution (amend. XIV) and Illinois Constitution (art. I, § 2). We must presume that statutes challenged on their face are constitutional; to overcome this presumption, the challenging party must establish a clear constitutional violation under any set of circumstances. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009); *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008). We review defendant's due process challenge *de novo*. *People v. Mosley*, 2015 IL 115872, ¶ 22.

¶ 62 A. Procedural Due Process

¶ 63 Procedural due process protects citizens from the government depriving their life, liberty, or property without sufficient procedural safeguards. *Collins v. City of Harker Heights, Texas*, 503 U.S. 115, 125 (1992); *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244 (2006). SORA's statutes lack a procedural mechanism by which to evaluate whether an offender presents a continuing danger to society. Defendant contends that offenders must receive the opportunity to prove they do not present such a danger.

¶ 64 Defendant's argument is fundamentally flawed. "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 8 (2003). Defendant's dangerous propensities, or lack thereof, are irrelevant to his facial challenge.

¶ 65 As written, SORA does not consider sex offenders' propensities. SORA comes part and parcel with offenders' convictions—the only process to which they are entitled is that which is constitutionally guaranteed to accused defendants prior to conviction. See *In re A.C.*, 2016 IL App (1st) 153047, ¶¶ 61-66; *People v. Pollard*, 2016 IL App (5th) 130514, ¶ 46; *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶ 92. The procedural mechanism defendant seeks would be a "bootless exercise" absent a *substantive* defect in SORA's laws. See *Doe*, 538 U.S. at 7-8. Defendant's claim implicates SORA's substance, not its procedure.

¶ 66 B. Substantive Due Process

¶ 67 Defendant claims that SORA's reach unconstitutionally extends beyond sex offenders who present a continuing public threat. He argues that SORA violates sex offenders' right "to be free from a lifetime of burdensome, intrusive monitoring and restrictions."

¶ 68 First, we note that defendant's claimed "right" is not a fundamental liberty interest. See *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997); *People v. Cornelius*, 213 Ill. 2d 178, 203 (2004); *In re J.W.*, 204 Ill. 2d 50, 67 (2003); *Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 74-75. Because defendant's claim does not implicate a fundamental liberty interest, the question is whether SORA "bears a rational relationship to the purpose the legislature intended to achieve in enacting the statute." *Cornelius*, 213 Ill. 2d at 203-04. "If there is any conceivable basis for

finding a rational relationship, the statute will be upheld." *In re J.W.*, 204 Ill. 2d at 72 (citing *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998)).

¶ 69 Defendant claims that SORA is not rationally related to its legislative purpose, protecting the public from sex offenders, because it is overbroad. SORA applies to all sex offenders, not just those who are deemed "dangerous," and precludes judicial review. Defendant cites a South Carolina case, *State v. Dykes*, 744 S.E.2d 505, 510 (S.C. 2013), where the South Carolina supreme court found its SORA unconstitutional because it precluded judicial review.

¶ 70 We decline to follow South Carolina's precedent. Here, defendant challenges *all* of SORA's statutes on their face. SORA's statutes are not collectively or individually arbitrary. They require sex offenders to register identifying information to help protect the public. They restrict offenders' access to places where children typically congregate such as schools and public parks. Regardless of whether it is the best means to protect the public from sex offenders, SORA is, on its face, rationally related to its legislative goal.

¶ 71 We recognize that a panel of this court recently found one statute implicated in defendant's challenge (720 ILCS 5/11-9.4-1 (West 2014)) (prohibiting sex offenders from living or being present within 500 feet of a public park) to be unconstitutional on its face. *People v. Pepitone*, 2017 IL App (3d) 140627, ¶ 24. We note that *Pepitone*'s scope is restricted to only the public parks statute. Defendant challenges all of SORA's statutes. Regardless, "the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels." *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008).

¶ 72 We hold that SORA's statutory scheme is rationally related to its legislative purpose. We reject defendant's due process argument. We affirm his conviction and sentence.

¶ 73 CONCLUSION

¶ 74 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 75 Affirmed.

¶ 76 JUSTICE CARTER, specially concurring.

¶ 77 I concur in the judgment of the court. I specially concur with regard to the allegations that the SORA statutory scheme violates defendant's substantive and procedural due process rights. Our court recently rejected the same arguments that defendant advances in this appeal and found that the SORA statutory scheme did not violate an individual's due process rights (substantive and procedural). See *People v. Zetterlund*, 2018 IL App (3d) 150435, ¶ 11. Therefore, I respectfully specially concur with the majority's decision.