

NOTICE
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2018 IL App (5th) 140415-U

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).

NO. 5-14-0415

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 12-CF-1584
)	
SHANE A. KITTERMAN,)	Honorable
)	John Baricevic,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court. Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's conviction for unlawful failure to register as a sex offender is reversed where the State failed to adduce evidence at trial that the defendant was required to register on the date of the alleged offense.

¶ 2 Following a jury trial, the defendant, Shane A. Kitterman, was convicted of unlawful failure to register as a sex offender for providing false information on a sex offender registration form, a Class 2 felony, and sentenced to 24 months of probation. See 730 ILCS 150/3(a), 10(a) (West 2012). On appeal, the defendant argues that his conviction should be reversed outright because the State's evidence was insufficient to sustain his conviction. Alternatively, the defendant argues that his conviction should be

reversed where the circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) in admonishing the jury and Illinois Supreme Court Rule 401(a)(2) (eff. July 1, 1984) in accepting his waiver of legal counsel. Additionally, the defendant challenges the sentencing order arguing that the court erred in determining that his conviction was a Class 2 felony. Because we agree with the defendant's first argument, we reverse outright defendant's conviction and sentence.

¶ 3

BACKGROUND

¶ 4 In January 1996, the defendant was sentenced to four years of probation after he pleaded guilty and was convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1) (West 1994)). Due to the sexual nature of the charge, the defendant was notified that he was required to register as a sex offender for a 10-year period under the Sex Offender Registration Act (SORA). See 730 ILCS 150/1 *et seq.* (West 2012). In March 1997, the defendant's probation was revoked and he was sentenced to four years' imprisonment. The defendant was released from prison in February 1998.

¶ 5 In July 2005, the defendant pleaded guilty and was convicted of three felony offenses: obstructing justice (720 ILCS 5/31-4 (West 2002)); failure to register as a sex offender for failing to report a change of address (730 ILCS 150/3(a) (West 2004)); and retail theft (720 ILCS 5/16A-3(a) (West 2004)). The defendant was sentenced to three years' imprisonment, one year for each offense, to run consecutively. In December 2006,

the defendant was released from prison and notified by the Illinois State Police (ISP) that his sex offender registration requirement had been extended for a period of 10 years.¹

¶ 6 On November 5, 2012, the defendant was charged by information with one count of unlawful failure to register as a sex offender in violation of SORA. The information alleged that the defendant was a sex offender who "knowingly failed to provide correct information regarding the address of his residence ***." The information also stated that the defendant was subject to a Class 2 felony because he had a prior conviction, failure to report a change of address, under SORA in 2005.

¶ 7 At the preliminary hearing, the defendant waived the reading of the charge, informed the circuit court that he was aware of the possible penalties, and pleaded not guilty. Although initially appointed a public defender, the defendant later discharged his public defender and retained private counsel. The defendant subsequently discharged private counsel and represented himself *pro se*.

¶ 8 In January 2013, the defendant filed a pretrial petition challenging his SORA registration requirement. The defendant alleged that he was not informed of the 10-year registration requirement prior to pleading guilty to aggravated criminal sexual abuse. The defendant also alleged that when he pleaded guilty for failure to register as a sex offender in July 2005, the circuit court informed him, on the record, that his guilty plea would not extend his registration requirement. Thus, the defendant asserted that the ISP improperly

¹The Illinois legislature amended SORA, effective July 1, 1999, providing that "[t]he Director of State Police, consistent with administrative rules, shall extend for 10 years the registration period of any sex offender who fails to comply with the provisions of this Article." 730 ILCS 150/7 (West Supp. 1999); see 91st Ill. Gen. Assem., House Bill 2721, 1999 Sess. (Pub. Act 91-48 (eff. July 1, 1999)).

extended his registration requirement because his registration period expired in January 2006. The court subsequently dismissed the defendant's petition on the State's motion.

¶ 9 The defendant filed motions to reconsider and a request for an evidentiary hearing for the circuit court to determine whether the ISP improperly extended his registration period. In response, the State filed a motion *in limine* to preclude the defendant from asserting, as an affirmative defense, that he was not required to register, and from contesting the State's evidence regarding his registration requirement. The State asserted that the defendant's registration period was determined by the ISP and was not a relevant fact for the jury to decide. Additionally, the State argued that it was only required to prove that the defendant was a sex offender, not that the defendant was required to register, per the jury instructions. See Illinois Pattern Jury Instructions, Criminal, No. 9.43H (4th ed. Supp. 2011) (hereinafter IPI Criminal 4th No. 9.43H (Supp. 2011)).

¶ 10 The circuit court subsequently denied the defendant's request for an evidentiary hearing and granted the State's motion *in limine*, which effectively barred the defendant from challenging the State's evidence concerning the registration requirement. The court determined that the legitimacy of the defendant's registration requirement was a collateral issue not within the jurisdiction of the court.

¶ 11 In December 2013, the defendant's case proceeded to trial where the State admitted a certified copy of the defendant's January 1996 conviction for aggravated criminal sexual abuse as evidence that he was a sex offender. Although the prior conviction occurred approximately 16 years before the alleged offense, the State did not

admit additional evidence to demonstrate that the defendant's SORA registration requirement continued beyond the initial 10-year period.

¶ 12 The State called Sergeant Gregory Woolery (Woolery), who was employed by the Swansea Police Department, to testify regarding the details of the defendant's registration in October 2012. On October 4, 2012, the defendant filed a SORA registration form at the Swansea Police Department listing his current address. Woolery did not check the defendant's criminal history or verify his registration requirement with the ISP, but he did indicate the defendant's next required registration date on the back of the registration form. However, Woolery later notified the defendant after he discovered that he had inadvertently written an incorrect registration date. On October 8, 2012, the defendant returned and filed a second registration form. Woolery testified that both forms contained an incorrect conviction date. The State admitted, without objection, both registration forms into evidence.

¶ 13 The State then called two individuals who resided at the address that the defendant had listed on his SORA registration form in October 2012. Both witnesses testified that they had given the defendant permission to register and live at their home, although the defendant never actually resided there. They explained that the defendant had continued to live with his wife, even though her home was in close proximity to a school and he was legally prohibited from residing there.

¶ 14 After the State rested, the defendant's aunt, Hazel Kitterman (Hazel), testified to the following. Hazel had driven the defendant to the listed address and had been under the impression that he planned to reside there. On cross-examination, however, she

admitted that the defendant had very few personal items with him at that time and that she did not see him enter the home after she dropped him off. Hazel indicated that she had never entered the home and, thus, she had no knowledge of the living arrangements.

¶ 15 At the close of the evidence, the circuit court provided the jury instructions, which contained two propositions that the State had to prove beyond a reasonable doubt. First, the State had to prove that the defendant was a sex offender, and, second, that he willingly or knowingly gave material information required by law that was false. See IPI Criminal 4th No. 9.43H (Supp. 2011). Following deliberations, the jury returned a guilty verdict. The court found that the defendant had a prior SORA registration violation and entered a judgment of conviction for a Class 2 felony. The defendant was subsequently sentenced to 24 months of probation. The defendant filed a timely appeal.

¶ 16

ANALYSIS

¶ 17 On appeal, the defendant challenges the sufficiency of the evidence to sustain his conviction for unlawful failure to register as a sex offender. Specifically, the defendant argues that the State's evidence was insufficient to prove that he was still required to register on the date of the alleged offense, which he contends was an essential element of unlawful failure to register as a sex offender. The State argues that the evidence was sufficient to sustain the defendant's conviction because it did not have to prove that the defendant was required to register under SORA.

¶ 18 In a challenge to the sufficiency of the evidence, the question is whether, viewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found all of the elements of the offense beyond a reasonable doubt. *People v.*

Wheeler, 226 Ill. 2d 92, 114 (2007). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. Consequently, "a reviewing court will not substitute its judgment for the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *Id.* A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Id.*

¶ 19 The defendant was charged and convicted under sections 3(a) and 10(a) of SORA. Section 3(a) of SORA requires a sex offender to register in person and provide accurate information to law enforcement, which includes the registrant's current address. Moreover, section 10(a) of SORA states as follows:

"Any person who is required to register under this Article who violates any of the provisions of this Article *** is guilty of a Class 3 felony. Any person who is convicted for a violation of this Act for a second or subsequent time is guilty of a Class 2 felony. Any person *who is required to register under this Article* who knowingly or wilfully gives material information required by this Article that is false is guilty of a Class 3 felony." (Emphasis added.) 730 ILCS 150/10(a) (West 2012).

¶ 20 Initially, we note that the defendant's challenge to the sufficiency of the evidence is wholly derivative of his success on his argument regarding the essential elements of the charged offense. The defendant maintains that section 10(a) of SORA sets forth an essential element requiring the State to prove that he was subject to the registration

requirements on the date of the offense. The State argues, however, that IPI Criminal 4th No. 9.43H (Supp. 2011) only requires the State to prove that the defendant was a sex offender, and that he "knowingly gave material information required by law that was false." The State contends that whether the defendant was obligated to register was not a factual question to be decided by the jury, but a matter of law for the circuit court to determine before trial. As such, the State posits that it was not required to prove that the defendant was required to register under SORA. Because the parties dispute the elements of the offense, we must first interpret the relevant SORA provisions to determine the essential elements of the offense.

¶ 21 The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *People v. Blair*, 215 Ill. 2d 427, 442 (2005). The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. *Id.* at 442-43. Statutes are read as a whole, so that interpretation of a statute's language does not render any part meaningless or superfluous, and its words and phrases are construed in light of other relevant provisions of the statute. *People v. Ellis*, 199 Ill. 2d 28, 39 (2002). We review issues involving statutory interpretation *de novo*. *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 18.

¶ 22 Our First District colleagues recently interpreted section 10 of SORA, offering guidance to the provision at issue in the present case. See *People v. Jones*, 2017 IL App (1st) 143718, ¶ 22. In *Jones*, defendant lacked a fixed place of residence and was therefore required to register on a weekly basis pursuant to section 6 of SORA. *Id.* ¶ 5. Defendant's initial 10-year registration requirement began on September 4, 1979, the date

he was convicted of attempted rape. *Id.* ¶ 16. However, nearly 33 years after this conviction, defendant was charged and convicted of failure to report weekly. *Id.*

¶ 23 On appeal, defendant argued that the State failed to produce evidence to show that he was required to register on the date of the alleged violation because his incarceration tolled the 10-year requirement. *Id.* ¶¶ 16, 21. The First District, citing to section 10 of SORA, noted that the "plain language of SORA makes clear that the duty to report as a sex offender follows from the duty to register as a sex offender ***." *Id.* ¶ 13. The court concluded that the State's evidence was insufficient to prove beyond a reasonable doubt that defendant was still subject to the reporting requirements 33 years after his underlying conviction for attempted rape. *Id.* ¶ 22. The court noted that "[w]here a sex offender's duty to register has been tolled by imprisonment or extended by a subsequent conviction, the State should provide evidence of such at trial." *Id.*

¶ 24 In the present case, we conclude that the plain language of the statute makes clear that a sex offender's duty not to "knowingly or wilfully give[] material information required by this Article that is false" follows the duty to register. Thus, we hold that in order to prove that the defendant unlawfully failed to register as a sex offender for giving a false address, the State was required to present evidence that the defendant had a continuing duty to register on the date of the alleged offense. The State concedes, and we agree, that it failed to present evidence to establish that the defendant's registration period was either tolled by imprisonment or extended by a subsequent conviction following his initial 10-year registration period that began in January 1996. Accordingly, even viewing the evidence in the light most favorable to the State, we conclude that no rational trier of

fact could have found the defendant was required to register and provide material information pursuant to SORA at the time of the alleged offense. Because this issue is dispositive, we need not address the defendant's remaining arguments.

¶ 25

CONCLUSION

¶ 26 We find the evidence adduced at trial was insufficient to sustain the defendant's conviction where the State failed to prove that the defendant had a duty to register. For the foregoing reasons, we reverse outright the defendant's conviction and sentence.

¶ 27 Reversed.