2012 IL App (3d) 100795-U

Order filed April 11, 2012

Modified Upon Denial of Rehearing April 27, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-10-0795
v.	)	Circuit No. 10-CF-894
	)	
ARTAVEUS S. LOWE,	)	Honorable Amy Bertani-Tomczak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence presented at trial was sufficient to convict defendant of being a child sex offender present in a public park because his conduct was the type that the legislature indented to punish under the statute. (2) The order requiring defendant to submit a DNA sample and pay a $200 DNA analysis fee should be vacated because defendant had a DNA sample on file at the time of sentencing.

¶ 2 After a stipulated bench trial, defendant, Artaveus S. Lowe, a convicted child sex offender, was convicted of two counts of being a child sex offender present in a public park. 720

ILCS 5/11-9.4(a) (West 2010). Defendant was sentenced to two concurrent terms of three years' imprisonment. Defendant appeals, arguing that: (1) he was not proven guilty beyond a reasonable doubt of being a child sex offender who had contact with a minor in a public park where he only had contact with his girlfriend's children with her permission; and (2) the portion of the trial court's sentencing order requiring him to submit a deoxyribonucleic acid (DNA) sample and pay a $200 DNA analysis fee should be vacated. We vacate the portion of the judgment ordering him to submit a DNA sample and pay the $200 DNA analysis fee and otherwise affirm.

¶ 3 FACTS

¶ 4 On June 3, 2010, defendant was charged by superseding indictment with two counts of being a child sex offender present in a public park. The indictment alleged that defendant, a child sex offender, was knowingly present in a public park when persons under the age of 18 were present, had contact with minors K.S. and A.S., and was not the parent or guardian of any minor in the park.

¶ 5 Defendant pled not guilty, and the cause proceeded to a stipulated bench trial. The evidence established that defendant was a registered sex offender and had no children of his own. On April 18, 2010, defendant went to the park with his girlfriend, Christina Steen, and her children, 11-year-old K.S. and 10-year-old A.S. Steen's neighbors and their children accompanied them to the park. There were also other children at the park while defendant was present.

¶ 6 While at the park, defendant played with Steen's two children. Steen knew defendant was a child sex offender, but gave him permission to play with her children at the park. Defendant

was not the parent or guardian of Steen's children. Defendant did not approach any other children while he was at the park. Steen and her children were not concerned about defendant playing with them at the park.

¶ 7 At the close of the bench trial, the trial court found defendant guilty on both counts. The trial court sentenced defendant to two concurrent terms of three years' imprisonment. Defendant was also ordered to submit a DNA sample and pay a $200 DNA analysis fee. Defendant filed a motion to reconsider, which was denied by the trial court. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant first argues that he was not proven guilty beyond a reasonable doubt of being a child sex offender who had contact with a minor in a public park where he only had contact with his girlfriend's children with her permission. Defendant acknowledges that all of the elements of the offense were stipulated at trial; however, he argues that his conduct was not the type of conduct the legislature intended to punish under the statute.

¶ 10 When defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1 (2011). Further, the primary rule of statutory construction is to ascertain and give effect to the legislature's intent. *People v. Whitney*, 188 Ill. 2d 91 (1999). The most reliable indicator of such intent is the plain language of the statute. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390 (2006). We review issues of statutory interpretation *de novo*. *Id.*

¶ 11 As charged in this case, section 11-9.4(a) of the Criminal Code of 1961 (the Code) states:

> "It is unlawful for a child sex offender to knowingly be present in any public park building or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds." 720 ILCS 5/11-9.4(a) (West 2010).

¶ 12 After reviewing the plain language of section 11-9.4 of the Code, we believe it was the legislature's intent to prohibit defendant's conduct in this case. Although defendant had permission from Steen to have contact with K.S. and A.S. in the park, the legislature only provided an exception for a sex offender who is a parent or guardian of a minor in the park. 720 ILCS 5/11-9.4(a) (West 2010). Section 11-9.4 of the Code was intended to protect children from known sex offenders and does not provide an exception for sex offenders who are given permission from a parent to have contact with their child in a park. See *People v. Diestelhorst*, 344 Ill. App. 3d 1172 (2003). Accordingly, the evidence at trial was sufficient to prove defendant guilty beyond a reasonable doubt of being a child sex offender present in a public park.

¶ 13 Defendant next contends that this court should vacate the portion of the trial court's sentencing order requiring him to submit a DNA sample and pay a $200 DNA assessment fee because he provided a DNA sample following a prior conviction. Any individual convicted of an offense that is classified as a felony under Illinois law after January 1, 1998, is required to submit to the taking, analysis, and indexing of the offender's DNA, and the payment of an analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2010). However, a defendant is only required to submit and pay

for a DNA assessment when he is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 14 Here, defendant's presentence investigation report indicated that his DNA sample was on file at the time of sentencing. The State agrees. We therefore vacate the portion of the sentencing order requiring defendant to submit a DNA sample and pay an analysis fee.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed in part and vacated in part.

¶ 17 Affirmed in part and vacated in part.