2018 IL App (4th) 160729-U

NO. 4-16-0729

FILED
August 3, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
SIXTO MARTINEZ,	)	No. 14CF1166
Defendant-Appellant.	)	
	)	Honorable
	)	Scott D. Drazewski,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's convictions, finding the Sex Offender Registration Act is not unconstitutional and the circuit clerk did not improperly impose certain fines. The appellate court modified defendant's sentence to reflect the reduction in his child-pornography fines.

¶ 2 In February 2016, the trial court found defendant, Sixto Martinez, guilty of six counts of aggravated criminal sexual abuse and three counts of child pornography. The court sentenced defendant to four years in prison on one count of child pornography, to be served consecutively to concurrent terms of three years in prison on the remaining counts. The court also imposed various fines and fees and noted defendant was required to register as a sex offender.

¶ 3 On appeal, defendant argues (1) the Sex Offender Registration Act (Registration Act) (730 ILCS 150/1 to 12 (West 2014)) is unconstitutional, (2) his child-pornography fines

should be reduced, and (3) the circuit clerk improperly imposed certain fines. We affirm as modified.

¶ 4 I. BACKGROUND

¶ 5 In October 2014, a grand jury indicted defendant on six counts of aggravated criminal sexual abuse (counts I to VI) (720 ILCS 5/11-1.60(d) (West 2014)), alleging he knowingly committed acts of sexual penetration with S.M., involving defendant's penis and the anus and/or mouth of S.M., when S.M. was at least 13 years of age but under 17 years of age, and defendant was at least five years older than S.M.

¶ 6 In February 2015, a grand jury indicted defendant on two additional counts of aggravated criminal sexual abuse (counts VII and VIII) (720 ILCS 5/11-1.60(d) (West 2014)). The grand jury also indicted defendant on eight counts of criminal sexual assault (counts IX to XVI) (720 ILCS 5/11-1.20(a)(1) (West 2014)), alleging he knowingly committed acts of sexual penetration with S.M., said acts involving defendant's penis and the mouth and/or anus of S.M., and the acts were committed with the use of force or threat of force.

¶ 7 A grand jury later indicted defendant on three counts of child pornography (counts XVII to XIX) (720 ILCS 5/11-20.1(a)(2), (a)(6) (West 2014)), alleging he, with the knowledge of the content thereof, possessed and/or disseminated a photograph or other similar visual reproduction or depiction by computer of S.M., whom he reasonably should have known to be under the age of 18, in a setting involving the lewd exhibition of S.M.'s unclothed genitals. Defendant pleaded not guilty to the charges.

¶ 8 In February 2016, defendant's bench trial commenced. Dora M. testified she is the mother of S.M., who was born in May 1999. In 2014, Dora noticed changes in S.M.'s behavior at home, stating he would stay up late or leave for the weekend. She also noticed S.M.

coming home with gifts, including clothes, a watch, and shoes. In September 2014, Dora found in her house a pair of underwear with the word "Papi." She later discovered a text message of "Papi" on S.M.'s phone.

¶ 9 S.M. testified he was 16 years old at the time of the trial. In September 2013, when he was 14 years old, S.M. joined "adultfriendfinder.com," which is "an adult site where you find partners, typically for sexual interactions." Because the website requires users to be 18 years old, S.M. lied about his age. S.M. uploaded photographs to his profile, including "a nude picture of [his] torso" and his genitalia, and used the name "Samster696969" as his profile identification. "A week or so" after being on the website, he received a message from defendant. The two sent messages to each other and corresponded through other websites. S.M. initially told defendant he was 16 years old and later told him he was 14 years old. Defendant told him it was "okay as long as they don't find out."

¶ 10 "A few weeks" after their first communication, S.M. and defendant agreed to meet at a movie theater. After S.M. did not show up because he realized what he "was doing was wrong at that time," defendant "was very angered" and said S.M. had to "make it up to him." The two planned another meeting, and defendant picked him up and went to a hotel in Bloomington on October 12, 2013. Defendant went inside by himself to rent the room, while S.M. stayed in the car. After going to the room and conversing, defendant started touching S.M., who felt uncomfortable and attempted to leave. Defendant "firmly grasped" S.M.'s wrist and pulled him back. When S.M. "started begging" defendant that he did not want "to do this anymore," defendant demanded he be quiet and covered S.M.'s mouth with his hand. Defendant then "started slowly taking off [their] clothing." After engaging in kissing, defendant "pushed and shoved his genitalia forcefully into [S.M.'s] mouth." Once the oral sex was complete,

defendant pushed S.M. onto the bed and started to perform anal sex. S.M. pleaded with him to stop, but defendant continued for "around five minutes."

¶ 11 Although defendant told S.M. he would take him home, they went to defendant's house in Lafayette, Indiana. Once they arrived, defendant pulled him out of the car and into the house, where defendant "forcefully" removed their clothes. Defendant "forced [S.M.] to perform oral sex" and then "turned [S.M.] around to perform anal sex." S.M. "was begging for him to stop," but defendant refused and told him to cooperate. During the anal sex, S.M. stated he felt a sharp object, which he assumed was knife, digging into his lower back. After defendant locked him in the bathroom, S.M. cleaned up blood from his back. The next morning, defendant told S.M. he would take him home. He also stated the sex acts would continue and he would provide gifts to S.M.

¶ 12 On November 10, 2013, defendant and S.M. scheduled a meeting, and defendant picked him up and went to a motel. After showering separately, S.M. performed oral sex on defendant and then defendant inserted his penis in S.M.'s anus. S.M. testified he went to the motel unwillingly because defendant threatened to come to his house and shoot the person who opened the door. S.M. stated he was scared of defendant because he threatened to kill S.M. and members of S.M.'s family.

¶ 13 In January 2014, defendant picked up S.M. and went to the mall in Bloomington. S.M. stated he received a gift of clothing at that time, but they did not have any sexual contact. S.M. testified defendant took him to Indiana approximately four times, and they engaged in sexual contact on each occasion. S.M. stated he hid notes at defendant's house "out of desperation" and in hopes defendant's children would "help" S.M.

¶ 14 On May 10, 2014, defendant picked up S.M. and they went to a hotel. After

showering separately, they started kissing. S.M. then "had to perform oral sex." Then, defendant penetrated S.M.'s anus with his penis. After spending the night in the hotel, defendant took S.M. home.

¶ 15 S.M. testified they went to the same hotel on May 25, 2014. Again, S.M. performed oral sex on defendant and then defendant penetrated S.M.'s anus with his penis. S.M. stated defendant "would wake up throughout the night and then he would do the same thing."

¶ 16 S.M. stated he had contact with defendant in June, July, and August 2014. At the July meeting, defendant stayed at S.M.'s house. When S.M.'s parents saw a vehicle in the driveway, S.M. "freaked out" and told them it was a friend's car. Defendant refused to leave, and S.M. "decided that the only way to get rid of him was to bring him" through the house. When S.M. brought defendant inside, S.M. stated he "was sexually abused." After defendant left, S.M. noticed he had left a pair of thong underwear.

¶ 17 Throughout the time period in which defendant and S.M. were communicating, S.M. received his "incentives," including clothing, cash, and a watch. They also sent each other "photographs of each other's bodies." S.M. sent pictures of his genitalia after he told defendant he was 14 years old. Defendant also had S.M. take pictures of S.M.'s genitalia while at the hotel. S.M. testified his last contact with defendant occurred in August 2014, after his mother found text messages on his phone.

¶ 18 On cross-examination, S.M. stated he sent text messages to defendant and said he loved him "quite a bit." S.M. admitted lying to get on the "friend finder" website, knew the site had to do with sex, and put on his profile that he was looking for a one-night stand. When asked why he did not leave defendant's house when defendant was asleep, S.M. stated he was scared of how he would get home.

¶ 19 Bloomington police detective Michael Burns testified he investigated a claim of the sexual abuse of S.M. in September 2014. He learned defendant was born in August 1966 and, in October 2014, he was 48 years old. Police arrested defendant on October 2, 2014, and a search of his cell phone revealed two nude photographs of S.M.

¶ 20 Defendant testified on his own behalf and stated he was 49 years old. He denied owning a thong. Defendant brought S.M. to Indiana four to five times, and they engaged in sexual relations. They also engaged in sexual relations at S.M.'s house and at hotels. Defendant stated S.M. provided four different ages during their relationship, with the oldest being 23 years old. When asked his age before the first hotel encounter, S.M. said he was 18 years old. Defendant stated he never threatened S.M. or his family and never cut him with a knife.

¶ 21 Defendant stated S.M. often asked for money and gifts and once tried to use defendant's credit card without permission. S.M. also asked him for $1000, claiming someone from a hotel had recorded them having sex. Defendant told S.M. he was going to report the matter to the police, but S.M. told him not to do anything.

¶ 22 On cross-examination, defendant stated S.M. told him he was 14 years old after their October 12, 2013, encounter. S.M. sent "maybe 12" photographs of his genitals to defendant during the course of their relationship.

¶ 23 Following closing arguments, the trial court found defendant not guilty on two counts of aggravated criminal sexual abuse (counts I and II) and not guilty of criminal sexual assault (counts IX to XVI). The court found S.M. and defendant had a consensual relationship and noted S.M. had "not been truthful in a variety of circumstances relating to what took place" between them. The court also found defendant did not use or threaten force against S.M.

¶ 24 The trial court, however, found that after their first sexual encounter, defendant

knew or should have known S.M. was a minor. Thus, the court acquitted defendant of the two charges relating to the October 13, 2013, encounter but found him guilty of aggravated criminal sexual abuse (counts III to VIII). The court also found defendant guilty of child pornography (counts XVII to XIX) for possessing two photographs on his cell phone and for disseminating a photo of S.M. in an online conversation.

¶ 25 In March 2016, defendant filed a posttrial motion, arguing the evidence failed to prove beyond a reasonable doubt that defendant knew S.M.'s age since S.M. repeatedly lied to him. The trial court denied the motion. In April 2016, the court sentenced defendant to four years in prison on count XVII, to be served consecutively to concurrent terms of three years in prison on counts III to VIII, XVIII, and XIX. The court noted defendant would be required to register as a sex offender. The court imposed "all other mandatory minimum fines as requested by the State, including the minimum thousand dollar fines on counts [XVII] through [XIX]." The court's supplemental sentencing order lists a $500 fine for each of the child-pornography convictions. This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 A. The Registration Act

¶ 28 Defendant argues the "difficult, lifelong restraints and registration requirements" of the Registration Act and related statutes constitute grossly disproportionate penalties and violate his constitutional rights to procedural and substantive due process. We disagree.

¶ 29 1. *Standard of Review*

¶ 30 Defendant acknowledges he failed to raise his constitutional claims in the trial court, but the State does not claim he forfeited his argument. Thus, we will consider it. See *People v. Jones*, 2018 IL App (1st) 151307, ¶ 47 (considering the defendant's constitutional

challenges to the Registration Act after finding the State waived any forfeiture argument). To be clear, but for the State's failure to raise defendant's forfeiture of his "as applied" challenge in the trial court, we would otherwise have no obligation to allow defendant to do so here. See *People v. Thompson*, 2015 IL 118151, ¶ 37, 43 N.E.3d 984 ("By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of the individual defendant or petitioner. Therefore, it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review"). This is particularly true here where defendant faces the daunting task of not only overcoming the presumption of constitutionality, but also attempting to explain away a substantial body of supreme court decisions finding the particular statutes in question are not punitive in nature and therefore not subject to eighth-amendment analyses.

¶ 31 "All statutes carry a strong presumption of constitutionality." *People v. Mosley*, 2015 IL 115872, ¶ 22, 33 N.E.3d 137. "The party challenging the constitutionality of a statute carries the burden of proving that the statute is unconstitutional." *People v. Hollins*, 2012 IL 112754, ¶ 13, 971 N.E.2d 504. "Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity." *People v. Rizzo*, 2016 IL 118599, ¶ 23, 61 N.E.3d 92. Whether a statute is constitutional involves a question of law, and our review is *de novo*. *People v. Melongo*, 2014 IL 114852, ¶ 20, 6 N.E.3d 120.

¶ 32 2. *The Registration Act's Requirements*

¶ 33 Our supreme court has found "the legislature's intent in requiring registration of sex offenders was to create an additional measure of protection for children from the increasing incidence of sexual assault and child abuse." *People v. Malchow*, 193 Ill. 2d 413, 420, 739

N.E.2d 433, 438 (2000). Thus, the Registration Act aids "law enforcement by facilitating ready access to information about sex offenders and, therefore, to protect the public." *People v. Johnson*, 225 Ill. 2d 573, 585, 870 N.E.2d 415, 422 (2007).

¶ 34 In this case, defendant was convicted of aggravated criminal sexual abuse, thereby classifying him as a sexual predator under the Registration Act. 730 ILCS 150/2(E)(1) (West 2014). A person deemed a sexual predator must register for the period of his natural life. 730 ILCS 150/7 (West 2014). A sex offender or sexual predator covered by the Registration Act must register with the chief law enforcement officer of the jurisdiction of the person's residence. 730 ILCS 150/3(a) (West 2014). Registrants who lack a fixed residence must report, in person, every week to register. 730 ILCS 150/3(a) (West 2014). The Registration Act also requires all registrants to "pay a $100 initial registration fee and a $100 annual renewal fee to the registering law enforcement agency having jurisdiction." 730 ILCS 150/3(c)(6) (West 2014). Section 120 of the Sex Offender Community Notification Law (Notification Law) (730 ILCS 152/120 (West 2014)) requires much of this information to be disclosed to public and nonpublic entities. Moreover, all sex offenders are listed in an online database (730 ILCS 152/115 (West 2014)).

¶ 35 "A sex offender or sexual predator who is temporarily absent from his or her current address of registration for 3 or more days" is required to notify the registering agency and provide the itinerary of travel. 730 ILCS 150/3(a) (West 2014). Every registrant is required to register in person "within 3 days of beginning school, or establishing a residence, place of employment, or temporary domicile." 730 ILCS 150/3(b) (West 2014). Sex offenders are restricted from where they can reside, who they communicate with, and where they can work. 720 ILCS 5/11-9.3 (West 2014). Section 11-9.4-1(b) of the Criminal Code of 2012 makes it unlawful for a sexual predator "to knowingly be present in any public park building or on real

property comprising any public park." 720 ILCS 5/11-9.4-1(b) (West 2014).

¶ 36 A person who is required to register under the Registration Act who violates its provisions is guilty of a Class 3 felony. 730 ILCS 150/10(a) (West 2014). "Any person who is convicted for a violation of this Act for a second or subsequent time is guilty of a Class 2 felony." 730 ILCS 150/10(a) (West 2014).

¶ 37 3. *Eighth Amendment and Proportionate Penalties*

¶ 38 Defendant argues the lifelong restrictions of the Registration Act and related statutes violate the eighth amendment's cruel and unusual punishment clause (U.S. Const., amend. VIII) and the Illinois Constitution's proportionate penalties clause (Ill. Const. 1970, art. 1, § 11). The proportionate penalties clause is coextensive with the eighth amendment's proportionality requirement. *People v. Patterson*, 2014 IL 115102, ¶ 106, 25 N.E.3d 526. "Both provisions apply only to the criminal process where the government takes direct action to inflict punishment. [Citation.] Thus, the critical determination is whether imposition of the [Registration] Act's registration requirement is a direct action to inflict punishment." *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 207, 909 N.E.2d 783, 799 (2009).

¶ 39 Our supreme court has determined the Registration Act does not constitute punishment. See *People v. Cardona*, 2013 IL 114076, ¶ 24, 986 N.E.2d 66 (stating "it is worth repeating that sex offender registration is not punishment"); *Konetski*, 233 Ill. 2d at 208, 909 N.E.2d at 777 (adhering to its prior "holding that the [Registration] Act's registration requirement as applied to juveniles does not amount to punishment"); *Malchow*, 193 Ill. 2d at 419, 739 N.E.2d at 438 (stating that "requiring sex offenders to register is not punishment"); *People v. Adams*, 144 Ill. 2d 381, 387, 581 N.E.2d 637, 640 (1991) (finding "the duty to register is not punishment"). "Rather, it is a regulatory scheme designed to foster public safety."

Cardona, 2013 IL 114076, ¶ 24, 986 N.E.2d 66. Our supreme court has also held the Notification Law does not constitute punishment as well and, as a result, the notification requirements of which defendant complains are not in violation of the eighth amendment. *Malchow*, 193 Ill. 2d at 424, 739 N.E.2d at 441.

¶ 40 While defendant acknowledges our supreme court has repeatedly upheld the constitutionality of the Registration Act, he contends the Registration Act's requirements have been "vastly expanded," and the new "substantial restrictions" constitute punishment. Defendant relies in large part on the Third District's opinion in *People v. Tetter*, 2018 IL App (3d) 150243. In a 2-to-1 decision, the Third District found the Registration Act constituted punishment and the punishment was grossly disproportionate as applied to the defendant in that case. The *Tetter* opinion was based, in part, on an earlier opinion by a different panel of the Third District, which held the statute banning sex offenders from public parks (720 ILCS 5/11-9.4-1 (West 2012)) was facially unconstitutional. *People v. Pepitone*, 2017 IL App (3d) 140627, ¶¶ 1, 3, 75 N.E.3d 297. The supreme court disagreed and reversed the appellate court's judgment. *People v. Pepitone*, 2018 IL 122034, ¶ 34. "Whether we agree or disagree with the reasoning in *Tetter*, we must follow our supreme court's precedent until and unless our supreme court dictates otherwise." *Jones*, 2018 IL App (1st) 151307, ¶ 61.

¶ 41 Although reluctant to address *Tetter* in detail due to a petition for rehearing request, the court in *Jones* noted some of the problems with the reasoning of the *Tetter* court. The First District noted, as a result of the Third District's decision, the defendant in *Tetter* may be the only convicted sex offender in the state who has been freed of all restrictions under either the Registration Act or Notification Law by an appellate court since it failed to apply any of the previous restrictions in which the constitutionality had already been determined. Under the

Tetter rationale, trial courts would be left to conduct their own recidivism risk assessments as to each defendant and then decide which statutory restrictions were constitutional as applied to that particular defendant. It is for this reason, as well as others expressed here, we also decline to follow the holding in *Tetter*.

¶ 42 We note our sister courts have considered similar arguments raised by defendant here and concluded the Registration Act does not constitute punishment. *People v. Rodriguez*, 2018 IL App (1st) 151938, ¶ 20 (concluding that although the Registration Act "has become more onerous since 1998, it remains nonpunitive in effect"); *People v. Bingham*, 2017 IL App (1st) 143150, ¶ 28, 73 N.E.3d 39 (stating it was bound by the supreme court's decisions holding the requirements of the Registration Act did not constitute punishment); *In re A.C.*, 2016 IL App (1st) 153047, ¶ 77, 54 N.E.3d 952 (finding it was bound by supreme court precedent and there was no "punitive intent" behind the challenged requirements of the Registration Act and the Notification Law). As we are bound by our supreme court's decisions and, as the Registration Act's requirements do not constitute punishment, defendant's arguments that he was subjected to cruel and unusual and grossly disproportionate punishment are without merit.

¶ 43 4. *Substantive Due Process*

¶ 44 Defendant argues the Registration Act violates substantive due process because it does not rationally advance its goal of protecting the public from recidivist sex offenders.

> "A court generally applies the rational basis test in examining the constitutionality of a statute under substantive due process. [Citation.] To satisfy this test, a statute need only bear a rational relation to a legitimate state purpose, and must be neither arbitrary nor discriminatory. [Citation.] If, however, challenged legislation

> impinges upon a fundamental constitutional right, the court will examine the statute under the strict scrutiny standard. [Citation.] To withstand the strict scrutiny standard, a statute must serve a compelling state interest, and be narrowly tailored to serve the compelling interest, *i.e.*, the legislature must use the least restrictive means to serve the compelling interest." *Lulay v. Lulay*, 193 Ill. 2d 455, 470, 739 N.E.2d 521, 529 (2000).

¶ 45 Defendant acknowledges Illinois courts have found the Registration Act's restrictions do not impinge upon fundamental rights. *Pepitone*, 2018 IL 122034, ¶ 14 (finding "being present in a park is not a fundamental right"); *In re J.W.*, 204 Ill. 2d 50, 67, 787 N.E.2d 747, 757 (2003) (finding the Registration Act did not affect a fundamental right); *People v. Pollard*, 2016 IL App (5th) 130514, ¶ 36, 54 N.E.3d 234 (noting "Illinois courts have rejected the suggestion that residency restrictions on sex offenders violate fundamental rights"); *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶ 76, 49 N.E.3d 428 (declining "to recognize a new fundamental right relating to defendant's presence on school property or in public parks"). However, defendant argues the Registration Act violates the due process clause because it lacks a rational relationship to the intended goal of the legislature in enacting it. The purpose of the Registration Act is to protect the public, especially children, from sex crimes (*Malchow*, 193 Ill. 2d at 419-20, 739 N.E.2d at 438-39), but defendant contends it does not further this goal because "[m]ost convicted sex offenders do not commit additional sex crimes" and the Registration Act fails "to identify which offenders are truly dangerous."

¶ 46 Courts have considered similar arguments and concluded the Registration Act bears a rational relationship to protecting the public from sex offenders. See *Pollard*, 2016 IL

App (5th) 130514, ¶ 43, 54 N.E.3d 234 (finding the Registration Act "survives rational basis scrutiny, advancing the government's legitimate goal to protect children from sexual predators"); *A.C.*, 2016 IL App (1st) 153047, ¶ 57, 54 N.E.3d 952 (finding the Registration Act and the Notification Law "are rationally related to the purpose of protection of the public from sexual offenders and constitute a reasonable means of accomplishing this goal").

> "Although we recognize that the Statutory Scheme at issue may be over-inclusive—that is, it may impose burdens on individuals who pose no threat to the public because they will not reoffend—it still has a rational relationship to protecting the public. As our supreme court has held, [the Registration Act] and the Notification Law help law enforcement and private individuals keep track of sex offenders by providing information about their presence and offenses. [Citations.] Similarly, by keeping sex offenders who have committed offenses against children away from areas where children are present (*e.g.*, school property and parks) and out of professions where they could come in contact with children (*e.g.*, driving an ice cream truck, being a shopping-mall Santa Claus) or vulnerable people (*e.g.*, driving an emergency services vehicle), the legislature could have rationally sought to avoid giving certain offenders the opportunity to reoffend. Whether or not the Statutory Scheme is a finely-tuned response to the threat of sex-offender recidivism is not a question for rational-basis review; that is a question for the legislature." *Avila-Briones*, 2015 IL App (1st)

132221, ¶ 84, 49 N.E.3d 428.

We agree with these decisions and reject defendant's argument that the restrictions and obligations of the current Registration Act violate his substantive due process rights. The policy considerations reflected in the Registration Act are matters best left to the General Assembly to consider and address.

¶ 47 5. *Procedural Due Process*

¶ 48 Defendant argues the Registration Act violates procedural due process because it fails to accord registrants individual consideration.

> "A procedural due process claim challenges the constitutionality of specific procedures used to deny a person's life, liberty or property. [Citation.] The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections. [Citation.] Due process is a flexible concept and 'not all situations calling for procedural safeguards call for the same kind of procedure.' [Citation.]" *In re M.A.*, 2015 IL 118049, ¶ 35, 43 N.E.3d 86.

¶ 49 In evaluating a procedural due process claim, our supreme court has set forth the following factors to consider:

> " 'First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the

> fiscal and administrative burdens that the additional or substitute procedural requirement would entail.' " *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 277, 807 N.E.2d 423, 433 (2004) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

¶ 50 Defendant argues procedural due process "demands some mechanism for classified sexual predators like [him] to seek relief from a lifetime of restrictions." Similar arguments have been rejected by our sister courts. See *People v. Parker*, 2016 IL App (1st) 141597, ¶ 82, 70 N.E.3d 734 (finding "there is no constitutional mandate for procedures that would allow a convicted defendant to demonstrate that he or she is not likely to reoffend"); *Pollard*, 2016 IL App (5th) 130514, ¶ 48, 54 N.E3d 234 (finding "the defendant's obligations are not sufficiently burdensome to mandate the additional procedural protection of a mechanism to determine his risk of recidivism"). In *Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 91-92, 49 N.E.3d 428, the First District relied on the United States Supreme Court's decision in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003)), which rejected the argument that due process requires the additional procedure of assessing the risk of reoffending before subjecting an offender to the restrictions and requirements of registration laws.

> "[T]he [Supreme] Court held that Connecticut was not required to hold a 'hearing to determine whether [sex offenders] are likely to be "currently dangerous" ' before requiring them to register. [Citation.] The Court noted the Connecticut's sex-offender registration system 'turn[ed] on an offender's conviction alone—a fact that a convicted offender has already had a procedurally

> safeguarded opportunity to contest.' [Citation.] Because the defendant's current dangerousness was 'of no consequence' under Connecticut law, individuals were not entitled to a hearing to prove something that had no relevance to their registration. [Citation.] The Court concluded, 'Unless respondent can show that [Connecticut's] *substantive* rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current dangerousness is a bootless exercise.' (Emphasis in original.) [Citation.]" *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 91, 49 N.E.3d 428.

As the system in Illinois is similarly based on the offense for which a sex offender has been convicted, "[a] sex offender's likelihood to reoffend is not relevant to that assessment." *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 92, 49 N.E.3d 428. We find defendant has not shown the Registration Act violates procedural due process requirements.

¶ 51 B. Child-Pornography Fines

¶ 52 Defendant argues his child-pornography fines should be reduced to $1500 to reflect one fine for each of his three convictions for child pornography. The State concedes error, and we agree.

¶ 53 Section 5-9-1.14 of the Unified Code of Corrections (730 ILCS 5/5-9-1.14 (West 2014)) provides, "[i]n addition to any other penalty imposed, a fine of $500 shall be imposed upon a person convicted of child pornography under Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012." Here, the trial court found defendant guilty on three counts of child pornography, but he received $4500 in fines pursuant to section 5-9.1.14. The State

concedes that, while defendant was convicted of nine sex-offense counts, he was only subject to the $500 child-pornography fines on those particular three counts. Thus, we reduce defendant's child-pornography fines to $1500. See *People v. Harper*, 387 Ill. App. 3d 240, 244, 900 N.E.2d 381, 384 (2008) (noting the appellate court has "the authority to correct the mittimus at any time without remanding the matter to the trial court").

¶ 54 C. Other Fines

¶ 55 Defendant argues this court should vacate various fines improperly imposed by the circuit clerk. Specifically, defendant lists $3720 as a lump sum surcharge, $900 for the Violent Crime Victim Assistance fund, $450 for the court system, $135 for the child advocacy center, $90 for drug court, $270 for juvenile records expungement, $90 for arrestee's medical costs, and $10 for probation and court services. In its brief, the State contends the circuit clerk did not improperly impose these fines, as the record reflects the trial court signed a supplemental sentencing order reflecting the imposition of the challenged assessments based on defendant's nine felony convictions. In his reply brief, defendant concedes the fines were properly imposed by the court in its written order and withdraws the issue. Accordingly, we need not address it.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm defendant's convictions and reduce his child-pornography fines to $1500. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 58 Affirmed as modified.