

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0438

September Term, 2015

WILLIAM CAMINO

v.

STATE OF MARYLAND, ET AL.

Graeff,
Friedman,
Thieme, Raymond, G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: April 15, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a decision by the Circuit Court for Baltimore City denying a motion for summary judgment filed by William Camino, appellant, and granting summary judgment in favor of the State of Maryland and the Maryland Department of Public Safety and Correctional Services, appellees. On January 2, 2001, after entering an *Alford* plea, appellant was convicted of third-degree sexual offense. He was sentenced to incarceration for a term of seven years, all of which was suspended, followed by three years of supervised probation. In addition, appellant was ordered to register as a sex offender.

On July 21, 2014, appellant filed a complaint for declaratory judgment seeking an order that he had no further obligation to register as a sex offender and directing that his name be removed from the Maryland Sex Offender Registry. Both parties filed motions for summary judgment. By written order entered on April 13, 2015, the circuit court denied appellant’s motion for summary judgment, granted appellees’ motion for summary judgment, and declared that appellant was required to register for life as a Tier III sexual offender. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court erred in granting summary judgment in favor of appellees. For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

On January 2, 2001, appellant pleaded guilty to a single count of third-degree sexual offense against an eleven-year-old child in violation of Md. Code (1996 Repl.

Vol., 1999 Supp.), Art. 27 §464B.¹ The offense occurred on June 23, 2000, when appellant was forty years old. The order of probation directed appellant, among other things, to register as a sex offender, which he did. A dispute arose regarding the required length of the term of registration. Appellees took the position that appellant had to

¹ Article 27, § 464B provided:

(a) *Elements of offense.* – A person is guilty of a sexual offense in the third degree if the person engages in:

(1) Sexual contact with another person against the will and without the consent of the other person, and:

(i) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably concludes is a dangerous or deadly weapon; or

(ii) Inflicts suffocation, strangulation, disfigurement or serious physical injury upon the other person or upon anyone else in the course of committing that offense; or

(iii) Threatens or places the victim in fear that the victim or any person known to the victim will be imminently subjected to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or

(iv) Commits the offense aided and abetted by one or more other persons; or

(2) Sexual contact with another person who is mentally defective, mentally incapacitated, or physically helpless, and the person knows or should reasonably know the other person is mentally defective, mentally incapacitated, or physically helpless; or

(3) Sexual contact with another person who is under 14 years of age and the person performing the sexual contact is four or more years older than the victim; or

(4) A sexual act with another person who is 14 or 15 years of age and the person performing the sexual act is at least 21 years of age; or

(5) Vaginal intercourse with another person who is 14 or 15 years of age and the person performing the act is at least 21 years of age.

(b) *Penalty.* -- Any person violating the provisions of this section is guilty of a felony and upon conviction is subject to imprisonment for a period of not more than 10 years.

Md. Code (1957, 1996 Repl. Vol., 1999 Supp.), Art. 27, §464B.

register as a sexually violent offender for the rest of his natural life. Appellant disagreed, asserting that he was required to register only for a period of ten years.

DISCUSSION

Appellant contends that at the time he committed the third-degree sexual offense in June 2000, he fell within three different offender categories for the purpose of registration as a sex offender under the Maryland sex offender registration act (“MSORA”): a child sexual offender, an offender, and a sexually violent offender. Md. Code (1996 Repl. Vol., 1999 Supp.), Art. 27, §792. Two of those categories, child sexual offender and sexually violent offender, required that appellant register with the Maryland sex offender registry for life, while the other category required registration for a period of ten years. *See* Art. 27, §792(d)(2), (3) and (4). Appellant asserts that the circuit court ordered him to register as a sexual offender, not as a child sexual offender or a sexually violent offender and, as a result, he was required to register only for a period of ten years. Relying in part on *Doe v. Dep’t of Pub. Safety and Corr. Services*, 430 Md. 535 (2013), appellant maintains that because MSORA is ambiguous, the rule of lenity requires the lesser penalty of registration for a period of ten years, as opposed to registration for life. We disagree and explain.

A. Standard of Review

In reviewing a declaratory judgment entered as a result of the grant of a motion for summary judgment, we consider whether the declaration was correct as a matter of law under a *de novo* standard of review. *Dep’t of Pub. Safety and Corr. Services v. Doe*, 439 Md. 201, 219 (2014)(and cases cited therein); *Catalyst Health Solutions, Inc. v. Magill*,

414 Md. 457, 471-72 (2010)(quoting *Olde Severna Park Improvement Ass’n, Inc. v. Gunby*, 402 Md. 317, 329 (2007)). The grant of summary judgment is governed by Md. Rule 2-501. If, as in the instant case, there is no genuine issue of material fact, we review the trial court’s grant of summary judgment to ascertain if it was legally correct. Md. Rule 2-501(f); *Springer v. Erie Ins. Exch.*, 439 Md. 142, 156 (2014); *Jahnigen v. Smith*, 143 Md. App. 547, 555 (2002).

B. The Statutory Scheme

At the time of the underlying offense, Article 27, §792 defined an “offender” to include, among other things, an individual who is ordered by the court to register and who “[h]as been convicted of a crime that involves conduct that by its nature is a sexual offense against an individual under the age of 18 years[.]” Article 27, §792(a)(6)(viii). A “child sexual offender” was defined as, among other things, an individual who “[h]as been convicted of violating any of the provisions of §§ 462 through 464B of this article for an offense involving an individual under the age of 15 years.” Article 27, §792(a)(2)(ii). Lastly, a “sexually violent offender” was defined as a person convicted of a “violation of any of the provisions of . . . §464B . . . of this article[.]” Article 27, §792(a)(11)(i).

Section 792 set forth different terms of registration depending on a registrant’s status as an “offender,” “child sexual offender,” or “sexually violent offender.” Section 792(d)(3) provided that an “offender” “shall register annually with the Department . . . for 10 years.” Section 792(d)(2) provided that “[a] child sexual offender shall register annually in person with a local law enforcement agency” for life if convicted of, among

other things, a violation of §464B. Similarly, a sexually violent offender was required to register annually for life if convicted of violating §464B. Art. 27, §792(d)(4).

In 2002, as part of the code revision process, the provisions of Article 27 were transferred to the new Criminal Law Article. The provisions of Article 27, §464B were transferred, without substantive change, to §3-307 of the Criminal Law Article. Similarly, provisions governing registration for certain offenders were transferred to §11-701 *et seq.* of the Criminal Procedure Article. The registration provisions were amended in 2009 and 2010. Among other things, the 2010 amendments categorized persons convicted of sex offenses into three tiers of offenders. Under that system, appellant was classified as a Tier III offender and was required to register every three months for life. Md. Code (2008 Repl. Vol., 2011 Supp.) §11-707(a) of the Criminal Procedure Article (“CP”). The General Assembly also made the registration requirement retroactive to include any person convicted of an offense committed before July 1, 1997, and who is “under the custody or supervision of a supervising authority on October 1, 2010.” CP §11-702.1(a)(1).

C. The *Doe* Case

Appellant argues that, given the ambiguity as to his offender status under Art. 27, §792, the rule of lenity requires imposition of the lesser penalty, which is registration for a period of 10 years. In support of his argument, appellant directs our attention to *Doe v. Dep’t of Pub. Safety and Corr. Services*, 430 Md. 535 (2013). In *Doe*, the Court of Appeals considered whether Doe, who had been convicted of certain sex offenses, was required to register with the Maryland sex offender registry, when the registration statute

did not exist at the time the offenses were committed. *Doe*, 430 Md. at 536-37. Doe argued that requiring him to register would violate his right to be free from *ex post facto* laws pursuant to both the federal Constitution and the Maryland Declaration of Rights and to be free from *ex post facto* restrictions pursuant to the Maryland Declaration of Rights. *Id.* He also argued that a registration requirement would violate his due process rights under both the federal Constitution and the Maryland Declaration of Rights and the plea agreement he entered into with respect to the underlying sex offenses. *Id.* at 537.

At the time Doe’s sex offenses were committed, Maryland did not have a sex offender registration statute. *Id.* at 540. The General Assembly first enacted such a statute in 1995. *Id.* As a result of amendments to that statute in 2009 and 2010, Doe was required to register as a sex offender. *Id.* After considering Doe’s arguments, the Court of Appeals, in a plurality opinion, held that requiring Doe to register as a result of the 2009 and 2010 amendments would violate the prohibition against *ex post facto* laws set forth in Article 17 of the Maryland Declaration of Rights and, therefore, his name and likeness must be removed from the Maryland sex offender registry. *Id.* at 537.

The holding in *Doe* does not resolve the issue presented in the instant case because, at the time of appellant’s sex offense, June 2000, Maryland law required a person convicted of a third-degree sexual offense pursuant to Article 27, §464B to register as a sex offender for life. See Art. 27, §792(d). The requirement to register as a sex offender for life became effective on October 1, 1999, one year before appellant committed the underlying third-degree sexual offense.

D. Term of Registration

Appellant’s contention that he only has to register as an “offender” for a ten year period is without merit. The order for probation did not determine that appellant was to be categorized as an “offender,” but merely indicated that he was required to register as a sex offender. The statutory scheme specifically defined child sexual offenders and sexually violent offenders to include those, like appellant, who were convicted of third-degree sexual offense under Article 27, §464B, when the victim was under the age of fifteen. It is well established that where there is a conflict between a general statute and one dealing specifically with the issue at hand, the specific statute controls. *Smack v. Dep’t of Health and Mental Hygiene*, 378 Md. 298, 306 (2003)(and cases cited therein). When, viewed in context, two statutes conflict, with one general and the other more specific, “the statutes may be harmonized by viewing the more specific statute as an exception to the more general one.” *Id.*

It is clear from the statutory scheme that the General Assembly intended those convicted of third-degree sexual offense to receive a longer registration period than those categorized as offenders. As the State points out, to interpret MSORA otherwise would render the definition of “child sexual offender” virtually meaningless because any sexual offense against a person under fifteen years of age would also constitute a sexual offense against a person under the age of eighteen. We will not interpret the statute so as to render a portion of it meaningless. *Office of People’s Counsel v. Maryland Pub. Serv. Comm’n*, 355 Md. 1, 22-23 (1999)(and cases cited therein). The General Assembly’s clear intent was to require lifetime registration for those convicted of third-degree sexual

offense under Article 27, §464B, as to both child sexual offenders, if the victim was under the age of fifteen, and sexually violent offenders.

We also reject appellant’s contention that the rule of lenity requires that his registration requirement be limited to ten years. The rule of lenity serves as an aid for resolving an ambiguity when all other tools of statutory construction fail to resolve the issue. *Oglesby v. State*, 441 Md. 673, 681 (2015). There is no ambiguity with respect to the registration statute at issue. The clear language of the statute indicates the General Assembly’s intent to require lifetime registration from those convicted of certain crimes, including a third-degree sexual offense under Article 27, §464B.

E. Additional Reporting Requirements

Appellant further contends that none of the amendments to the registration requirements passed after 1999 can be applied to him without offending Maryland’s constitutional prohibition against *ex post facto* laws.² According to appellant, even if he is required to register for life, he should only have to provide his name, address, aliases, social security number, conviction, and the jurisdiction of the offense because these were the only requirements in effect at the time he committed the subject offense. In addition,

² Article 17 of the Maryland Declaration of Rights, provides:

That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required.

he should only be required to provide that information on an annual basis. This issue is not properly before us.

Appellant’s argument below focused solely on whether he was required by the applicable registration statute to register for life rather than ten years. Although appellant set forth in his brief on appeal a detailed list of changes to the registration laws that have occurred since 1999, he made no argument in either his complaint for declaratory judgment or his motion for summary judgment with respect to any specific requirement of the civil regulatory scheme enacted since his conviction. Nor did he offer any argument that a particular amendment enacted after 1999 was not a legitimate part of the civil regulatory scheme, but rather imposed additional criminal punishment on him.

“Ordinarily, [we] will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Md. Rule 8-131(a). As the issue of whether additional requirements enacted after 1999 constituted additional punishment was not raised in or decided by the circuit court, we decline to consider it.

F. Imposition of Severe Restrictions Other than Punishment

Appellant argues that sex offender registration requirements enacted after 1999 imposed severe restrictions on him in violation of Article 17 of Maryland’s Declaration of Rights. According to appellant, Article 17’s prohibition of the imposition or requirement of “any retrospective oath or restriction” “must mean something other than punishment.” He maintains that the clause constitutes a prohibition on those sex offender

registration requirements that took effect after 1999 and imposed “severe restrictions,” as opposed to punishments, that he otherwise would not have been subject to.³

Again, we need not reach this issue because appellant did not raise it in either his complaint for declaratory judgment or motion for summary judgment. As the issue was not raised in or decided by the circuit court, we shall not address it. Md. Rule 8-131(a).

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**

³ Appellant identifies these restrictions as follows:

For example, Mr. Camino cannot not [sic] travel freely without having to report his whereabouts; he may not move without having to report his new residence; he may not purchase a new or different car without having to report his fact; he may not change his cell phone number without reporting it; he may not change jobs without reporting the new place of employment; he may not join any social networking sites without reporting this fact; he may not change a computer log-in or screen name, e-mail address or computer identity password without reporting; he must report any nicknames he is given; and on and on.