
STATE OF MONTANA,

Plaintiff and Appellee,

v.

JESSE DAVID SEDLER,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Nineteenth Judicial District Court,
Lincoln County, the Honorable Matthew J. Cuffe, Presiding

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STATEMENT OF THE ISSUE

Convicting Jesse Sedler for failing to register as a violent offender violated his substantive right to due process. He was charged two years *after* the maximum time he was required to be on the Violent Offender Registry. Mont. Code Ann. § 46-23-506(2)(a) unfairly extends the maximum time a violent offender has to be on the registry.

STATEMENT OF THE CASE

Mr. Sedler presents the following relevant procedural facts:

- | | |
|---------------|--|
| October 2002 | Mr. Sedler convicted of assault with a weapon and intimidation after a jury trial and, because of his mental illness, sentenced to 10 years in Department of Health and Human Services (DPHHS) custody. ¹ |
| February 2004 | Mr. Sedler's DPHHS sentence is amended to a suspended sentence. Mr. Sedler released from DPHHS custody and registers as a violent offender. |
| February 2014 | Mr. Sedler completed 10 years on the VOR without committing a new felony offense. |
| April 2016 | Mr. Sedler's neighbor, who is also a deputy sheriff, reported Mr. Sedler non-compliant with the VOR. |

¹ This Court may take judicial notice under Rule 202(6), Mont. Rules Evid. of the underlying offense and proceedings requiring Mr. Sedler to register as a violent offender. *See, State v. Jesse David Sedler*, Sup. Ct. No. 03-337 and *State v. Jesse David Sedler*, Sup. Ct. No. 04-622.

- June 27, 2017 Mr. Sedler charged with failure to register as a violent offender under Mont. Code Ann. § 46-23-504 and Mont. Code Ann. § 46-23-506. D. C. Doc. 4.
- April 17, 2018 Mr. Sedler entered an Alford plea² for failing to register as a violent offender. D.C. Doc. 35.
- June 18, 2017 The Hon. Matthew J. Cuffe sentences Mr. Sedler to five years in the Department of Corrections, all suspended. D.C. Doc. 43. (Judgment and Sentence attached as Appendix A.)
- June 23, 2017 On his own, Mr. Sedler filed a Notice of Appeal in district court.
- September 2018 Montana Supreme Court ordered appointment of counsel on appeal.

STATEMENT OF THE FACTS

In 2015, Jesse Sedler stopped registering as a violent offender. D.C. Doc. 2 at Ex. A. His registerable offense arose after he was convicted in 2002 of assault with a weapon for hitting his neighbor with a wooden archery recurve bow. Since he had serious mental health issues, Mr. Sedler was committed to the Department of Health and Human Services. *See, State v. Sedler*, Sup Ct. No. 04-622. He was released from DPHHS custody in 2004 and continuously registered as a

² *North Carolina v. Alford*, 400 U.S. 25, 32, 91 S.Ct. 160, 164-65 (1970).

violent offender every year for the next eleven years.

Although successful with the violent offender registration requirements for 10 years, Mr. Sedler lived near a deputy sheriff in Lincoln County. The deputy, acting as a private citizen, reported to his colleagues in law enforcement that Mr. Sedler was no longer compliant with his registration requirements. D.C. Doc. 2 at Ex. A. No one mentioned that Mr. Sedler had exceeded the maximum 10-year-cap set forth in the violent offender registry statute. Instead, the State relied on the provision allowing the maximum duration on the registry to be extended if Mr. Sedler had not petitioned the district court to be removed from the registry.

The judicial decision to remove someone from the registry is not discretionary, but Mr. Sedler did not petition the court until April 2018. The petition was granted on April 11, 2018. *State v. Jesse David Sedler*, DC 02-040, D.C. Doc. 102. Nevertheless, Mr. Sedler admitted he had been registering and was apparently required to do so through 2018. April 17, 2018, Change of Plea (COP) Tr. at 21. He admitted moving to Kalispell in 2016 to continue his mental health counseling and did not register as a violent offender in Kalispell. COP Tr. at 22. He reluctantly

admitted a jury would find him guilty based on a “technical bias” so he agreed to enter into the *Alford* plea. COP Tr. at 25. The Court accepted the plea for failing to register as a violent offender. COP Tr. at 26.

Twelve years after he had been released from DPHHS custody for his assault with a weapon conviction, Mr. Sedler appeared for sentencing on the failure to register conviction. June 18, 2018, Sentencing (Sent.) Tr. at 28. Mr. Sedler was a logger and welder and continued to participate in counseling for his mental health issues. Sent. Tr. at 32-34. He clearly expressed his frustration being required to register in Lincoln County for so long and now facing continued Department of Correction’s supervision for another five years after his conviction for failing to register as a violent offender. Sent. Tr. at 36.

STANDARD OF REVIEW

This Court conducts a plenary review of questions of constitutional law. *State v. Egdorf*, 2003 MT 264, ¶ 12, 317 Mont. 436, 77 P.3d 517. A statute is presumed constitutional, and any doubts must be resolved in favor of the statute. *Egdorf*, ¶ 12. The party challenging the statute has the burden of proving that it is unconstitutional beyond a reasonable doubt. *Egdorf*, ¶ 12.

An issue not addressed below may be reviewed for plain error where fundamental constitutional rights are implicated and the failure to review the issue “would result in a manifest miscarriage of justice, call into question the fairness of the trial or proceeding, or compromise the integrity of the judicial process.” *State v. Taylor*, 2010 MT 94, ¶¶ 12–17, 356 Mont. 167, 231 P.3d 79.

SUMMARY OF THE ARGUMENT

Battling mental illness, Jesse Sedler was convicted in 2002 of hitting a fellow craftsman with a wooden bowstaff. Mr. Sedler’s mental illness warranted a sentence to the DPHHS rather than confinement in the Montana State Prison. Twelve years after discharging from DPHHS custody Sedler was charged for failing to register as a violent offender in violation of Mont. Code Ann. § 46-23-504. Under Mont. Code Ann. § 46-23-506(2)(a) offenders who have not been convicted of another felony are only required to be on the Violent Offender Registry (VOR) for 10 years. However, the statutory 10-year maximum VOR duration is extended indefinitely if an offender does not petition the district court where the offender is residing to get off the registry.

The arbitrary provision requiring a defendant to petition a court to get off the VOR has effectively turned the 10-year cap into a lifetime registration requirement. VOR statistics confirm that nearly a third of all people removed from the VOR every year are removed because they died while still on the VOR. LJIC cite. Once he completed 10 years on the VOR, a court would have had no choice but to remove Mr. Sedler from the VOR. Yet, because he did not petition the district court for removal, Mr. Sedler remained on the VOR and was exposed to ongoing criminal liability. The petitioning requirement does not enhance public safety nor is implemented like other statutory procedures for ending criminal liability. Mr. Sedler's conviction for failing to register must be dismissed because the legislative anomaly created by the petition requirement violates his right to substantive due process.

ARGUMENT

- I. **It was a fundamental miscarriage of justice to convict Jesse Sedler for failing to register as a violent offender after the 10-year maximum duration of the VOR had expired.**

The erroneous and unlimited extension of the violent offender registry period beyond the 10-year maximum exposes offenders on the VOR like Jesse Sedler to criminal liability for a new offense that is

punishable by up to five years in the Montana State Prison and a \$10,000 fine. Mont. Code Ann. § 46-23-507. Thus, the substantive due process violation created by the extended VOR duration under both the United States and Montana Constitutions results in a manifest miscarriage of justice. *Taylor*, ¶14. Mr. Sedler’s challenge to the arbitrary nature of the petition requirement to be removed from the VOR focusses on this procedural statutory provision that has no rational basis to permit extension of the 10-year registration requirement.

Facial challenges, unlike as applied challenges, do not depend on the facts of a particular case. *See, Lott v. State*, 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337 (defining a “facially invalid” sentence as a sentence “which, as a matter of law, the court had no authority to impose” and holding that incarceration on such a facially invalid sentence is a “grievous wrong” and a “miscarriage of justice”); *State v. Stanko*, 1998 MT 321, ¶¶ 28-30, 292 Mont. 192, 974 P.2d 1132 (holding Montana’s “reasonable and proper” speed law facially void for vagueness without deciding whether the particular defendant’s speed was itself “reasonable and proper”); *Raisler v. Burlington N. Ry.*, 219

Mont. 254, 263-64, 717 P.2d 535, 540-41 (1985) (completing a substantive due process analysis based purely on the legislation's purpose and general effect).

A. The conditions of Mr. Sedler's time on the VOR.

Mr. Sedler was convicted of assault with a weapon in 2002, he was required to register as a "violent offender." Mont. Code Ann. § 46-23-502(7) and (9)(a)(2003). He was required to register 10 days before he was released from confinement. Mont. Code Ann. § 46-23-504(1)(b)(2003). Thus, he was placed on the VOR 10 days before he was released from DPHHS custody in 2004.

While registered, Mr. Sedler's name, address and conviction offense was public information. Mont. Code Ann. § 46-23-508(2013)³. Mr. Sedler's information posted on Montana's Sexual and Violent Offender Registry website. <https://app.doj.mt.gov/apps/svow/default.aspx>. His registration could be found by either a name search or map location search. See, <https://app.doj.mt.gov/apps/svow/search.aspx>. Unlike other

³ As the registration requirements have changed nearly every legislative session, Mr. Sedler has chosen to set out the registration requirements in place in 2013, the law in effect when he completed 10 years on the VOR.

criminal records maintained by the Montana Department of Justice (DOJ), there was no cost to search for Mr. Sedler's status as a violent offender. *Compare*, <https://app.mt.gov/choprs/> (\$20 per request for public record criminal record search.)

Mr. Sedler was required to update his address and status in person at the registration agency within three days of whenever he moved or changed jobs. Mont. Code Ann. § 46-23-505(1)(2013). Additionally, the DOJ sent a yearly address verification requests to confirm his location. If he left his home county for more than 10 days, even on vacation, he was required to register in the county he was visiting. Mont. Code Ann. § 46-23-505(4)(2013) Mr. Sedler complied with all of the VOR requirements for 10 years. He was not notified when the maximum period of registration ended. Instead, DOJ continued to send address verification notices to Mr. Sedler after the 10 years had expired. D.C. Doc. 2 at Ex. A.

The reason DOJ continued to send address verification is Mr. Sedler had not petitioned to get off the registry. Granting the petition requires no judicial discretion. After 10 years, a judge has no choice but to grant a qualified petitioner's request to be removed from the VOR. Mont.

Code Ann. § 46-23-506 (2013). Since it is a non-discretionary decision, and Mr. Sedler had complied with the VOR requirements for 10 years, he was automatically removed from the VOR when he used all of his resources to hire a private attorney to file the petition. Sent. Tr. at 34-36.

Despite the reasonable assumption that he would no longer have to register as a violent offender after his 10 years expired, Mr. Sedler was found guilty of a crime of omission. Namely, he did not petition so his registration was extended indefinitely.

B. Legislative history behind the VOR petition requirement.

The legislative history behind the VOR explains how the process to be removed from the VOR turned into an arbitrary and capricious requirement. In 1995, the Legislature enacted Senate Bill 214 extending sex offender registration to a small group of violent crimes, including assault with a weapon. Just as with sex crimes, the Legislature made registering as a violent offender a lifetime requirement. Mont. Code Ann. § 46-23-506(1)(1995). There existed a mechanism to petition the court to relieve “the offender” from the duty to register. It was unclear whether both violent and sexual offenders

could use the process because the 10-year period to petition the court was tied to “the offender’s last conviction of a sexual offense.” Mont. Code Ann. § 46-23-506(2)(1995). Assuming violent offenders could also petition to get off the VOR 10 years after conviction, then both the county attorney and victim were to be notified about the petition. The district court had the discretion to grant or deny the petition based on whether the violent offender had been law-abiding, the interests of public safety, and the best interests of society. Mont. Code Ann. § 46-23-506(2)(a-b)(1995).

In 1997, the Legislature made the names of violent offenders on the registry public. It also split the removal requirements for violent and sexual offenders. A violent offender was only required to register for 10 years following conviction or confinement as long as the offender was not convicted of another felony during those 10 years. If convicted of a felony during the 10-year registration period, then the registration requirement would again revert to lifetime registration. Mont. Code Ann. § 46-23-506(2)(1997). Sex offenders were still required to register for life. Mont. Code Ann. § 46-23-506(1)(1997). Both sexual offenders and violent offenders who were required to register for life could

petition after 10 years to be removed from the registry if the same discretionary criteria of law-abiding, public safety and societal interests were met. Mont. Code Ann. § 46-23-506(3)(1997). Otherwise, the 10-year registry period for violent offenders who did not commit a new felony automatically ended after 10 years without any petitioning requirement. Mr. Sedler was convicted in 2002 and started registering in 2004 when this same registration process enacted in 1997 remained in place.

In 2005, the Legislature added a petitioning requirement for a violent offender who had successfully registered for 10 years before the violent offender could be relieved of the duty to register. Mont. Code Ann. § 46-23-506(2)(a)(2005). Unlike the previous petitioning process, the district court had no discretion but to grant the violent offender's petition to be removed from the registry as long as the offender had not committed another felony. Mont. Code Ann. § 46-23-506(3)(a)(2005). Although he started registering in 2004, the petitioning process enacted in 2005 remains in place and extended Mr. Sedler's time on the VOR two-years beyond 10-year maximum registration period until he was charged for failing to register in 2016.

C. Extending the VOR registration requirement past 10 years is arbitrary.

The Fourteenth Amendment to the United States Constitution and Article II, Section 17, of the Montana Constitution guarantee that no person shall be deprived of liberty without due process of law.

Egdorf, ¶ 19. The substantive component of due process “bars arbitrary government actions regardless of the procedures used to implement them and serves as a check on oppressive government action.” *Egdorf*, ¶ 19. “In order to satisfy substantive due process guarantees, a statute enacted under a state’s police power must be reasonably related to a permissible legislative objective.” *Raisler*, 219 Mont. at 263, 717 P.2d at 541. This Court must determine whether the challenged law has a sufficiently reasonable relation to a proper legislative purpose so as not to be deemed arbitrary. *State v. Jack*, 167 Mont. 456, 461, 539 P.2d 726, 729 (1975)(citations omitted).

Upholding a statute against a substantive due process challenge requires this Court to “decide (1) whether the legislation in question is related to a legitimate governmental concern, and (2) that the means chosen by the Legislature to accomplish its objective are reasonably related to the result sought to be attained.” *Walters v. Flathead*

Concrete Prods., 2011 MT 45, ¶ 18, 359 Mont. 346, 249 P.3d 913 (quoting *Plumb v. Fourth Jud. Dist. Ct.*, 279 Mont. 363, 372, 927 P.2d 1011, 1016 (1996)); see also, *Egdorf*, ¶ 21 (analyzing whether the challenged statute “is reasonably related to a permissive legislative goal”).

Here, Mr. Sedler did not object to convicting him for failing to register as a violent offender even when he was charged two years past the 10-year registration period. Nevertheless, Sedler’s current challenge to the unlawfulness of the failure to register conviction is appropriate for this Court’s plain error review. Mr. Sedler’s constitutional rights to due process are implicated by creating a new crime when his registration deadline was extended and convicting him resulted in calls into question the fairness of the charging and conviction process. *Taylor*, ¶¶ 12–17. This Court has used plain error to review other fundamental errors in criminal cases. See, *State v. Wagner*, 2009 MT 256, ¶¶ 14–21, 352 Mont. 1, 215 P.3d 20 (applying plain error review to the State’s use of the defendant’s invocation of the right to remain silent); *State v. West*, 2008 MT 338, ¶¶ 23–30, 346

Mont. 244, 194 P.3d 683 (determining that a due process, unreasonable delay violation was appropriate for plain error review).

D. The petition requirement is not related to the VOR's intent nor does it reasonably promote public safety.

The legislative goal for registration is based on community safety – not ongoing punishment. *State v. Mount*, 2003 MT 275, ¶¶ 45, 48, 80 and 89, 317 Mont. 481, 78 P.3d 829 (registration act was nonpunitive, civil regulatory scheme). Petitioning to be removed from the VOR has nothing to do with community safety. As long as the offender has not committed another felony within the last 10 years, the district court has no discretion but to grant the petition – meaning he automatically does not pose a danger to the community. DOJ maintains not only the VOR but also corresponding full access to electronic records showing felony convictions throughout Montana. An offender should automatically transfer to lifetime registration if the offender committed another felony within the 10-year registration period. No aspect of community safety is enhanced by the petition process.

Second, the method itself of requiring offenders to petition the district court of residence is also not reasonably related to community safety. When compared to other states, Montana already has the most

comprehensive registration requirement for violent offenders. *See*, <https://leg.mt.gov/content/Committees/Interim/2019-2020/Law-and-Justice/Meetings/Nov-2019/sj19-crime-registry-comparison-table-november-2019.pdf>. Yet, Montana does not provide any legal assistance to help offenders file, serve and litigate the necessary petition process to get off the registry. Mont. Code Ann. § 46-8-103. With nearly 4,000 violent offenders active on the registry in 2019 only 65 (or less than two percent) were removed through the petitioning process. Since 2009, the number of violent offenders on the registry in has increased by 31 percent. <https://leg.mt.gov/content/Committees/Interim/2019-2020/Law-and-Justice/Meetings/Nov-2019/sj19-crime-registry-comparison-table-november-2019.pdf>. Keeping an offender on the registry indefinitely runs counter to the legislative intent of capping registration at 10 years.

Comparing how a violent offender who gets a standard conviction with a suspended sentence, like Mr. Sedler, to a violent offender who gets a deferred sentence demonstrates how arbitrary the process to be removed from the VOR really is. An offender given the maximum six-year deferred sentence for assault with a weapon would no longer be required to register and the end of the deferral period without ever

having to go to court again. Mont. Code Ann. § 46-18-204(1)(a). An offender, like Mr. Sedler, sentenced to the same six-year suspended sentence would have to spend at least four more years on the VOR. Plus, the offender would have to approach the district court of residence to petition to get off the VOR after 10 years. Thus, for the same offense, the offender with the deferred sentence would have their conviction dismissed and removed from the registry by automatic court action and the offender with the suspended sentence would remain on the VOR exposed to criminal liability indefinitely. There can be no rational basis for treating offenders who commit the same offense differently.

“An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment.” *Ex parte Anderson*, 125 Mont. 331, 336-37, 238 P.2d 910, 913 (1951) (quoting *Ex parte Siebold*, 100 U.S. 371, 376-77 (1880)). Sentencing Mr. Sedler to five more years under DOC supervision based upon a facially unconstitutional and, thus, void statute creates a fundamental unfairness at least on par with the right to silence and unreasonable delay violations reviewed in *Wagner* and *West*.

CONCLUSION

Jesse Sedler worked on his mental health issues and successfully registered as a violent offender for over 10 years. Any rational reading of Mont. Code Ann. § 46-23-504 would mean Mr. Sedler completed the maximum time a violent offender has to register. However, the 10-year maximum gets extended indefinitely by the arbitrary requirement to petition a court to get off the registry. Convicting Mr. Sedler for failing to register past the 10-year registry period is fundamentally unfair and his conviction should be reversed.

Respectfully submitted this 27th day of November, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3501, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Chad Wright
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APPENDIX

Judgment and Sentence.....App. A

CERTIFICATE OF SERVICE

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