

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: January 27, 2014)

STATE OF RHODE ISLAND

:

:

v.

:

C.R. No. P2-2012-2199A

:

FREDERICK GIBSON

:

DECISION

McBURNEY, M. Before this Court is Defendant Frederick Gibson’s (Gibson or Defendant) motion pursuant to Super. R. Crim. P. 9.1 (Rule 9.1)<sup>1</sup> seeking to dismiss Count I of the instant Criminal Information for failure to register as a sex offender in violation of G.L. 1956 §§ 11-37.1-9 and 11-37.1-10. Defendant alleges that he no longer has a duty to register as a sex offender. For the reasons set forth below, this Court denies Defendant’s Motion to Dismiss Pursuant to Rule 9.1.

I

**Facts and Travel**

On November 18, 1994, Gibson entered an Alford plea on case number N1-1993-238A to a charge of Second Degree Child Molestation, resulting from an offense occurring on April 14,

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<sup>1</sup> Rule 9.1 reads as follows:

“A defendant who has been charged by information may, within thirty (30) days after he or she has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. The motion shall be scheduled to be heard within a reasonable time.”

1993. Gibson was sentenced to fifteen years at the Adult Correctional Institute, with four and one-half years to serve and the balance suspended with probation.

Beginning in 2007, Gibson was charged four times with Failure to Register as a Sex Offender pursuant to § 11-37.1-9. On June 20, 2007, Gibson entered a plea of nolo contendere in case number P2-2007-1342A and received a five year full sentence suspended with probation. On November 18, 2009, Gibson entered a plea of nolo contendere in case number P2-2009-2386A and received a three year sentence, with ninety days to serve and the balance suspended with probation. On October 20, 2010, Gibson entered a plea of nolo contendere in case number P2-2010-1861A and received a ten year sentence, with six months to serve and the balance suspended with probation.

Most recently, Gibson was arrested and charged with Failure to Register as a Sex Offender on July 24, 2012. The charge was based upon an address verification conducted by detectives of the Bureau of Criminal Identification (BCI) on May 1, 2012 at Gibson's last known address, 324 Willow Street in Woonsocket, Rhode Island. When the detectives visited the apartment, they spoke with Tyris Nealy, a neighbor, who stated that Gibson had not lived in the apartment for roughly two months. The next day, detectives returned and spoke with Quinn Gray, who had been staying at the apartment, who stated that Gibson had not lived in the apartment for about two months. Finally, detectives spoke with Gibson's girlfriend, Juanita Gray, who stated that she had been absent from the apartment since early February and could not confirm if Gibson had been living there or not. Subsequently, the detectives obtained a warrant for Gibson for failure to notify of an address change.

Gibson filed this Motion to Dismiss Pursuant to Rule 9.1,<sup>2</sup> arguing that his duty to register as a sex offender expired in November 2004, ten years after the date of his conviction. He does not allege that the State of Rhode Island (State) did not have probable cause to charge him with this violation; instead, he argues that the statute itself does not apply to him. The State objects, asserting that Gibson has a lifetime duty to register, or in the alternative, that his duty to register continues until at least November 2019. As all of the parties' arguments address an issue of statutory interpretation, and not one of probable cause, the instant Motion is better construed as a motion to dismiss pursuant to Super. R. Crim. P. 12(b)(2) (Rule 12(b)(2)).<sup>3</sup> In the interest of judicial economy, this Court will treat the Motion as one made under Rule 12(b)(2), as it arguably challenges a "defect[] in the institution of the prosecution" beyond that of a lack of probable cause. See Sch. Comm. of Cranston v. Bergin-Andrews, 984 A.2d 629, 649 (R.I. 2009) (the Superior Court "applies a liberal interpretation of the rules to look to substance, not labels") (quotation omitted).

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<sup>2</sup> Although neither party has raised the issue of the timing of the Motion, this Court notes that it appears that Gibson filed his Motion to Dismiss Pursuant to Rule 9.1 outside the thirty-day time frame contemplated in Rule 9.1. A review of the docket sheet indicates that the Information was filed on July 26, 2012. Gibson was arraigned and entered a "not guilty" plea on November 16, 2012. While it is unclear what date Gibson filed the instant Motion, he filed a supporting Memorandum on December 16, 2013, and provided the State of Rhode Island with a copy of the Motion to Dismiss Pursuant to Rule 9.1 on January 7, 2014. Nevertheless, pursuant to Rule 9.1, this Court will consider the within motion. See Rule 9.1 (the motion may be brought "at such later time as the court may permit").

<sup>3</sup> Rule 12(b)(2) reads as follows:

"[A]ll other defenses and objections based on defects in the institution of the prosecution or in the indictment, information, or complaint other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver."

## II

### Standard of Review

When interpreting a statute, this Court must “give effect to the purpose of the act as intended by the Legislature.” Ryan v. City of Providence, 11 A.3d 68, 70-71 (R.I. 2011) (quoting D’Amico v. Johnston Partners, 866 A.2d 1222, 1224 (R.I. 2005)). The Legislature’s intent may be “discovered from an examination of the language, nature, and object of the statute.” Berthiaume v. Sch. Comm. of Woonsocket, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979). If the language of a statute is “clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996).

This Court “consider[s] the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.” Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994). “Statutes should not be construed to achieve meaningless or absurd results.” Ryan, 11 A.3d at 71 (quoting Berthiaume, 121 R.I. at 247, 397 A.2d at 892).

## III

### Analysis

Gibson argues that the charges against him should be dismissed because he no longer has a duty to register as a sex offender. Specifically, he contends that his duty to register expired in November 2004, ten years after the date of his conviction. The State argues that Gibson’s duty to register does not have an expiration date. In the alternative, the State argues that Gibson’s duty to register expires in November 2019, ten years after the date he was released from probation.

Gibson was convicted of Second Degree Child Molestation in November 1994. At that time, § 11-37-16 imposed a registration duty on “[a]ny person who since July 1, 1992, has been, or shall hereafter be, convicted of any offense in violation of [a sexual assault as defined in Chapter 37].” The registration statute did not contain a time limit and thus imposed a lifetime duty to register. See U.S. v. Stevens, 598 F. Supp. 2d 133, 143 (D. Me. 2009) (interpreting the statute’s silence on when the registration duty ended as imposing a “lifetime registration” requirement), aff’d, 640 F.3d 48 (1st Cir. 2011).

In July 1996, the General Assembly enacted the “Sexual Offender Registration and Community Notification Act” and simultaneously repealed § 11-37-16. See P.L. 1996, ch. 104, § 1. As enacted in 1996, § 11-37.1-4 imposed a duty for sex offenders to register until “ten (10) years subsequent to the date of conviction.” The 1996 law also included a provision imposing a “[c]ontinuation of prior duty to register”:

“Any person, who pursuant to the provisions of section 11-37-16 (P.L. 1992, ch. 196, section 1), had a duty to register under that section after having been convicted of any violation of the provisions of chapter 11-37 . . . shall have the duty to register in accordance with the provisions of this chapter. Nothing herein shall be construed to abrogate any duty to register which exists or existed under the provisions of section 11-37-16.” Sec. 11-37.1-18.

In addition, the public law enacting chapter 37.1 directed that “Section 1 of this act shall take effect upon passage and shall apply to those persons who are convicted of an offense requiring registration, as defined in that section, which was committed after the effective date of this act.” P.L. 1996, ch. 104, § 4.

When the language of a statute is “clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning.” Accent Store Design, Inc., 674 A.2d at 1226. In this case, § 11-37.1-18 states that “[n]othing herein

shall be construed to abrogate any duty to register” existing under the previous § 11-37-16. There is no ambiguity in this provision; the Legislature clearly intended to maintain the lifetime registration requirement for offenders convicted prior to the enactment of the new statute. See Berthiaume, 121 R.I. at 247, 397 A.2d at 892 (the Legislature’s intent may be gleaned from the language of the statute). Moreover, this conclusion is bolstered by § 4 of the 1996 public law enacting the new statute, which explicitly stated that it would apply to offenders convicted of a sexual offense “which was committed after the effective date of this act.”

Thus, under the express direction of the public law enacting chapter 37.1, Gibson remained under a duty to register under § 11-37-16, notwithstanding the enactment of § 11-37.1-4. The new registration requirements applied only to those convicted after July 1996, whereas Gibson entered his plea in November 1994. The Rhode Island Supreme Court has ruled in a similar case that a sex offender charged with a crime in 1995, before the enactment of chapter 37.1, “must register as a sex offender pursuant to the registration requirements in effect at the time he was charged, that is, pursuant to § 11-37-16.” State v. Flores, 714 A.2d 581, 583 (R.I. 1998). In that case, the Court determined that the registration requirements of § 11-37.1-3 could not apply to offenses charged before July 1996 “by the clear and express language of the public law that enacted that statute.” Id. In addition, the Court noted that the “duty to register under § 11-37-16 survived that section’s repeal under the plain language of § 11-37.1-18,” which declared that such a duty shall not be abrogated with the passage of the new section. Id. The same principles apply here. As Gibson was convicted after July 1992, when § 11-37-16 was enacted, and before July 1996, when § 11-37.1-3 was enacted, he must register under the statute in effect at the time of his conviction. That statute, § 11-37-16, imposed a lifetime duty to register, and therefore, Gibson’s alleged failure to register in 2012 is a violation of this duty.

## **IV**

### **Conclusion**

For the reasons set forth above, the Court finds that Gibson is currently under a duty to register as a sex offender. This Court finds that because Gibson was convicted in 1994 for Second Degree Child Molestation, § 11-37-16, which was in effect at that time, applies and imposes a lifetime duty to register. In addition, this Court finds that chapter 37.1, enacted in 1996, does not apply to Gibson because he was convicted before its effective date in July of that year. Therefore, the Defendant's Motion is dismissed. Counsel will submit an appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** State of Rhode Island v. Frederick Gibson

**CASE NO:** P2-2012-2199A

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** January 27, 2014

**JUSTICE/MAGISTRATE:** McBurney, M.

**ATTORNEYS:**

**For Plaintiff:** Terence M. Coyne, Esq.

**For Defendant:** Michael J. Zarrella, Esq.