

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 26, 2013)

STATE OF RHODE ISLAND	:	
	:	
v.	:	Case No. P1-1997-3055A
	:	
MICHAEL ENGLISH	:	
	:	

**DECISION**

**McBURNEY, M.** This matter arises from the State’s Motion to Clarify this Court’s decision, State v. English, No. P1-1997-3055A, dated October 15, 2002. In that Decision and subsequent Order, this Court declared that Michael English (“Defendant”) did not have a lifetime obligation to register as a sex offender with the Department of the Attorney General. Rather, his obligation to register would expire ten years subsequent to the date of conviction. In the instant Motion, the State requests that this Court clarify and amend its 2002 decision to instruct the Defendant that he is obligated to register for ten years from the expiration of his sentence—that is, until September 8, 2028. For the reasons set forth below, this Court concludes that it lacks subject-matter jurisdiction to determine the merits of this case.

**I**

**Facts and Travel**

On March 10, 1998, Defendant pled nolo contendere to four counts of first degree child molestation, one count of second degree child molestation, and one count of contributing to the delinquency of a minor. On the counts of first degree child

molestation, he was sentenced to 20 years, 18 months to serve, with 222 months suspended sentence and probation. On the count of second degree child molestation, he was sentenced to 6 years, 18 months to serve, and 54 months suspended sentence and probation, and on the count of contributing to the delinquency of a minor, he was sentenced to one year suspended sentence and probation. As a result of pleading to those charges, Defendant was subject to the sex offender registration requirements under Rhode Island General Laws § 11-37.1-4. At the time of his offense, § 11-37.1-4 required Defendant to register for a period of ten years subsequent to conviction.

Upon his release from incarceration, the State sought to have Defendant declared an “Aggravated Offender,” which would have required lifetime registration. On October 15, 2002, however, this Court found that Defendant was not an Aggravated Offender within the meaning of the statute. Accordingly, Defendant was not required to register for life, but rather, as the Court had previously determined, for a period of ten years, consistent with § 11-37-1-4(a).

On August 25, 2003, an Order entered consistent with the 2002 Decision, stating that Defendant was required to register annually with the Department of the Attorney General for a period of ten years subsequent to his date of conviction. The State objected to this order, and a hearing was held on October 30, 2003, during which the State noted that it did not “have an argument to make in terms of advocating which length [of registration period] should apply.” The State requested that the Court note its objections to the order. The State did not, however, appeal at that time, nor is there any evidence in the record that the State subsequently filed a motion to correct the order, to clarify the

order, or to vacate the order until it filed the motion for clarification currently before this Court.

On July 10, 2003, before the August 19, 2003 order had entered, the General Assembly amended § 11-37-1-4(a). The amendment extended the duration of the required registration period. Although the previous iteration of the statute required sex offenders to register for ten years subsequent to the date of conviction, the amended statute required sex offenders to register for ten years subsequent to the expiration of the sentence.

On March 14, 2008, ten years from the date of conviction, the Defendant received from the Rhode Island Department of the Attorney General a letter notifying him that as of March 10, 2008, he was no longer obligated to register as a sex offender. The letter noted that his name and sex offender registration information had been removed from the Rhode Island Attorney General's Criminal History Record and NCIC. According to Defendant's testimony, upon receiving the letter, he called to confirm that his obligation to register had ended, and he was informed that it had.

Nearly four years later, on January 5, 2012, the State filed a motion to clarify or amend the October 15, 2002 decision. That motion asked the Court to "clarify and amend its decision to instruct the defendant that he needs to register until ten (10) years after the expiration of his sentence." At the time the State made the motion, Defendant had not registered under the statute for nearly four years pursuant to the letter that the Department of the Attorney General had sent him notifying him that his duty to register had ended. Further, the State brought the motion to clarify nearly a decade after the Decision that it seeks to clarify was entered.

## II

### Analysis

In its brief to this Court, submitted January 3, 2013, the State argues that the 2002 Decision should be amended to require Defendant to register with the Department of the Attorney General as a sex offender until 2028—ten years subsequent to the expiration of his sentence, as provided by § 11-37.1-1. It contends that such a result is warranted through application of our Supreme Court’s recent decision, State v. Germane, 971 A.2d 555 (2009), in which the Court held that sex offender registration requirements are not sufficiently punitive in character to trigger the application of the ex post facto clause of the federal or state constitutions.<sup>1</sup> Id. at 592-593. In contrast, Defendant argues that the State’s motion is barred under the doctrines of res judicata and the law of the case because the matter was finally litigated on its merits in 2003. The Defendant further contends that laches bars the State from pursuing this motion because the State negligently failed to appeal the 2003 order, and because he would be prejudiced by being required to register after receiving notice from the Department of the Attorney General that his requirement to register had ended.

Although neither party has addressed the jurisdictional aspects of this controversy, jurisdiction is a fundamental and indispensable component of any judicial proceeding. Paolino v. Paolino, 420 A.2d 830, 833 (R.I. 1980). “[I]t can be raised by the court sua sponte at any time, and . . . can be neither waived nor conferred by consent of the parties.” Id. (citing Naughton v. Goodman, 117 R.I. 113, 118-19, 363 A.2d 1345, 1348 (1976); Ryan v. DeMello, 116 R.I. 264, 266, 354 A.2d 734, 735 (1976); Castellucci

---

<sup>1</sup> This Court notes, however, that in Germane, the Defendant had made a timely appeal from a decision of the Superior Court upholding the determination of the Sex Offender Board. 971 A.2d at 560. That is, the Court had jurisdiction to entertain the motion.

v. Castellucci, 116 R.I. 101, 103, 352 A.2d 640, 642 (1976)); see Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249, 1256 (R.I. 2003). “[A] court which lacks jurisdiction over either subject matter or persons has no power to act, and it is the duty of the court to decline to do more than ascertain and declare that it has no power to examine or decide the merits of the case.” 21 CJS Courts § 18, at 28; see Druid City Health Care Auth. v. Alabama State Health Planning & Dev. Agency, 482 So. 2d 1222, 1223 (Ala. Civ. App. 1985).

In evaluating whether this Court has jurisdiction to entertain the instant motion, this Court notes that Rhode Island does not technically recognize or provide for a motion for clarification. Grieco v. Langlois, 94 R.I. 415, 418, 182 A.2d 434 (1962); see Hatfield v. Bd. of Cty. Com’rs for Converse Cty., 52 F.3d 858 (10th Cir.1995). Nonetheless, Rule 2 of the Superior Court Rules of Criminal Procedure provides that “[t]hese rules are intended to provide for the just determination of every criminal proceeding . . . [and] shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” Interpreting an analogous rule in the civil context, this Court has noted that it will “look to substance not labels” to effectuate this mandate to liberally interpret the Court Rules. See Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 916 (R.I. 2004); Sarni v. Melocarro, 113 R.I. 630, 634, 324 A.2d 648, 65-52 (R.I. 1974); James Wm. Moore, et. al., Moore’s Federal Practice 1997 Rules Pamphlet ¶ 60.2 [9] (1996). Notwithstanding the willingness to liberally construe motions, this Court will not consider a motion over which it has no jurisdiction to rule. See Iozzi v. City of Cranston, 52 A.3d 585, 588 (R.I. 2012).

The timely filing of a motion or appeal is mandatory and jurisdictional. See, e.g., Iozzi, 52 A.3d at 588; Bernard v. Vose, 730 A.2d 30 (R.I. 1999); State v. Heath, 665 A.2d 1336, 1337 (R.I. 1995); O'Brien v. Waterman, 91 R.I. 374, 378, 163 A.2d 31, 34 (1960); see also Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). Therefore, dismissal for lack of subject matter jurisdiction is appropriate where the moving party has not filed the motion or appeal in a timely manner. See, e.g., State v. Letourneau, 446 A.2d 746, 747 (R.I. 1982) (dismissing motion to reduce sentence for lack of jurisdiction when defendant failed to file motion within 120 days); Waz v. Judge's Estate, 417 A.2d 326, 328 (R.I. 1980) (dismissing appeal and concluding that the lower court lacked jurisdiction to entertain a motion that was not timely filed). Here, the Motion for Clarification was not timely—it was filed nearly ten years following the Decision that it seeks to clarify. This Court further notes that dismissal is especially appropriate where, as here, the delay in filing the motion implicates the important judicial interests of finality of convictions and efficient administration of claims—nearly a decade passed between the 2002 Decision and the 2012 Motion to clarify it; nearly four years passed between the Letter notifying Defendant that his obligation to register had ended and the 2012 Motion. See United States v. Gaytan-Garza, 652 F.3d 680, 681 (6th Cir. 2011). Further, the Court declines to stretch its jurisdictional authority to address a “Motion to Clarify” that is not even recognized by this Court’s Rules or its previous decisions.

The Defendant pled nolo contendere on March 10, 1998. After his release, the State sought to classify Defendant as an Aggravated Offender within the meaning of the statute, which classification would have required Defendant to register as a sex offender for life. On October 15, 2002, however, this Court found that Defendant was not an

Aggravated Offender. An order entered to that effect on August 25, 2003. In March 2008, pursuant to the 2002 Decision and 2003 Order, the State sent a letter to Defendant, notifying him that his duty to register had been terminated. In 2012—nearly a decade after the original Decision, and four years after Defendant had ceased registering pursuant to the letter from the Department of the Attorney General—the State filed this motion to clarify and amend the 2002 Decision. Under these circumstances, the State’s motion before this Court is exceedingly untimely. See Bernard v. Vose, 730 A.2d 30 (R.I. 1999). Accordingly, because the State did not timely file this motion or appeal from the 2002 Decision or 2003 Order, this Court dismisses for lack of jurisdiction. As this Court lacks subject matter jurisdiction over this action, it declines to consider the claims on their merits.

#### IV

#### **Conclusion**

For the reasons set forth above, the Court finds that it lacks subject matter jurisdiction over this action.