

Sex Offender Registration Law Update #28
September 8, 2009

1. U.S. v. George, 2009 U.S. App. LEXIS 19051 (9th Cir. Aug. 25, 2009)

- **State Failure to Implement does not Prevent Conviction**
- **Continuing Offense**

Where the defendant had been convicted of a federal crime requiring registration as a sex offender (sexual abuse of a minor on an Indian reservation), the fact that the state in which he resided (Washington) had not implemented SORNA did not prevent him from being convicted of a violation of 18 U.S.C. §2250. Also rejected George's ex post facto violation (he had moved to Washington State prior to SORNA's passage) on the grounds that failure to register is a continuing offense.

2. Doe v. Shurtleff, 2009 U.S. Dist. LEXIS 73955 (D. Utah Aug. 20, 2009)

- **Internet Identifiers**

This opinion vacates the injunction issued in Doe v. Shurtleff, 2008 U.S. Dist. LEXIS 73787 (D. Utah, Sept. 25, 2008), which was put in place because of First Amendment concerns surrounding the collection of internet identifiers from registered sex offenders. Because of legislative amendments that were made effective in May of 2009, those First Amendment concerns no longer exist, and the statute may be enforced as written. The opinion also addressed Fourth Amendment and Ex Post Facto challenges.

3. Magyar v. State, 2009 Miss. LEXIS 388 (Aug. 13, 2009)

- **Collateral Consequence**

As an issue of first impression, the Mississippi Supreme Court held that the requirement to register as a sex offender is a collateral consequence of a guilty plea, and failure to advise of that requirement is not grounds for reversal. The opinion has a detailed footnote with a list of all similar controlling state and territory cases coming to the same conclusion—approximately 30, in all.

4. State v. Reese, 2009 Kan. App. LEXIS 786 (July 31, 2009)

- **Recidivism determination—for registration purposes**
- **Prior conviction a juvenile adjudication**

Kansas has heightened registration requirements for offenders “upon a second or subsequent conviction”. Reese had been convicted as a juvenile of an offense that would have

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enhanced his registration requirement; however, because there was an obvious difference in the system between juveniles and adults required to register, that prior juvenile adjudication could not serve to enhance his current registration requirement. The court paid particular attention to the fact that juvenile adjudications were not included in the statutory definition of ‘conviction’.

5. **In re: C.P.W., 2009 Kan. LEXIS 399 (July 24, 2009)**

- **General Intent: Failure to Register**
- **Not Strict Liability**

The State is only required to prove that a defendant acted with general intent, rather than specific intent, to convict him of failure to register. Under Kansas’ statutes, it is not a strict liability crime.

6. **State v. Howe, 2009 Wash. App. LEXIS 1763 (July 21, 2009)**

- **Out-of-State Conviction**
- **Registration not required**

Howe was convicted of “lewd acts upon a child” in violation of California Penal Code §288(a). The Washington Court of Appeals concluded that this California offense was not comparable to any Washington sex offense and, therefore, he did not have to register as a sex offender.

7. **Doe v. Worsham, 2009 Mo. App. LEXIS 1026 (July 7, 2009)**

- **SORNA directly applicable to the state**

Doe filed a civil suit to have his registration requirement dismissed because his conviction was in 1993 (from the state of Georgia), and the Missouri Supreme Court had previously held (in 2006) that retroactive application of its terms was unconstitutional. However, based on the Keathley case, the court held that “SORNA imposes an independent obligation requiring Doe to register as a sex offender in Missouri...[and that obligation] operates irrespective of state law and the constitutionality” of the State’s own registration system.

8. **Commonwealth v. Wilgus, 975 A.2d 1183 (Pa. Super. 2009)**

- **Homeless Sex Offender**

Because of the way in which Pennsylvania’s laws were written, a homeless and transient person did not have a ‘residence’ to register and, therefore, could not be convicted of failure to register.

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9. **State v. Atcitty, 2009 N.M. App. LEXIS 112 (June 4, 2009)**

- **Indian Country**

The State of New Mexico had no authority to impose a duty to register on enrolled tribal members, living in Indian country, convicted of federal sex offenses. This was a case involving members of the Navajo Nation who had been charged with state-level failure to register offenses.

10. **People v. Birkett, 909 N.E.2d 783 (Ill. 2009)**

- **Juvenile Registration**
- **Compelled by Writ of Mandamus**

Where a juvenile court judge refused to order a juvenile adjudicated of a qualifying offense to register as a sex offender, a writ of Mandamus sought by the state was properly granted, compelling that order to be made.

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