

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CA-00795-SCT

CHRISTOPHER E. LOZIER

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT: 05/15/2018
TRIAL JUDGE: HON. ANTHONY ALAN MOZINGO
TRIAL COURT ATTORNEYS: HALDON J. KITTRELL
LORA ELIZABETH HUNTER
VICKI L. GILLIAM
COURT FROM WHICH APPEALED: PEARL RIVER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: VICKI L. GILLIAM
ATTORNEY FOR APPELLEE: LORA ELIZABETH HUNTER
NATURE OF THE CASE: CIVIL - OTHER
DISPOSITION: AFFIRMED - 10/31/2019
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE KITCHENS, P.J., BEAM AND ISHEE, JJ.

BEAM, JUSTICE, FOR THE COURT:

¶1. Christopher Lozier appeals from the Pearl River County Circuit Court’s order denying his petition to relieve him of the duty to register under the Mississippi Sex Offender Registry Law (MSORL). Lozier claims the trial court misinterpreted Mississippi Code Section 45-33-47 as applied to him. Lozier also claims that the MSORL is unconstitutional because it violates ex post facto laws of the federal and state constitutions, constitutes cruel and unusual punishment under both constitutions, violates the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution, and violates the Full Faith and

Credit Clause found in Article IV, Section 1, of the United States Constitution, and in Mississippi Code Sections 11-7-301 through -309.

¶2. We affirm the trial court's order denying Lozier's petition.

FACTS

¶3. The facts are not in dispute. Lozier currently resides in Carriere, Mississippi. In September 1992, he was tried for rape in Massachusetts. Following a mistrial, Lozier pleaded guilty in March 1993 to one count of indecent assault and battery upon a person over the age of fourteen.

¶4. Lozier received a suspended sentence of four to five years, and he was placed on probation for three years. Lozier was discharged from probation by court order in May 1996. As required by Massachusetts law, Lozier began registering as a sex offender in Massachusetts in 1997.

¶5. Lozier moved to Mississippi in 2006 to work in construction. As required by Mississippi law, Lozier began registering with Mississippi Sex Offender Registry (Registry). Lozier has complied with the MSORL's registration requirements since that time.

¶6. On April 24, 2017, Massachusetts' Sex Offender Registry Board notified Lozier, by letter, that he no longer had a duty to register in Massachusetts under Massachusetts General Laws Chapter 6, Section 178G (West, Westlaw through Ch. 88 of 2019 1st Annual Sess.), *declared unconstitutional on other grounds by Doe v. Sex Offender Registry Bd.*, 102 N.E.3d 950 (Mass. 2018). This section expressly allows a sex offender required to register

to cease registering after twenty years from the date of conviction, adjudication, or release from custody or supervision, whichever occurs last. *Id.*

¶7. On November 28, 2017, Lozier filed a petition in the Pearl River County Circuit Court seeking relief from the MSORL’s registration requirements under the full faith and credit given to foreign orders under the federal constitution and Mississippi Code Section 11-7-301 to -309 (Rev. 2019). The State filed a response objecting to Lozier’s petition.

¶8. A hearing was held on May 7, 2018, after which the trial court entered an order denying Lozier’s petition. The trial court found that even though Lozier is no longer required to register in Massachusetts, he still must register in Mississippi.

¶9. The trial court found that, according to Section 45-33-47, “[r]egistration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.” Miss. Code Ann. § 45-33-47(2)(a) (Rev. 2015). According to the trial court, the meaning of this language is clear: “It does not matter how long Lozier had been registered under the laws of Massachusetts[; w]hen [Lozier] moved to Mississippi in 2006, that was when ‘the clock’ began on the time he must register as a sex offender in Mississippi.”

¶10. The trial court did not reach the question of which “tier”¹ Lozier’s crime would fall under. The trial court opined, however, that even if the crime fell under tier one, Section 45-33-47 would require registration in Mississippi until the year 2021 (fifteen years from

¹ Section 45-33-47 separates registrable offenses into three tiers. Tier-one offenses require registration for fifteen years; tier-two offenses require registration for twenty-five years; and tier-three offenses require lifetime registration. Miss. Code Ann. § 45-33-47 (Rev. 2015).

Lozier’s first registration in Mississippi in 2006). Thus, according to the trial court, Lozier’s petition is at least three years premature.

DISCUSSION

¶11. At the outset, the only constitutional claim Lozier raised in the trial court is that Mississippi is required to give full faith and credit to his having been relieved by Massachusetts of the duty to register as a sex offender in that state. For the first time on appeal, Lozier asserts new constitutional claims. These new claims, however, are barred from review and will not be considered in this appeal. See *Wright v. Wright*, 693 So. 2d 898, 903 (Miss. 1997) (declining to entertain on appeal a new theory of unconstitutionality not first raised in the trial court), *overruled on other grounds by E. Miss. State Hosp. v. Callens*, 892 So. 2d 800 (Miss. 2004).

I. Whether the trial court misinterpreted Section 45-33-47.

¶12. The MSORL requires that, “[a]ny person having a permanent or temporary residence in this state . . . who has been convicted of a registrable offense in this state or another jurisdiction . . . shall register with the responsible agency and the Mississippi Department of Public Safety.” Miss. Code Ann. § 45-33-25(1)(a) (Rev. 2015).

¶13. Lozier’s conviction in Massachusetts is a registrable offense under the MSORL, which defines a registrable offense as “[a]ny offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had[.]” Miss. Code Ann. § 45-33-23(h)(xxii) (Supp. 2019).

¶14. Persons with a duty to register under Section 45-33-25 shall only be relieved of the duty under subsection (2) of Section 45-33-47. Section 45-33-47(2) says that “[a] person required to register for a registrable sex offense under Section 45-33-25[,] . . . whose duty to register arose in another jurisdiction,” may petition the circuit court “to be relieved of that duty under the following conditions”:

(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender’s tier classification. Incarceration for any offense will restart the minimum registration requirement. Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.

. . . .

(b) **Tier One.** — (i) Tier One [registrable offenses] require[] registration for a minimum of fifteen (1) years in this state

. . . .

(c) **Tier Two.** — (ii) Tier Two [registrable offenses] require[] registration for a minimum of twenty-five (25) years in this state

. . . .

(d) **Tier Three.** — Tier Three [registrable offenses] require[] lifetime registration, the registrant not being eligible to be relieved of the duty to register except as otherwise provided in this section

Miss. Code Ann. § 45-33-47(2) (Rev. 2015).

¶15. Lozier argues that the trial court mistakenly found that he had not met a minimal time requirement in Mississippi and was ineligible to petition for relief. Lozier contends that

when he began registering in Mississippi in June 2006, the minimal time requirement was ten years under former Section 45-33-47(2)(a).²

¶16. Lozier contends that, technically, he was eligible to petition for relief at the time he moved to Mississippi in 2006, because ten years had passed from the date of his release from his Massachusetts probation in May 1996. Yet it was only because he was required to register for twenty years in Massachusetts that he was even required to register in Mississippi.

¶17. Lozier further contends that even under the current MSORL, he no longer falls under tier one because his Massachusetts conviction does not fulfill any category of tier one. Thus,

² When Lozier began registering under the MSORL in June 2006, Section 45-33-47(2)(a) provided as follows:

(a) The offender has maintained his registration in Mississippi for not less than ten (10) years from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation. Incarceration for any offense will restart the ten-year minimum registration requirement. Registration in any other jurisdiction or state does not reduce the ten-year time requirement for maintaining registration in Mississippi.

Miss. Code Ann. § 45-33-47(2)(a) (Rev. 2004). This section was amended in July 2007, providing as follows:

(a) The offender has maintained his registration in Mississippi for not less than twenty-five (25) years from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation. Incarceration for any offense will restart the twenty-five-year minimum registration requirement. Registration in any other jurisdiction does not reduce the twenty-five-year time requirement for maintaining registration in Mississippi.

Miss. Code Ann. § 45-33-47(2)(a) (Supp. 2007). This section was amended again in July 2011 to provide the current three-tier framework noted in this opinion.

according to Lozier, the trial court could have proceeded to rule on his petition under Section 45-33-47(3), which provides in part as follows:

In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant properly maintained his registration as required by law and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

Miss. Code Ann. § 45-33-47(3) (Rev. 2015).

¶18. Lozier says that he has engaged in no criminal behavior before and after his conviction. He has maintained his registration, and he poses no threat to public safety, his community, or any other community. And he claims that future registration will not serve the purposes of the MSORL.

¶19. The State, however, argues that the trial court had no discretion to grant the relief sought by Lozier, under Section 45-33-47. According to the State, Lozier disregards the mandatory minimum registration requirements set forth in Section 45-33-47. The decision to relieve an offender from the duty to register is within the discretion of the trial court only after the petitioner has met the statutory requirements set forth in Section 45-33-47 and its minimum registration periods. The State contends that even if this Court were to find that Lozier had met his burden of proof by clear and convincing evidence that future registration would not serve the purposes of the MSORL, Lozier cannot prove that he has maintained his registration as required by Mississippi law.

¶20. We agree with the State and find that the trial court’s interpretation of Section 45-33-47(2)(a) is correct. Based upon its language, Section 45-33-47(2)(a) requires an offender with “permanent . . . residence in this state”³ to have maintained “registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender’s tier classification.” Section 45-33-47(2)(a) further states that, “[r]egistration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.” Miss. Code Ann. § 45-33-47(2)(a).

¶21. We see no other interpretation or construction that can be given to the statute. The MSORL classifies sex offenders as either a tier-one, a tier-two, or a tier-three offender. Miss. Code Ann. § 45-33-47(2)(b),(c), and (d). The minimum time that MSORL requires for a tier-one or a tier-two offender to maintain registration in Mississippi is fifteen years and twenty-five years, respectively. Miss. Code Ann. § 45-33-47(2)(b), (c).

¶22. No language or provision contained in the MSORL provides credit to those required to register in Mississippi for registration periods maintained in other jurisdictions. Again, Section 45-33-47(2)(a) states that “[r]egistration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.” Miss. Code Ann. § 45-33-47(2)(a).

¶23. Here, as the trial court found, according to Section 45-33-47, Lozier must maintain his registration in Mississippi for the minimum amount of time required by his tier

³ Miss. Code Ann. § 45-33-25(1)(a) (Rev. 2015).

classification in order to seek relief from his duty to register in Mississippi. The MSORL provides no credit for the period of time that Lozier was required to register in Massachusetts. Thus we find no merit to Lozier's claim that the trial court misinterpreted the MSORL.

II. Full Faith and Credit

¶24. Lozier contends that full faith and credit should be given in Mississippi to the administrative rulings from other states in which that particular state's registry has released the person from their duty to register in the state where the offense was committed. Lozier cites Article IV, Section 1, of the United States Constitution and Sections 11-7-301 through -309 of the Mississippi Code (Miss. Code Ann. §§ 11-7-301 to -309 (Rev. 2019)).

¶25. Article IV, Section 1, provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Record and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV § 1.

¶26. Section 11-7-301 provides that, "[F]oreign judgment' means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Miss. Code Ann. § 11-7-301.

¶27. The State points out that Lozier's relief from the duty to register in Massachusetts does not result from a court order but rather an executive action taken by the Massachusetts Sex Offender Registry Board, evidenced through a letter. The State further points out that numerous other courts that have addressed the issue have held that the Full Faith and Credit

Clause of the United States Constitution generally does not apply to sex-offender registration laws amongst states.

¶28. We agree with the State. Neither the federal Full Faith and Credit Clause nor Sections 11-7-301 to -309 require Mississippi to release Lozier from his registration duties under MSORL due to Lozier's release from Massachusetts's sex offender registry.

¶29. For purposes of Section 11-7-301 to -309, Lozier's relief from the duty to register in Massachusetts does not result from a "foreign judgment" as defined by Section 11-7-301. Rather, as the State points out, it results from an executive action by the Massachusetts Sex Offender Registry Board.

¶30. For purposes of the federal constitution's Full Faith and Credit Clause, the United States Supreme Court has held that the "clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that [latter] statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events." *Pac. Emp'rs Ins. Co. v. Indust. Accident Comm'n.*, 306 U.S. 493, 502, 59 S. Ct. 629, 83 L. Ed. 940 (1939). The Full Faith and Credit Clause may not be applied to frustrate a state's "domestic policy, in terms declared to be exclusive in its application to persons and events within the state." *Id.* at 503. It "does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998) (quoting *Pac. Emp'rs Ins. Co.*, 306 U.S. at 501)).

¶31. As noted by the State, the federal case of *Rosin v. Monken*, 599 F.3d 574 (7th Cir. 2010), is instructive. There, a sex offender entered into a plea bargain in New York under which he did not have to register as a sex offender. *Id.* at 575. A New York state court entered a judgment of conviction on the plea bargain. *Id.* The sex offender later moved to Illinois and was forced to register as a sex offender. *Id.* He sued Illinois state officials, claiming they had failed to give full faith and credit to the New York order by requiring him to register. *Id.* A federal district court denied relief, and the Seventh Circuit affirmed the district court. *Id.*

¶32. *Rosin* reasoned that even if the New York order had stated that the plaintiff need not register in New York or any other state, Illinois’s recognition of the New York order would not oblige Illinois to enforce that order in the prescribed manner. *Id.* at 576. *Rosin* held that, “New York has no authority to dictate to Illinois the manner in which it can best protect its citizenry from those convicted of sex offenses.” *Id.* at 577. And “Illinois need not dispense with its preferred mechanism for protecting its citizenry by virtue merely of a foreign judgment that envisioned less restrictive requirements being imposed on the relevant sex offender.” *Id.* at 577. *Rosin* explained that “[t]he Full Faith and Credit Clause was enacted to preclude the same matters being relitigated in different states as recalcitrant parties evade unfavorable judgments by moving elsewhere. It was never intended to allow one state to dictate the manner in which another state protects its populace.” *Id.*

¶33. A Nevada case cited by the State also is instructive. In *Donlan v. State*, Eugene Donlan pleaded guilty in 1985 to a sex offense in California that required him to register in

California as a sex offender. *Donlan v. State*, 249 P.3d 1231, 1232 (Nev. 2011). Donlan moved to Nevada in 2005, and began registering there as required by Nevada law. *Id.* In 2009, the California Department of Justice terminated Donlan’s registration requirement. Donlan then filed a petition in the trial court to terminate his requirement to register as a sex offender in Nevada. *Id.* The trial court denied Donlan’s petition, and the Nevada Supreme Court affirmed the trial court. *Id.*

¶34. *Donlan* held that an executive branch administrative decision was not a final court judgment, and public acts or records do not “require a State to apply another State’s law in violation of its own legitimate public policy.” *Id.* at 1233 (quoting *Nevada v. Hall*, 440 U.S. 410, 421-22, 99 S. Ct. 1182, 59 L. Ed. 2d 416 (1979), *overruled on other grounds by Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 203 L. Ed. 2d 768 (2019)). Consequently, Nevada properly imposed its sex offender registration law on a convicted sex offender when he moved to that state, “[e]ven if California imposes less restrictive requirements upon sex offenders” *Id.*

¶35. Here, convicted sex offenders residing in Mississippi who committed their offenses in Mississippi or other states are subject to this state’s sex offender registration laws. The MSORL is a matter of this state’s interests and public policy, not that of Massachusetts. And “[Massachusetts] has no authority to dictate to [Mississippi] the manner in which it can best protect its citizenry from those convicted of sex offenses.” *Rosin*, 599 F.3d at 577. The length and manner of Lozier’s MSORL requirements are determined by Mississippi law, not the law of Massachusetts.

¶36. Accordingly, the trial court rightly rejected Lozier’s full-faith-and-credit claims.

CONCLUSION

¶37. For these reasons, we affirm the trial court’s denial of Lozier’s petition seeking relief from the MSORL’s registration requirements.

¶38. **AFFIRMED.**

**RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL,
CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.**