STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT PATRICK POLDERDYK,

Defendant-Appellant.

UNPUBLISHED
May 21, 1996

No. 180185
LC No. 94-000944-FC

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

PER CURIAM.

Defendant pleaded guilty to first-degree criminal sexual conduct, MCL 750.520b(1)(b)(ii); MSA 28.788(2)(1)(b)(ii), and to being a second or subsequent sexual offender, MCL 750.520f; MSA 28.788(6). He was sentenced to twenty to sixty years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

As his sole issue on appeal, defendant argues that his first-degree CSC conviction was improperly treated as a second or subsequent criminal sexual offense conviction under MCL 750.520f; MSA 28.788(6), where his prior conviction was a Michigan conviction for assault with intent to commit first-degree CSC, contrary to MCL 750.520g; MSA 28.788(7). We disagree.

Under MCL 750.520f(2); MSA 28.788(6)(2), defendant's first-degree CSC conviction may be considered a conviction for a second or subsequent offense if his prior conviction is for: (1) first-, second-, or third-degree CSC *or* (2) an offense involving a violation of "any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense." Defendant's prior conviction for assault with

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.
**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

intent to commit first-degree CSC does not fall within the first category of offenses, inasmuch as it does not involve one of the enumerated offenses in that category. However, we believe the prior conviction falls within the second category of offenses.

Defendant acknowledges that assault with intent to commit first-degree CSC is a similar-in-kind criminal sexual offense. However, relying on the maxim *expressio unius est exclusio alterius*, defendant contends that the express reference in § 520f(2) to three Michigan statutory offenses (i.e., §§ 520b, 520c and 520d) implies "the intent of the Legislature to exclude the use of any other Michigan statutory provision involving a sexual offense from use as the prior offense" for purposes of § 520f. In other words, defendant argues that the second category described above encompasses only similar-in-kind criminal sexual offense convictions from other jurisdictions, thereby excluding his Michigan conviction for assault with intent to commit first-degree CSC. We disagree.

The *expressio unius* maxim provides that the express mention of one thing in a statute implies the exclusion of other similar things. *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995). If § 520f(2) had been limited in scope to only the three enumerated offenses in the first category of offenses described above, then perhaps defendant's argument would possess some merit. See e.g., *People v Anderson*, 202 Mich App 732; 509 NW2d 548 (1993). However, because the statute expressly refers to a second category of offenses, we find that defendant's reliance on the *expressio unis* maxim is misplaced.

The Legislature's use of the broad phrase "any state" in the second category of cases evidences an intent that similar-in-kind criminal sexual offense convictions arising in Michigan are included within the second category of offenses. See *People v Stanaway*, 446 Mich 643, 658; 521 Mich 557 (1994); *In re Forfeiture of $5,264*, 432 Mich 242, 250; 439 NW2d 246 (1989). Moreover, the statute evidences a legislative intent that included among the similar-in-kind criminal sexual offense convictions that may be considered under the statute are convictions for offenses involving rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any of those offenses. While §§ 520b, 520c and 520d encompass some of these listed offenses, notably rape and carnal knowledge, they do not necessarily encompass acts involving indecent liberties or gross indecency, or an attempt to commit any of the listed offenses. To adopt defendant's interpretation of § 520f would mean that a prior conviction for a similar-in-kind criminal sexual offense involving indecent liberties, gross indecency, or an attempt to commit a listed offense could not be considered for purposes of § 520f if the conviction arose in Michigan, but could be considered if the conviction arose in any other state. To draw such a distinction would be unreasonable and lead to an absurd result. Because statutes are to be construed so as to avoid absurd or unreasonable consequences, *People v Weatherford*, 193 Mich App 115, 119; 483 NW2d 924 (1992), defendant's interpretation is rejected.

Accordingly, we conclude that § 520f encompasses consideration of defendant's prior Michigan conviction for assault with intent to commit first-degree CSC and, therefore,

defendant's present first-degree CSC conviction properly was treated as a conviction for a second or subsequent offense under § 520f.

Affirmed.

/s/ Thomas G. Kavanagh
/s/ Robert B. Burns
/s/ Glenn S. Allen, Jr.