

STATE OF MICHIGAN
COURT OF APPEALS

PETER ALLEN KOETJE,

Petitioner-Appellant,

v

KENT COUNTY PROSECUTOR'S OFFICE,

Respondent-Appellee.

UNPUBLISHED

June 7, 2005

No. 252343

Kent Circuit Court

LC No. 03-008449-AZ

Before: Murphy, P.J., and White and Smolenski, JJ.

SMOLENSKI, J. (*dissenting*).

Because I believe the trial court properly determined that petitioner was required to register as a sex offender, I respectfully dissent.

Under the sex offenders registration act, individuals who have been convicted of a listed offense must register. MCL 28.723(1)(a). The phrase "listed offense" has been defined to include, among other things, "[a]ny other violation of law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age." MCL 28.722(e)(x). Furthermore, a listed offense includes an offense that is "substantially similar to an offense described in subparagraphs (i) to (xii) under a law of the United States, any state, or any country or under tribal or military law." MCL 28.722(e)(xiii). Hence, an individual convicted of a crime in a state other than Michigan will be required to register if the conviction constitutes a "violation of law . . . that by its nature constitutes a sexual offense against an individual who is less than 18 years of age." MCL 28.722(e)(x).

In *People v Meyers*, 250 Mich App 637, 648-649; 649 NW2d 123 (2002), the court explained,

by referring to "sexual offenses," rather than "sexual offense statutes," the language of MCL 28.722(d)(x) directs us to examine the unique nature of the criminal conduct underlying the charge that the defendant violated a state law or municipal ordinance to determine whether the criminal conduct was inherently sexual.

Thus it is the convicted individual's conduct that determines whether the violation was of a sexual nature rather than the type of conduct sought to be punished under the statute.

In the present case, petitioner pleaded guilty to criminal attempt to contribute to the delinquency of a minor. The relevant statute does not, on its face, attempt to punish conduct of a sexual nature, but under *Meyers, supra*, petitioner would still be required to register as a sex offender if the underlying violation was by its nature a sexual offense.

At petitioner's sentencing hearing, the victim's mother described petitioner as someone who preyed upon her daughter. In addition, the prosecutor told the court that the petitioner "basically blames the 14-year-old girl for being the sexual aggressor." He further stated that the petitioner provided the alcohol and drugs to the victim before he committed the "act." Furthermore, the trial court described the petitioner's crime as "taking advantage of a person that was not an adult," and, based upon this decided to sentence petitioner to the maximum penalty of three years in prison. After the trial court announced the three year prison term, the petitioner threatened to withdraw his plea. Faced with the threatened withdrawal of the plea, the trial court acquiesced to the original plea agreement and sentenced petitioner to two years. Petitioner's use of this threatened withdrawal to leverage the trial court into granting petitioner a more lenient sentence than the trial court found was warranted based on defendant's sexually aggressive conduct, is tantamount to an admission that the conduct was as described at the hearing. Consequently, under the unique facts of this case, I would conclude that petitioner was required to register as a sex offender because he was convicted of a violation of law that by its nature constituted a sexual offense against an individual who was less than 18 years of age. MCL 28.722(e)(x).

/s/ Michael R. Smolenski