

SUPREME COURT OF VIRGINIA

Terri Hackley McCabe v. Commonwealth of Virginia

650 S.E.2d 508 (Va. 2007) · No. Record No. 061909 · Decided September 14, 2007

SUMMARY

The Supreme Court of Virginia affirmed dismissal of Terri Hackley McCabe's complaint challenging the retroactive application of enhanced sex-offender reregistration requirements. The court held that lifetime quarterly reregistration, subject to possible reduction, did not implicate a fundamental liberty interest, that no hearing was required because classification depended solely on the fact and nature of the prior conviction, and that the equal protection claim was moot.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Elizabeth B. Lacy; Chief Justice Hassell; Justice Keenan; Justice Koontz; Justice Kinser; Justice Lemons; Justice Agee; Senior Justice Lacy
JURISDICTION	Virginia
DECIDED	September 14, 2007
DOCKET	Record No. 061909
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Circuit Court of Fairfax County's order sustaining the Commonwealth's demurrer and dismissing McCabe's constitutional challenge to amended sex-offender reregistration requirements.
STANDARD OF REVIEW	Substantive due process claims receive strict scrutiny only when legislation infringes a fundamental right or specially protected liberty interest; otherwise rational-basis review applies. The procedural due process claim turns on whether the challenged classification implicates a protected liberty interest and whether a hearing could establish facts material to the statutory scheme. The equal protection claim was dismissed as moot.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion; precedential.
PARTIES	Terri Hackley McCabe v. Commonwealth of Virginia

TOPICS

substantive due process

procedural due process

equal protection

constitutional law

statutory interpretation

PRACTICE AREAS

constitutional law

civil rights

criminal procedure

sex offender registration

QUESTIONS PRESENTED

1. Whether applying the amended sex-offender classification and lifetime quarterly reregistration requirement to McCabe violated substantive due process.
2. Whether the automatic reclassification of McCabe's prior conviction without a hearing violated procedural due process.
3. Whether the statutory treatment of convictions under Code § 18.2-370.1 violated equal protection based on the timing of the convictions.

HOLDINGS

1. A convicted felon has no fundamental or specially protected liberty interest in being free from lifetime quarterly sex-offender reregistration, so the amended registration requirement does not violate substantive due process on that basis.
2. McCabe had no fundamental constitutional right to rely on the civil registration scheme in effect when she pleaded guilty and was convicted.
3. Procedural due process did not require a hearing before McCabe's offense was subject to the amended sexually violent offense classification because the classification depended solely on the fact and nature of her prior conviction, not on current dangerousness or recidivism.
4. McCabe's equal protection claim was moot because the current statute imposed the registration requirements on all persons convicted of listed offenses on or after July 1, 1994, eliminating the asserted distinction based on whether the conviction occurred before or after July 1, 1997.

KEY QUOTATIONS

“If the asserted right is not a fundamental right or liberty interest specially protected by the Due Process Clause, the legislation will survive constitutional scrutiny if it is rationally related to a legitimate governmental interest.” (at 510-11)

“Therefore, we hold that McCabe's right to be free from lifetime quarterly reregistration as a sex offender does not qualify as a liberty interest specially protected by the Due Process Clause for purposes of a substantive due process claim.” (at 512)

“In sum, the change in classification of a prior conviction in a civil registration scheme does not necessitate any additional process for McCabe because, as the trial court properly held, McCabe “failed to allege that a hearing on the reclassification would have established facts relevant to the legislature's statutory scheme.”” (at 513-14)

FACTUAL BACKGROUND

McCabe pleaded guilty on December 19, 1997, to taking indecent liberties with a minor by a person in a custodial or supervisory relationship, in violation of Code § 18.2-370.1. At the time, she was required to register as a sex offender annually for ten years. A 2001 amendment reclassified her offense as a sexually violent offense, requiring quarterly reregistration for life, subject to a statutory mechanism for seeking reduction of the quarterly requirement. McCabe challenged the amended requirements as violations of substantive due process, procedural due process, and equal protection.

PROCEDURAL HISTORY

McCabe filed a complaint in the Circuit Court of Fairfax County challenging the retroactive application of amended sex-offender registration requirements. The circuit court sustained the Commonwealth's demurrer and dismissed the complaint. The Supreme Court of Virginia awarded McCabe an appeal on five assignments of error and affirmed.

DISPOSITION

affirmed

CASES CITED

- Washington v. Glucksberg, 521 U.S. 702, 721, 728 (1997)
- Reno v. Flores, 507 U.S. 292, 302, 305 (1993)
- Heller v. Doe, 509 U.S. 312, 319-20 (1993)
- Walton v. Commonwealth, 255 Va. 422, 427-28, 497 S.E.2d 869, 872-73 (1998)
- Weems v. United States, 217 U.S. 349, 364-65 (1910)
- Doe v. Tandeske, 361 F.3d 594, 597 (9th Cir. 2004), cert. denied, 543 U.S. 817 (2004)
- Smith v. Doe, 538 U.S. 84, 89-90, 102-03 (2003)
- Connecticut Department of Public Safety v. Doe, 538 U.S. 1, 4, 8 (2003)
- Wilkinson v. Austin, 545 U.S. 209, 213, 221 (2005)
- Allen v. Mottley Construction Co., 160 Va. 875, 888, 170 S.E. 412, 417 (1933)
- Board of Zoning Appeals v. CaseLin Systems, Inc., 256 Va. 206, 210, 501 S.E.2d 397, 400 (1998)
- Doe v. Moore, 410 F.3d 1337, 1344-46 (11th Cir. 2005)
- Cutshall v. Sundquist, 193 F.3d 466, 479-81 (6th Cir. 1999)
- Johnson v. Commonwealth, 259 Va. 654, 672-73, 529 S.E.2d 769, 779-80 (2000)
- Kitze v. Commonwealth, 23 Va. App. 213, 220, 475 S.E.2d 830, 834 (1996)