

SUPREME COURT OF NORTH DAKOTA

State v. Glaser

2015 ND 31 · No. 20140174 · Decided February 12, 2015

SUMMARY

The North Dakota Supreme Court affirmed Gary Michael Glaser’s criminal judgment and the district court’s order requiring him to register as a sex offender after pleading guilty to indecent exposure. The court held that the sex-offender-registration statute’s definition of “predatory” applied and that the district court had discretion, but was not required, to consider the psychosexual risk assessment in deciding whether to deviate from registration. The court also concluded that the record established a sufficient factual basis for the guilty plea under North Dakota Rule of Criminal Procedure 11(b)(3).

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Carol Ronning Kapsner, Justice; Carol Ronning Kapsner; Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	February 12, 2015
DOCKET	20140174
DISPOSITION	affirmed
PROCEDURAL POSTURE	Glaser appealed from a criminal judgment entered after he pleaded guilty to misdemeanor indecent exposure and was ordered to register as a sex offender.
STANDARD OF REVIEW	Sentencing decisions are reviewed for abuse of discretion, focusing on whether the district court acted within statutory limits or substantially relied on an impermissible factor. Statutory interpretation is reviewed de novo. An unpreserved Rule 11 claim is reviewed for obvious error, requiring a clear deviation from current law affecting substantial rights and warranting discretionary correction because it seriously affects the integrity, fairness, or public reputation of judicial proceedings.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential within North Dakota.
PARTIES	Gary Michael Glaser v. State of North Dakota

TOPICS

criminal procedure

statutory interpretation

sentencing

appellate procedure

standard of review

PRACTICE AREAS

criminal law

criminal procedure

sex-offender registration

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by applying the sex-offender-registration statute's definition of predatory conduct rather than the definition in the civil-commitment statute.
2. Whether the district court was required to consider Glaser's psychosexual risk assessment and exercise discretion to deviate from sex-offender registration.
3. Whether the district court committed obvious error under North Dakota Rule of Criminal Procedure 11(b)(3) by accepting Glaser's guilty plea without expressly determining a factual basis.

HOLDINGS

1. For purposes of determining whether an individual must register as a sex offender, the definition of "predatory" in N.D.C.C. § 12.1-32-15(1)(d) governs. The district court therefore correctly treated an act directed at a stranger as predatory conduct under the registration statute.
2. The phrase "may deviate" in N.D.C.C. § 12.1-32-15(2)(b) confers discretion rather than imposing a duty. Although the district court could consider the psychosexual risk assessment under N.D.C.C. § 12.1-32-15(4), it was not required to exercise that discretion, and its decision to require registration was not an abuse of discretion.
3. The district court did not commit obvious error in accepting Glaser's guilty plea. A factual basis may be established from anything appearing in the entire record, and the court's review of the psychosexual assessment and victim-impact statement, specification of the crime, and verification that Glaser admitted the allegation were sufficient.

KEY QUOTATIONS

"Because N.D.C.C. § 12.1-32-15(1)(d) plainly defines "predatory" and states the definition applies "[a]s used in this section" of the North Dakota Century Code, we conclude the district court was correct in applying the N.D.C.C. § 12.1-32-15(1)(d) definition of "predatory."" (¶ 14)

"Thus, in this case, in examining whether predatory conduct was exhibited in the commission of the offense, the district court could have chosen to exercise its discretion, afforded under N.D.C.C. § 12.1-32-15(4), and considered Dr. Ascano's psychosexual risk assessment report of Glaser; however, under N.D.C.C. § 12.1-32-15(2)(b), the court was not required to exercise such discretion." (¶ 23)

"In addition to questioning the parties, a trial court may determine a factual basis for the plea exists from anything appearing on the record." (¶ 27)

FACTUAL BACKGROUND

Glaser allegedly drove up to a stranger walking on a sidewalk, stopped his vehicle, and exposed his penis. He pleaded guilty to indecent exposure, a class A misdemeanor. A psychosexual risk assessment placed him at the zero percentile on the sexual-assault scale and did not indicate traits associated with risk for sexual violence, but the district court ordered him to register as a sex offender because his conduct was directed at a stranger.

PROCEDURAL HISTORY

Glaser was charged with class A misdemeanor indecent exposure, initially pleaded not guilty, and later pleaded guilty after receiving appointed counsel. At sentencing, the district court ordered sex-offender registration, imposed a one-year sentence with nine months suspended, and placed Glaser on two years of probation. Glaser appealed, arguing that the court misapplied the statutory definition of predatory conduct and failed to establish a factual basis for his guilty plea under North Dakota Rule of Criminal Procedure 11(b)(3).

DISPOSITION

affirmed

CASES CITED

- State v. Wardner, 2006 ND 256, ¶ 27, 725 N.W.2d 215
- State v. Corman, 2009 ND 85, 765 N.W.2d 530
- State v. Holbach, 2014 ND 14, ¶ 16, 842 N.W.2d 328
- Northern X-Ray Co., Inc. v. State, 542 N.W.2d 733, 735-36 (N.D. 1996)
- Edinger v. Governing Auth. of Stutsman Cnty. Corr. Ctr. and Law Enforcement Ctr., 2005 ND 79, ¶ 16, 695 N.W.2d 447
- City of Devils Lake v. Corrigan, 1999 ND 16, ¶¶ 12-13, 589 N.W.2d 579
- Matter of Adoption of K.S.H., 442 N.W.2d 417, 420 (N.D. 1989)
- State v. Kuruc, 2014 ND 95, ¶ 32, 846 N.W.2d 314
- State v. Bingaman, 2002 ND 202, ¶ 9, 655 N.W.2d 51
- State v. Miller, 2001 ND 132, ¶ 25, 631 N.W.2d 587
- Mackey v. State, 2012 ND 159, ¶¶ 9-16, 819 N.W.2d 539