

DISTRICT OF COLUMBIA COURT OF APPEALS

Arthur v. United States

Arthur v. United States · No. 19-CF-5 · Decided July 1, 2021

SUMMARY

The District of Columbia Court of Appeals affirmed Robert L. Arthur’s conviction for failing to register as a sex offender under the District of Columbia Sex Offense Registration Act. The court held that retroactive application of the Act did not violate the Ex Post Facto Clause because the registration and notification scheme is civil and remedial rather than punitive. Relying on prior precedent, the court rejected both facial and as-applied challenges based on the Act’s registration, notification, reporting, and alleged employment and housing effects.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Thompson, Associate Judge; Glickman, Associate Judge; Fisher, Senior Judge
JURISDICTION	District of Columbia
DECIDED	July 1, 2021
DOCKET	19-CF-5
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a bench trial in the Superior Court of the District of Columbia, appellant was convicted of failing to register as a sex offender under SORA. The trial court denied his pretrial motion to dismiss on the ground that retroactive application of SORA violated the Ex Post Facto Clause. The District of Columbia Court of Appeals reviewed the ruling de novo.
STANDARD OF REVIEW	De novo review of the denial of the motion to dismiss and the Ex Post Facto Clause challenge.
PRECEDENTIAL VALUE	precedential
PARTIES	Robert L. Arthur v. United States

TOPICS

- ex post facto
- constitutional law
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

constitutional law

criminal law

appellate litigation

sex-offender registration

QUESTIONS PRESENTED

1. Whether retroactive application of the District of Columbia Sex Offense Registration Act violates the Ex Post Facto Clause because SORA is punitive in purpose or effect.
2. Whether SORA's requirements are punitive as applied to Arthur based on alleged employment loss, exclusion from his mother's public housing unit, in-person reporting requirements, and stigma.
3. Whether the requirement of quarterly in-person verification is punitive or excessive under SORA.

HOLDINGS

1. SORA is a civil and remedial regulatory scheme rather than a punitive criminal penalty, and Arthur did not provide the clearest proof necessary to overcome the legislature's civil intent or this court's prior holding that SORA does not inflict punishment.
2. Because the District of Columbia Court of Appeals had definitively construed SORA as civil, Arthur could not establish an as-applied Ex Post Facto violation merely by showing the effects SORA had on him as a single individual.
3. Arthur failed to show that quarterly in-person verification was punitive or excessive either facially or as applied to him.

KEY QUOTATIONS

"We therefore affirm appellant's conviction of failure to comply with SORA's registration requirements." (at 2)

"They prohibit "[r]etroactive application of a law that inflicts greater punishment than did the law that was in effect when the crime was committed."" (at 9)

"Accordingly, we may not re-evaluate SORA's civil nature by reference to the effect that it has on appellant as "a single individual."" (at 18)

"None of appellant's claims warrants revisiting W.M. or enables appellant to overcome this court's determination in that case that SORA is not punitive." (at 27)

FACTUAL BACKGROUND

Arthur pleaded guilty to second-degree rape in Maryland in 1991, before enactment of the District of Columbia Sex Offense Registration Act of 1999. He later resided, worked, and was under supervision in the District of Columbia, became subject to SORA's lifetime registration requirement, and regularly registered through April 2015. He then failed to complete required registration updates from May 20, 2015, through November 9, 2016, although he had been advised of the registration obligation and had previously been convicted in Maryland of failing to register.

PROCEDURAL HISTORY

Arthur was charged with failing to comply with SORA registration requirements between May 20, 2015, and November 9, 2016. The Superior Court denied his motion to dismiss, conducted a bench trial, found him guilty, and entered a conviction. The Court of Appeals affirmed, holding that Arthur had not shown that SORA was punitive either facially or as applied to him.

DISPOSITION

affirmed

CASES CITED

- Solomon v. United States, 120 A.3d 618 (D.C. 2015)
- In re W.M., 851 A.2d 431 (D.C. 2004)
- North Carolina v. Alford, 400 U.S. 25 (1970)
- Smith v. Doe, 538 U.S. 84 (2003)
- Seling v. Young, 531 U.S. 250 (2001)
- Doe v. Reed, 561 U.S. 186 (2010)
- M.A.P. v. Ryan, 285 A.2d 310 (D.C. 1971)
- People v. Tucker, 879 N.W.2d 906 (Mich. Ct. App. 2015)
- In re Dutil, 768 N.E.2d 1055 (Mass. 2002)
- Garner v. Jones, 529 U.S. 244 (2000)
- Doe v. Biang, 494 F. Supp. 2d 880 (N.D. Ill. 2006)
- Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010)
- United States v. Supreme Court of New Mexico, 839 F.3d 888 (10th Cir. 2016)
- Ctr. for Individual Freedom v. Madigan, 697 F.3d 464 (7th Cir. 2012)
- Richard H. Fallon, Jr., As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321 (2000)
- State v. Williams, 952 N.E.2d 1108 (Ohio 2011)
- Doe v. DA, 932 A.2d 552 (Me. 2007)
- Tilley v. United States, 238 A.3d 961 (D.C. 2020)
- United States v. Parks, 698 F.3d 1 (1st Cir. 2012)
- State v. Gaskill, 817 N.W.2d 754 (Neb. 2012), rev'd on other grounds, 824 N.W.2d 655 (Neb. 2012)
- Does 1-5 v. Snyder, 834 F.3d 696 (6th Cir. 2016)
- State v. Letalien, 985 A.2d 4 (Me. 2009)
- McGuire v. Strange, 83 F. Supp. 3d 1231 (M.D. Ala. 2015)
- Peugh v. United States, 569 U.S. 530 (2013)