Feb 12, 2014

**SEX OFFENDER REGISTRATION: STATUTORY CONSTRUCTION RETROACTIVITY**
**APPELLATE STUFF: TRAP 47.1 ANALYZING EVERY ISSUE NECESSARY FOR THE RESOLUTION OF THE APPEAL**

*Reynolds v. State,* No. PD-1369-12, 2/12/14, Meyers. Publish. This is an extremely complicated discussion of the history of the retroactivity of the sex offender registration statute and appellate procedure. Law nerds rejoice! The client was convicted of a sex offense BEFORE sex offenders (SO) were required to register. (1990). The Statute was amended in 2005, he was convicted of failing to register in 2009.

- *The first sex offender registration provision was enacted in 1991, applicable to reportable convictions after 9-1-91*
- *In 1997, made retroactive to those with reportable convictions dating back to 9-1-70*
- *"savings clause" in the foregoing restricted its application to people who were "confined in a penal institution . ..or. . . under the supervision and control . . . of TDCJ" on or after 9-1-97*
- *Appellant completed his entire sentence in 2005 therefore that savings clause applied to him and he still was not required to register*
- *9-1-2005, statute updated again— not clear whether "savings clause" repealed*
- *Relying on a letter from TDPS that stated that he did not have to register under the new law appellant never registered*

The issues are whether the 2005 amendments imposed a new requirement for appellant to register as a sex offender although had no such duty in the past (YES) and whether this would constitute prohibited retroactivity. (DUCKED ERROR PRESERVATION) . PDR denied on the intermediate appellate court's ruling that there was some evidence to support the jury's rejection of appellant's mistake of law defense. HELD: "The plain meaning of these provisions is simply that the amendments to the law apply those with a reportable conviction that occurred on or after September 1, 1970, which includes appellant. . . .[T]he sex-offender registration requirements in Chapter 62 apply to Appellant because the 'savings clause 'that previously exempted him was deleted by the 2005 amendments. " To preserve error on the argument that this statute was unconstitutional "as applied" to him it must be objected to at the trial level. "Asserting that the statute contained an exemption for Appellant, however, is a far cry from presenting the argument that the statute is unconstitutionally retroactive because it took away Appellant's vested right not to register. This retroactivity argument cannot be made for the first time on appeal." Price's dissent (he is joined by Womack & Johnson dissented without opinion) deals with the error preservation issue. "I would reach the merits of the important retroactivity issue we granted review to address" and, were we to reverse the court of appeals to remand to the court of appeals to address the extant[1] preservation issue." "Courts of appeal are always permitted to affirm judgments of conviction on the merits of the issues raised without necessarily also reaching issues of procedural default (whether raised by the parties or not), for in that event they have addressed every issue "necessary to final disposition of the appeal. Only if we should later reverse the lower court's judgment that affirmed the conviction does the issue of procedural

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default then become ‘ necessary to final disposition on appeal’ on remand. . . . [The TCCA should only address error preservation in the first instance on discretionary review] when it allows us to reach the issue we actually exercised our discretionary authority to review—presumably an issue of greater jurisprudential value than a run-of –the-mill question of procedural default (or else we would not have granted discretionary review in the first place). **Any other attitude tends to demean the office of discretionary review-to shepherd the jurisprudence by providing authoritative and final dispositions on issues of paramount importance.**”[2] Janet’s thoughts: (1) your guy probably has to register even if his conviction is really old if it is for a reportable conviction (2) make unconstitutional as applied to your client challenges at the trial level or waive error (3) the issue that this statute is unconstitutional due to its retroactivity is (a) ripe and (b) one that the TCCA and possibly the SCOTUS is interested in –make those objections in an appropriate case (4) the language in this case provides an awesome recipe for drafting your PDR (5) letters from TDPS saying you do not have to register are not worth the paper that they are printed on.

[2] *TRAP 47.1.*

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