STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-1702

ANDREW WOOD,
Plaintiff,

v.

JEFFREY WALLIN, Director of Vermont Crime Information Center and MICHAEL SCHIRLING, Commissioner of Department of Public Safety,
Defendants.

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Andrew Wood seeks Rule 75 review of a determination of the Vermont Department of Public Safety (DPS) to not remove him from the Vermont Sex Offender Registry operated by the Vermont Crime Information Center. He claims that his obligation to appear on the Registry has lapsed due to the passage of time. Prior to suit, DPS denied relief, taking the position that the 10-year period after which he will be removed from the Registry has not yet begun to run, much less ended. There is no dispute of fact. The controversy presents an issue of pure law—how to interpret the applicable statute. The parties have filed cross-motions for summary judgment addressing that issue.

For qualifying convictions, as relevant to this case, the obligation to appear on the Registry ceases "10 years after the sex offender is released from prison or discharged from probation or parole, whichever is later." 13 V.S.A. § 5407(e).[1] In 1993, Mr. Wood was sentenced *concurrently* to 8–10 years for felony sexual assault and 20–life for murder. Concurrent sentences run at the same time. The sexual assault conviction, but not the murder conviction, triggered Mr. Wood's requirement to appear on the Registry. He served more than 10 years in prison (beyond the maximum of his sexual assault sentence) and eventually was released on parole. At this point, he has spent more than 10 years on parole. He remains on the Registry, and he remains on parole.

Mr. Wood's position is that he maxed out his sexual assault sentence so that once he was released from prison, the 10-year clock started ticking. Because it is now more than 10 years later, he argues, he should be removed from the Registry, regardless that he remains on parole for his murder conviction. In his view, any other interpretation of § 5407 is

[1] Mr. Wood relies on the original 1996 version of § 5407, and the State does not object to that. Accordingly, for purposes of this decision and without taking any position on which version of the Registry statutes properly apply, the court will apply the 1996 version of § 5407 here.

"absurd."

The State's position is that, under the plain language of § 5407(e), no event yet has occurred to trigger the 10-year period because Mr. Wood remains on parole. In Mr. Wood's view, he is on parole for murder and cannot be on parole for sexual assault because he already has exceeded his maximum for that sentence. The State responds that he in fact *is* on parole for sexual assault because when he was sentenced concurrently, both sentences "merged" into one aggregate sentence pursuant to 13 V.S.A. § 7032(c)(1). His sentence for sexual assault, the State argues, therefore remains ongoing so long as his murder sentence does.[2] The State also argues that if there is any ambiguity as to the matter, the court should defer to DPS's interpretation of § 5407 because it is the agency in charge of implementing it. See *In re Williston Inn Group*, 2008 VT 47, ¶ 12, 183 Vt. 621.

Section 5407(e) provides as follows: "All reporting requirements under this section, except for sexually violent predators, shall cease 10 years after the sex offender is released from prison or discharged from probation or parole, whichever is later. The 10-year period shall not be affected or reduced in any way by the actual duration of the offender's sentence as imposed by the court, nor shall it be reduced by the sex offender's release on parole or ending of probation or other early release."[3]

"In interpreting a statute, our primary aim is always to determine the intent of the Legislature and implement that intent. In determining that intent, we begin by looking to the plain language of the statute. If the intent of the Legislature is apparent on the face of the statute because the plain language of the statute is clear and unambiguous, we implement the statute according to that plain language. As a corollary of this principle, we resort to other tools of statutory construction—such as legislative history—only if the plain language of the statute is unclear or ambiguous." *Flint v. Dept. of Lab.*, 2017 VT 89, ¶ 5, 205 Vt. 558 (citations omitted).

Section 5407(e) recites three potential events that will trigger the 10-year period: release from prison, discharge from probation, and discharge from parole. The effective trigger is whichever occurs later. Mr. Wood has not been discharged from parole. Therefore, under the plain language of the first sentence of § 5407(e), his 10-year reporting requirement has not yet begun.

Mr. Wood rejects this outcome as "absurd." The thrust of his objection is that the operative release or discharge must be understood to relate to the conviction that caused him to appear on the Registry in the first place, and he has maxed out that sentence. Therefore, he argues, the 10-year period must have begun, at least when he maxed out the sexual assault sentence or was released thereafter.

Mr. Wood's argument may make sense abstractly, and it might be a debatably wiser policy choice that the legislature could have adopted. But it did not. The 10-year period is not triggered by maxing out one's sentence, unless that coincides with the later of one of the

[2] The State represents that, along with DPS, the DOC takes the same position.

[3] Applicable regulations exist, but they merely parrot the statutory language, and thus are of no use here. See Vt. Admin. Code 17-2-2:3.11(a).

express statutory triggers. The second sentence of § 5407(e) expressly disconnects the "actual duration of the offender's sentence as imposed by the court" from the statutory triggers. This appears to be intended to account for the myriad but commonplace sentencing scenarios that are more complex than a single sentence for a single conviction that caused one to appear on the Registry, such as in this case.

"Generally, 'statutes should not be construed to produce absurd or illogical consequences.' However, '[a] statute is not absurd simply because it causes an outcome that . . . a litigant believes to be anomalous or perhaps unwise.'" *Estate of Daniels by and through Lyford v. Goss*, 2022 VT 2, ¶ 23. Courts should apply the canon against absurdity only "where it is quite impossible that [the legislature] could have intended the result and where the alleged absurdity is so clear as to be obvious to most anyone." *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 706 (2d Cir. 2019) (citation omitted), quoted in *Billewicz v. Town of Fair Haven*, 2021 VT 20, ¶ 29.

It is not "impossible" that the legislature could have intended § 5407(e) to apply to Mr. Wood in the manner DPS has imposed it. The State offers a policy justification for it, that in a case such as this, it ensures that the 10-year period will apply when the offender otherwise would not have been under any State supervision whatsoever. Regardless whether one finds such a rationale wise, it is not impossible that the legislature could have made such a choice.

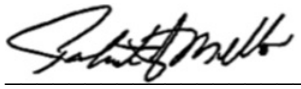
Were there any ambiguity as to this interpretation § 5407(e), the court would defer to DPS's interpretation of it. DPS is entitled to that deference as the agency in charge of implementing § 5407(e), and its interpretation aligns with plain meaning and certainly would be among those that are reasonable.

The State has further argued that this outcome is warranted because Mr. Wood in fact *is* on parole for sexual assault. It arrives at this conclusion by expansively interpreting the statute detailing how concurrent sentences are calculated, 13 V.S.A. § 7032(c)(1), as *substantively* converting each component sentence into one with the longest maximum, as though the court had imposed it in that manner. In other words, in the State's view, Mr. Wood's 10-year sexual assault sentence actually became a life sentence because it was imposed concurrent to a life sentence. This view of 13 V.S.A. § 7032(c)(1) is in some tension with § 7032(b), which requires that "each" component of a concurrent sentence "shall run from its respective date of commitment after sentence," and could have substantial repercussions outside the context of § 5407(e). In any event, it is not necessary to resolve the matter here as this case is resolved on the plain meaning of § 5407(e).

Order

For the foregoing reasons, the State's motion for summary judgment is granted, and Mr. Wood's is denied. The State shall submit a form of judgment. V.R.C.P. 58(d).

SO ORDERED this 30th day of September, 2022.



Robert A. Mello
Superior Judge