

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 1279

STATE OF LOUISIANA

VERSUS

DEMENICA DION WESTBROOK



Judgment Rendered: December 21, 2007

On Appeal from the 22nd Judicial District Court
In and For the Parish of Washington
Trial Court No. 06 CR3 94700

Honorable Ray Childress, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

Guidry, Jr. concurs in the result.

HUGHES, J.

Defendant, Demenica Westbrook, was charged by bill of information with sexual battery, a violation of LSA-R.S. 14:43.1 (Count 1), and unauthorized entry of an inhabited dwelling, a violation of LSA-R.S. 14:62.3 (Count 2). Although the defendant initially pled not guilty to these charges, he later entered into a plea agreement whereby his plea was changed to guilty on both counts.¹

Following his guilty plea, the trial court sentenced the defendant on Count 1 to serve four years at hard labor and to register in accordance with the sexual offender statute. On Count 2, the trial court sentenced the defendant to serve four years at hard labor, to run concurrently with his sentence on Count 1. Additionally, the defendant's sentences on Counts 1 and 2 were also ordered to be served concurrent with all other sentences he received.

Defendant filed a motion to reconsider his sentence on the basis that his conviction for sexual battery (Count 1) is not a "sex offense" that would require his registration as a sex offender as required by LSA-R.S. 15:541.

The trial court denied the defendant's motion to reconsider sentence. Defendant appeals. We affirm his convictions and sentences.

DISCUSSION

The present offenses were committed on May 9, 2005. In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to reconsider sentence on Count 1. Defendant argues that the

¹ The record also includes separate bills of information filed under separate docket numbers charging defendant with: possession with intent to distribute marijuana, a violation of LSA-R.S. 40:966(A)(1); violation of controlled dangerous substance law within one thousand feet of property used for school purposes or recreation park area, a violation of LSA-R.S. 40:981.3; and simple burglary of an inhabited dwelling, a violation of LSA-R.S. 14:62.2. Defendant pled guilty to these charges on the same date he entered his present guilty pleas; however, these separate convictions are not at issue in this appeal.

definition of "sex offense" contained in LSA-R.S. 15:541(14.1) excludes a first conviction of sexual battery from sex offender registration requirements.

Louisiana law requires any adult residing in this state, who is convicted of any "sex offense," to register with the sheriff of the parish of the person's residence and with the chief of police if the address of the residence is located in an incorporated area that has a police department. LSA-R.S. 15:542(A). A "sex offense" is defined by LSA-R.S. 15:541(14.1), which at all pertinent times provided:²

§ 541. Definitions

For the purposes of this Chapter,^[3] the definitions of terms in this Section shall apply:

* * *

(14.1) "Sex offense" means deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest), R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm), R.S. 14:283 (video voyeurism), a second or subsequent conviction of R.S. 14:283.1 (voyeurism) **or any provision of Subpart C of Part II or Subpart A(1) of Part V of Chapter 1 of Title 14** of the Louisiana Revised Statutes of 1950, committed on or after June 18, 1992, or committed prior to June 18, 1992, if the person, as a result of the offense, is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state or federal law which is equivalent to an offense provided for in this Chapter. [Emphasis added.]

The statute prohibiting the crime of sexual battery, LSA-R.S. 14:43.1, is found in Subpart C ("Rape and Sexual Battery") of Part II ("Offenses Against the Person") of Chapter 1 ("Criminal Code"), of Revised Statutes, Title 14, and is

² The provisions of LSA-R.S. 15:541(14.1) were amended by 2007 La. Acts, No. 460, § 2, but since this amendment is not effective until January 1, 2008, it is therefore inapplicable to the instant case and not discussed herein.

³ The chapter is currently entitled: "CHAPTER 3-B. REGISTRATION OF SEX OFFENDERS, SEXUALLY VIOLENT PREDATORS, AND CHILD PREDATORS."

expressly made subject to the definition of "sex offense" as provided in LSA-R.S. 15:541(14.1).

Defendant argues that "sex offense" as defined in LSA-R.S. 15:541(14.1) does not include a **first** conviction of any crime under "Subpart C of Part II ... of Chapter 1 of Title 14," including a **first** conviction for sexual battery (LSA-R.S. 14:43.1). Instead, the defendant argues that the definition of "sex offense" set forth in LSA-R.S. 15:541(14.1) only applies to a **second or subsequent** conviction of any crime under "Subpart C of Part II ... of Chapter 1 of Title 14." Defendant's argument is based upon the absence of a comma in the text of LSA-R.S. 15:541(14.1) between the clause "a second or subsequent conviction of R.S. 14:283.1 (voyeurism)" and before the clause reading "or any provision of Subpart C of Part II ... of Chapter 1 of Title 14." Thus, the defendant asserts that the words "a second or subsequent conviction" apply to both the violation of "R.S. 14:283.1 (voyeurism)" and the violation of "any provision of Subpart C of Part II ... of Chapter 1 of Title 14," making application of the sex offender registration requirement applicable only to "a second or subsequent conviction" of sexual battery.

In support of this argument, the defendant presented testimony in the trial court from Dr. Joseph Abraham, an LSU Professor qualified as an expert in the field of grammar and linguistics, who stated that the only reasonable interpretation of this definition was that only second or subsequent convictions of any provision of Subpart C of Part II of Chapter 1 of Title 14 would meet the statutory definition of sex offender. We disagree.

All of the provisions of a criminal statute must be given a "genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision," in accordance with LSA-R.S. 14:3. **State v. Muschkat**, 96-

2922, p. 5 (La. 3/4/98), 706 So.2d 429, 432. The title of the act, while not part of the statute, may be used to determine legislative intent. As a general rule, the plain meaning of legislation should be conclusive, except in the rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters, in which case the intention of the drafters, rather than the strict language, controls. **State v. Holmes**, 2001-0955, p. 5 (La. App. 1 Cir. 2/15/02), 811 So.2d 955, 958. See also State v. Madere, 352 So.2d 666, 668-69 (La. 1977).

The purpose of Louisiana's sex offender registration law is to assist law enforcement and to provide information to the general public about sex offenders. LSA-R.S. 15:540(B). In LSA-R.S. 15:540(A), the legislature articulated findings upon which the sex offender registration law was based. See State v. Myers, 98-1213, p. 7 (La. App. 4 Cir. 2/9/00), 753 So.2d 921, 925. Specifically, LSA-R.S. 15:540(A) provides:

The legislature finds that sex offenders, sexually violent predators, and child predators often pose a high risk of engaging in sex offenses, and crimes against victims who are minors even after being released from incarceration or commitment and that protection of the public from sex offenders, sexually violent predators, and child predators is of paramount governmental interest. The legislature further finds that local law enforcement officers' efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses and crimes against victims who are minors, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders, sexually violent predators, and child predators who live within the agency's jurisdiction, and the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Restrictive confidentiality and liability laws governing the release of information about sex offenders, sexually violent predators, and child predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense or a crime against a victim who is a minor have a reduced expectation of privacy because of the public's interest

in public safety and in the effective operation of government. Release of information about sex offenders, sexually violent predators, and child predators to public agencies, and under limited circumstances to the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Defendant's assertion that the definition of "sex offense" only applies to **second or subsequent** convictions of the crimes enumerated in Subpart C of Part II of Chapter 1 of Title 14, if accepted by this court, would result in an exemption for **first** offenders of any of the following crimes from registering as a sex offender: aggravated rape (LSA-R.S. 14:42), forcible rape (LSA-R.S. 14:42.1), simple rape (LSA-R.S. 14:43), sexual battery (LSA-R.S. 14:43.1), second degree sexual battery (LSA-R.S. 14:43.2), oral sexual battery (LSA-R.S. 14:43.3), and intentional exposure to the AIDS virus (LSA-R.S. 14:43.5). Such an interpretation would be completely at odds with the purpose of the sex offender registration law and contrary to the stated purpose expressed by the Louisiana Legislature.

Moreover, the legislative history of LSA-R.S. 15:541(14.1) does not support the defendant's contention. Section 541 was enacted by the legislature in 1992 La. Acts, No. 388, §1, and at that time the statute did not contain Paragraph 14.1, defining a "sex offense."⁴ Paragraph 14.1 was added by 2001 La. Acts, No. 1206, § 1, and when enacted read as follows:

§ 541. Definitions

For the purposes of this Chapter, the definitions of terms in this Section shall apply:

* * *

⁴ The title of Chapter 3-B, in which LSA-R.S. 15:541 appears, was then entitled, "CHAPTER 3-B. REGISTRATION OF SEX OFFENDERS." The chapter title was amended by 1997 La. Acts, No. 1147, § 1, to its current form, which reads: "CHAPTER 3-B. REGISTRATION OF SEX OFFENDERS, SEXUALLY VIOLENT PREDATORS, AND CHILD PREDATORS."

(14.1) "Sex offense" means deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest), R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm) or any provision of Subpart C of Part II or Subpart A(1) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, committed on or after June 18, 1992, or committed prior to June 18, 1992, if the person, as a result of the offense, is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state or federal law which is equivalent to an offense provided for in this Chapter.

When enacted in 2001, Paragraph 14.1 contained no reference to "second or subsequent" convictions of any enumerated crime, which included sexual battery, and clearly made applicable the provisions of Chapter 3-B, Registration Of Sex Offenders, Sexually Violent Predators, and Child Predators, to first offenders.

Thereafter, LSA-R.S. 15:541(14.1) was amended by 2003 La. Acts, No. 690, § 2, to read as follows:

§ 541. Definitions

For the purposes of this Chapter, the definitions of terms in this Section shall apply:

* * *

(14.1) "Sex offense" means deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest), R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of the infirm), **R.S. 14:283 (video voyeurism)**, or any provision of Subpart C of Part II or Subpart A(1) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, committed on or after June 18, 1992, or committed prior to June 18, 1992, if the person, as a result of the offense, is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state or federal law which is

equivalent to an offense provided for in this Chapter.
[Emphasis added.]

Act No. 690 added the phrase ", R.S. 14:283 (video voyeurism)," preceding "or any provision of Subpart C of Part II or Subpart A(1) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950," and included a comma between the two phrases. The 2003 amendment to Paragraph 14.1 likewise contained no reference to "second or subsequent" convictions of the enumerated crimes, nor did the act change the definition of the term "sex offense" to exclude first-time sex offenders.

The version of LSA-R.S. 15:541 applicable to the instant offense, as quoted at the outset of this discussion hereinabove, was effected via 2004 La. Acts, No. 888, § 2, which inserted the phrase "a second or subsequent conviction of R.S. 14:283.1 (voyeurism)" prior to the existing phrase "or any provision of Subpart C of Part II ... of Chapter 1 of Title 14." In this 2004 amendment, the legislature neglected to insert a comma to separate the newly added clause, concerning voyeurism, from the pre-existing clause, encompassing the instant offense.

We also note that the title to Act 888 provided:

AN ACT to amend and reenact R.S. 15:541(14.1) and to enact R.S. 14:283.1, relative to sex offenses; to create the crime of voyeurism; to provide for criminal penalties; to provide with respect to sex offender registration and notification requirements; to provide with respect to the definition of "sex offense"; and to provide for related matters.

Act 888 accomplished two changes in the law: (1) it enacted LSA-R.S. 14:283.1 making voyeurism a crime, and (2) it amended LSA-R.S. 15:541(14.1) to include within the definition of a "sex offense" the crime of second or subsequent offense voyeurism. No intention was expressed by the legislature, with respect to Act 888, to eliminate from the definition of "sex offense" first convictions of the crimes previously enumerated in and

encompassed by LSA-R.S. 15:541(14.1). Consequently, we do not consider the punctuation oversight by the legislature as evidencing an intent by the legislature to alter the existing meaning or scope of the statute.⁵

We observe that the distinction made by Act 888, limiting a "sex offense" to only second or subsequent convictions of voyeurism, would seem to be based upon the fact that a first conviction of voyeurism is a misdemeanor under LSA-R.S. 14:283.1(B)(1), while a second or subsequent conviction of voyeurism is a felony, as provided by LSA-R.S. 14:283.1(B)(2). See LSA-R.S. 14:2(4) and (6). Furthermore, of the crimes defined as sex offenses by the version of LSA-R.S. 15:541 in effect at the time of the instant offense, requiring sex offender registration, all were felony offenses.⁶

Having thoroughly examined the legislative history of the statutes at issue herein, we recognize the definition of "sex offense" set forth in LSA-R.S. 15:541(14.1) included only a second or subsequent conviction of voyeurism (LSA-R.S. 14:283.1), but we conclude the statute encompassed first offense convictions of the other enumerated crimes at the time of the offense at issue herein. Accordingly, the trial court did not err in finding the defendant's conviction of first offense sexual battery was subject to the registration requirements of LSA-R.S. 15:541 et seq.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.

⁵ We further note that LSA-R.S. 24:253 authorizes the Louisiana Law Institute to "[c]orrect manifest typographical ... errors."

⁶ While LSA-R.S. 14:80.1 (found in Subpart A(1) of Part V of Chapter 1 of Title 14) addresses "[m]isdemeanor carnal knowledge of a juvenile," paragraph (F) of that statute specifically states that "[t]he offender shall not be subject to any of the provisions of law which are applicable to sex offenders, including but not limited to the provisions which require registration of the offender and notice to the neighbors of the offender." Also, LSA-R.S. 14:81.4, enacted by 2007 La. Acts, No. 363, § 1 (prohibiting sexual conduct between an educator and a student), designates a first offense of that statute as a misdemeanor and second or subsequent offenses thereof as felonies; however, Section 81.4 was not present in Title 14 at the time of the instant offense.