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Honorable Joe W. Whisante
Sheriff
Madison County Sheriff's Office
Madison County Courthouse
100 Northside Square
Huntsville, Alabama 35801

Community Notification Act — Appeals — Notices

A "conviction" is a prerequisite to community notification and registration.

A "conviction" becomes effective at the time of adjudication in the trial court.

The Community Notification Act's provisions, as well as the registration provisions set out in section 13A-11-200 of the Code of Alabama, should be applied to sex offenders upon conviction at the trial court level. It is not necessary to wait until such conviction is affirmed on appeal.

Dear Sheriff Whisante:

This opinion is issued in response to your request for an opinion from the Attorney General on behalf of the Madison County Sheriff's Office.

QUESTION

Should a person convicted of a criminal sex offense as a result of entering a plea of guilty who, at the time of sentencing, files an appeal to have his guilty plea vacated and to be released on an appellate bond, be subject to the provisions of the Community Notification Act and the Sex Offender Registration Act of 1967 prior to the conclusion of the appeal so filed?

FACTS AND ANALYSIS

The provisions of the Community Notification Act, sections 15-20-20 through -24 of the Code of Alabama, can only be enforced against those persons who have received a "conviction" for having committed an enumerated sex offense. See ALA. CODE §§ 15-20-21(a)(3), (4), and (5). Similarly, section 13A-11-200 of the Code requires "convicted" sex offenders to register with the sheriff of the county of their legal residence. ALA. CODE § 13A-11-200 (1994). Thus, for purposes of both community notification and registration, a "conviction" is a prerequisite to their being applied by law enforcement.

Your question turns on whether, for the purposes of applying community notification and registration to sex offenders, a "conviction" is consummated at the time of adjudication in the trial court—in this case on the basis of a guilty plea—or at the time when the ensuing appellate process is completed and the trial court's adjudication of conviction is affirmed. Although no decisions have addressed this issue in the specific context of applying community notification and registration to sex offenders, it has long been settled in Alabama that a "conviction" becomes effective at the time of adjudication in the trial court.

In Ex parte Alabama State Bar, 285 Ala. 191, 230 So. 2d 519 (1970), the Alabama Supreme Court addressed the question whether an attorney who had been convicted of a crime should be immediately disbarred or whether disbarment should ensue only after the attorney's conviction was upheld on appeal. The Court held that disbarment was required even if an appeal of the attorney's conviction was pending. Relying on the holding in United States v. Esters, 161 F. Supp. 203 (W.D. Ark. 1958), the Court stated:

[T]he presumption of innocence no longer attends the defendant after conviction, and on the contrary the

presumption is that the proceedings were regular, the evidence sufficient and the trial free from error. While the appeal suspends the execution of the sentence of the criminal court pending appeal . . . the matter of the conviction remains and continues to exist.

Alabama State Bar, 285 Ala. at 194, 230 So. 2d at 522 (citations omitted).

Later, in Evers v. Medical Licensure Comm'n of Alabama, 421 So. 2d 89 (Ala. 1982), the Alabama Supreme Court was faced with a similar question involving the revocation of a physician's license. In that case, the Court again held that the term "conviction" means an adjudication of guilt in the trial court, not a conviction followed by an affirmance on appeal. The Court stated:

The ordinary legal meaning of "conviction," when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court, or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt. . . .

Evers v. Medical Licensure Comm'n of Alabama, 421 So. 2d at 91 (quoting Alabama State Bar, 285 Ala. 191, 230 So. 2d 519).

Finally, in Ex parte Thomas, 460 So. 2d 216 (Ala. 1984), the Alabama Supreme Court addressed the question of whether a felony conviction could be used as an aggravating circumstance in a capital murder case before the felony conviction's disposition on appeal. The Court answered affirmatively. Citing both Alabama State Bar and Evers, the Court held that "[t]he collateral and supplemental effects of a conviction are not suspended pending appeal." 460 So. 2d at 225.

CONCLUSION

Based on the foregoing authorities, it is clear that the Community Notification Act's provisions, as well as the registration provisions set out in section 13A-11-200 of the Code of Alabama, should be applied to sex offenders upon their conviction at trial. It is not necessary to wait until such conviction is affirmed on appeal.

Sheriff Joe W. Whisante
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I hope this sufficiently answers your question. If this Office can be of further assistance, please contact Scott L. Rouse of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:

A handwritten signature in cursive script that reads "Carol Jean Smith".

CAROL JEAN SMITH
Chief, Opinions Division

BP/SLR
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