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DISTRICT IV

January 25, 2024

To:

Hon. Martin J. De Vries
Circuit Court Judge
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Lawrence T. Davis
6108 N. 40th St.
Milwaukee, WI 53209

You are hereby notified that the Court has entered the following opinion and order:

2022AP1652 State of Wisconsin v. Lawrence T. Davis (L.C. # 2011CF147)

Before Blanchard, Graham, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Lawrence Davis, pro se, appeals a circuit court order denying the postconviction motion he filed pursuant to WIS. STAT. § 974.06, and an order denying his motion for reconsideration. (2021-22).[1] After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In 2011, following a jury trial, Davis was convicted of armed robbery, armed burglary, and nine counts of false imprisonment with dangerous weapon enhancers, all as a party to a

[1] All references to the Wisconsin Statutes are to the 2021-22 version.

crime. Davis was sentenced to a total of twelve years of initial confinement and five years of extended supervision. In the years following his conviction, Davis has pursued multiple postconviction motions, including three motions filed pursuant to WIS. STAT. § 974.06.

In his most recent WIS. STAT. § 974.06 motion, Davis asserts that he received a June 2022 letter from the state department of corrections, which states that he was required to register as a sex offender upon release to extended supervision because one of his false imprisonment convictions involved a minor victim. *See* WIS. STAT. §§ 301.45(1d)(b), 940.30. Davis argues that the letter constituted newly discovered evidence entitling him to a new trial. The circuit court denied Davis's motion. Davis filed a motion for reconsideration, which the circuit court also denied, and Davis appeals.

On appeal, Davis argues that WIS. STAT. § 301.45(1d)(b) is unconstitutional both on its face and as applied. "The constitutionality of a statute is a question of law that we review de novo." ***State v. Wood***, 2010 WI 17, ¶15, 323 Wis. 2d 321, 780 N.W.2d 63. "A statute enjoys a presumption of constitutionality," and to overcome that presumption, a person challenging the constitutionality of a statute must prove that it is unconstitutional beyond a reasonable doubt. ***State v. Smith***, 2010 WI 16, ¶8, 323 Wis. 2d 377, 780 N.W.2d 90. When mounting a facial challenge to the statute, the challenger must show that it cannot be enforced "under any circumstances." ***Wood***, 323 Wis. 2d 321, ¶13 (citation omitted). If a challenger succeeds in a facial attack, the statute is void in its entirety, from beginning to end. ***Id.*** By contrast, an as-applied challenge requires us to "assess the merits of the challenge by considering the facts of the particular case in front of us[.]" ***Id.*** If the challenger succeeds in showing that their constitutional rights were actually violated, "the operation of the [statute] is void as to the party asserting the claim." ***Id.***

We begin with Davis's argument that WIS. STAT. § 301.45(1d)(b) is unconstitutional as applied to him. Davis argues that, in his case, the crime of false imprisonment of a minor did not involve any sexual component. Therefore, he argues, requiring him to register as a sex offender is not rationally related to a legitimate governmental interest. However, our supreme court considered and rejected the same argument in ***Smith***, 323 Wis. 2d 377, ¶¶39-40.

In ***Smith***, the defendant argued that, because the purpose of WIS. STAT. § 301.45 is to protect the public from sex offenders, and because Smith's underlying conviction for false imprisonment of a minor was not sexual in nature, the statute as applied to him was irrational, arbitrary, and could not be related to any legitimate government interest. ***Id.***, ¶10. The court rejected Smith's arguments and concluded that § 301.45 was constitutional as applied to Smith because requiring him to register as a sex offender was rationally related to the legitimate government interest in protecting the public and assisting law enforcement. ***Id.***, ¶13.

We are bound to reach the same conclusion here as to Davis. The legislature determined that, pursuant to WIS. STAT. § 301.45, "offenders convicted under certain statutes must register as sex offenders," ***id.***, ¶39, and Davis, like the defendant in ***Smith***, was convicted of an offense for which registration is required. We are bound by our supreme court's conclusion that there are "numerous conceivable, rational reasons why the legislature could have so chosen to include" persons within the registry requirement who were "convicted of false imprisonment of a minor, regardless of whether his crime was of a sexual nature." ***Id.*** Under the circumstances, Davis has not proven that § 301.45(1d)(b)'s registration requirement is unconstitutional as applied to him.

We next turn to Davis's argument that WIS. STAT. § 301.45(1d)(b) is unconstitutional on its face. The argument is somewhat difficult to follow. Davis appears to be arguing that, when

the legislature decided to include false imprisonment of a minor within the statutory definition of a "sex offense" for registration purposes, the legislature in effect tacked on, as additional elements of the crime of false imprisonment, the need to prove that the offense was sexual in nature and that the victim was not the defendant's biological child. *See* § 301.45(1d)(b); WIS. STAT. § 940.30. Davis takes the position that both of these additional elements must be proved beyond a reasonable doubt to a jury in order for the registration requirement to be constitutionally imposed upon a person convicted of false imprisonment of a minor.

The State argues that Davis's facial challenge to the constitutionality of WIS. STAT. § 301.45(1d)(b) must fail. We agree. We are not persuaded by Davis's argument that § 301.45(1d)(b) requires, as additional elements of the crime of false imprisonment of a minor, proof that the offense was sexual in nature and that the victim was not the defendant's biological child. In order to determine whether a particular fact must be found by a jury even if it is not essential to meet the statutory elements of an offense, "the relevant inquiry is not one of form, but of effect—does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" ***Apprendi v. New Jersey***, 530 U.S. 466, 494 (2000). Here, the answer is no. Under Wisconsin law, requiring a person to register as a sex offender is not considered punishment, ***State v. Bollig***, 2000 WI 6, ¶27, 232 Wis. 2d 561, 605 N.W.2d 199, and does not increase the statutorily prescribed sentence applicable for false imprisonment, a Class H felony. *See* WIS. STAT. §§ 301.45, 939.50(3)(h), 940.30, 973.01(2)(b)8. & (d)5.

In order for a jury to find a defendant guilty of the crime of false imprisonment under WIS. STAT. § 940.30, the State must prove five elements beyond a reasonable doubt: that the defendant confined or restrained the victim, that the confinement or restraint was intentional, that the confinement or restraint was without the victim's consent, that the defendant had no lawful

authority to confine or restrain the victim, and that the defendant knew that the defendant did not have lawful authority to confine or restrain the victim and knew the victim did not consent. *See* WIS JI—CRIMINAL 1275 (2015). At Davis's trial, the jury was instructed about these five elements, and it returned a guilty verdict. The jury did not make a finding, nor was it required to make a finding, that the false imprisonment offense was sexual in nature or that the victim was not the defendant's biological child. Indeed, in ***Smith***, our supreme court stated that, in cases where a person falsely imprisons a minor, the registry statute "does not require that the State prove what the abductor must have been thinking or whether the abductor committed a sexual act." ***Smith***, 323 Wis. 2d 377, ¶32. Davis has not shown that WIS. STAT. § 301.45(1d)(b) is unconstitutional on its face, and we reject his facial challenge on that basis.

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals