

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-718

D.C.T.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 4, 2012

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. JV-2008-10]

HONORABLE BARBARA HALSEY,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The State filed a petition on February 22, 2008, alleging that appellant was a juvenile delinquent because he had committed the elements of the offense of rape, a Class Y felony. Appellant was adjudicated delinquent after a bench trial on August 22, 2009, and was committed to a sex-offender program through the Department of Youth Services. Appellant completed a sex-offender risk assessment on July 6, 2010, and on September 13, 2010, the State filed a motion requesting a sex-offender registration hearing pursuant to Ark. Code Ann. § 9-27-356 (Repl. 2009). Following hearings pertaining to that motion, the trial court entered an order on March 17, 2011, directing appellant to register as a sex offender. Appellant argues on appeal that the trial court erred in so doing. We affirm.

In essence, appellant argues that the trial court lacked subject-matter jurisdiction to order him to register as a sex offender because a sex-offender registration order is permitted



under Ark. Code Ann. § 9-27-356(b)(2) only if such registration is recommended by the person conducting the sex-offender risk assessment,¹ and sex-offender registration was not recommended by the assessor in this case. Appellant concedes that he did not present this argument to the trial court and is raising it for the first time on appeal. However, he asserts that he may properly make the argument now because the trial court has no authority to act in excess of its authority, *i.e.*, in a manner contrary to a correct interpretation of the statute, so that the question is one of subject-matter jurisdiction that can be raised for the first time on appeal. We do not agree.

Our courts have recognized a distinction between “want of jurisdiction to adjudicate a matter and a determination of whether the jurisdiction should be exercised.” *State v. D.S.*, 2011 Ark. 45 at 6 n.1 (quoting *Young v. Smith*, 331 Ark. 525, 529, 964 S.W.2d 784, 786 (1998)).

Jurisdiction of the subject matter is power lawfully conferred on a court to adjudge matters concerning the general question in controversy. It is power to act on the general cause of action alleged and to determine whether the particular facts call for the exercise of that power. Subject matter jurisdiction does not depend on a correct exercise of that power in any particular case. If the court errs in its decision or proceeds irregularly within its assigned jurisdiction, the remedy is by appeal or direct action in the erring court. If it was within the court’s jurisdiction to act upon the subject matter, that action is binding until reversed or set aside.

Young v. Smith, 331 Ark. at 529, 964 S.W.2d at 786 (quoting *Banning v. State*, 22 Ark. App. 144, 149, 737 S.W.2d 167, 170 (1987)). Although failure to follow the statutory procedure

¹Regarding the merits of this argument, see *T.Y.R. v. State*, 2010 Ark. App. 475; *L.W. v. State*, 89 Ark. App. 318, 202 S.W.3d 552 (2005); *c.f. M.S. v. State*, 2011 Ark. App. 222.



Cite as 2012 Ark. App. 227

in the exercise of this power constitutes reversible error, it does not oust the jurisdiction of the court. *Noble v. Norris*, 368 Ark. 69, 243 S.W.3d 260 (2006) (citing *Banning v. State, supra*).

Appellant contends that his argument may properly be raised for the first time on appeal pursuant to *M.S. v. State*, 2011 Ark. App. 222, which held that the trial court lacked authority to require that the appellant in that case register as a sex offender in the absence of a recommendation to that effect in the risk assessment, stating that “[w]hen a court acts in excess of its authority, it becomes a question of subject-matter jurisdiction.” *Id.* at 223. *M.S. v. State* did say that, and the principle was again applied shortly thereafter to consider another issue of statutory interpretation concerning the sex-offender registry for the first time on appeal in *Sullivan v. State*, 2011 Ark. App. 576. However, the Arkansas Supreme Court reviewed and vacated this court’s decision in *Sullivan v. State*, 2012 Ark. 74, where the supreme court stated that it could not and would not decide an issue of statutory interpretation relating to sex-offender registration for the first time on appeal. The supreme court’s *Sullivan* decision effectively overruled *sub silentio* our holding in *M.S. v. State* regarding subject-matter jurisdiction. Therefore, we hold that the issue regarding the trial court’s asserted failure to exercise its authority in a manner consistent with a correct interpretation of the statute is not a question of subject-matter jurisdiction and cannot be raised for the first time on appeal.

Affirmed.

WYNNE and HOOFFMAN, JJ., agree.

Rodney L. Chedister, Deputy Pub. Def., for appellant.

Dustin McDaniel, Att’y Gen., by: *LeaAnn J. Irvin*, Ass’t Att’y Gen., for appellee.