

Cite as 2022 Ark. 8
SUPREME COURT OF ARKANSAS
No. CR-21-347

Opinion Delivered: January 20, 2022

STATE OF ARKANSAS

APPELLANT

V.

DARRELL LAMONT SCOTT

APPELLEE

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, THIRD
DIVISION
[NO. 60CR-20-3017]

HONORABLE CATHLEEN V.
COMPTON, JUDGE

REVERSED AND REMANDED.

SHAWN A. WOMACK, Associate Justice

The State of Arkansas appeals from an order of the Pulaski County Circuit Court acquitting appellee Darrell Scott by reason of mental disease or defect of one count of theft of property and two counts each of kidnapping and first-degree false imprisonment of minors C.A. and E.M. The State's sole point on appeal is that the circuit court erred by failing to require Scott to register as a sex offender pursuant to the Sex Offender Registration Act of 1997 (Act), codified at Arkansas Code Annotated sections 12-12-901 to -930 (Repl. 2016 & Supp. 2021). We reverse and remand.

On July 6, 2020, Scott was transported by ambulance to Baptist Health Medical Center in Little Rock for treatment of injuries sustained from a motor-vehicle accident. Scott fled the emergency room immediately after having his vitals taken. Scott searched for an

unlocked vehicle in the hospital parking lot and found a running car occupied by two minors, C.A. and E.M. He entered the vehicle and drove away. While in the car, E.M. called her aunt and told her Scott had stolen the vehicle and that she and C.A. were still inside. The aunt then received a text message from E.M. advising that she was at McCain Mall in North Little Rock. Officers from the North Little Rock Police Department located the vehicle in the mall parking lot and found the two minors unharmed. Scott was arrested inside the mall.

The State charged Scott with one count of theft of property and two counts each of kidnapping and first-degree false imprisonment of C.A. and E.M. In response to the charges, Scott filed a notice of his intent to rely on the defense of lack of criminal responsibility. The circuit court ordered Scott to be examined to determine his fitness to proceed and criminal responsibility.

Dr. J.M. Wood performed Scott's examination. Dr. Wood concluded that at the time of the examination, Scott suffered from mental disease but not mental defect and diagnosed Scott with several disorders, including bipolar disorder. Dr. Wood found that due to mental disease, Scott "lacked the capacity to appreciate the criminality of his conduct" and "[h]e lacked the capacity to conform his conduct to the requirements of the law."

The circuit court held a hearing on Dr. Wood's report on May 6, 2021. The State and the defense agreed that Scott should be acquitted due to lack of criminal responsibility, and the circuit court agreed. As a result of Scott's acquittal, the State requested that Scott be required to register as a sex offender. The State maintained that pursuant to Arkansas Code

Annotated section 12-12-905(a)(3), a person acquitted on the grounds of mental disease or defect of a sex offense is required to register under the Sex Offender Registration Act. It explained that the Act defines “sex offense” to include kidnapping and false imprisonment when the victim is a minor and the offender is not the victim’s parent. The State reasoned that because C.A. and E.M. are minors and Scott is not their parent, he was required to register as a sex offender. In response, Scott argued the legislature did not intend for the registration requirement to apply when the offense was not sexual in nature. He also noted that he had not been adjudicated guilty of any offense.

The circuit court found that Scott should not be required to register as a sex offender. The court found that there must be an adjudication of guilt to place a person on the sex-offender registry and held that Scott’s acquittal cannot be considered an “adjudication of guilt.” Furthermore, the court observed that while Scott had been charged with kidnapping and false imprisonment, the criminal information lacked any allegation that a sexual act occurred.

The circuit court entered an order on May 10, 2021, acquitting Scott of all charges by reason of mental disease or defect. The order did not include a requirement that Scott register as a sex offender. The State appeals.

Before reaching the merits, we must first determine whether this is a proper State appeal under Rule 3 of the Arkansas Rules of Appellate Procedure–Criminal. While docketed as a criminal appeal, the State asserts this appeal is civil in nature because sex-offender registration is a regulatory matter. We agree. This court has previously held that the

Act's registration requirements are "essentially regulatory and therefore non-punitive in nature." *Sullivan v. State*, 2012 Ark. 74, at 30, 386 S.W.3d 507, 525 (quoting *Kellar v. Fayetteville Police Dep't*, 339 Ark. 274, 287, 5 S.W.3d 402, 410 (1999)). Sex-offender registration is not a form of punishment and, therefore, not a criminal sentence. *Id.* Because the issue on appeal is civil in nature, the State need not satisfy the requirements of Rule 3. See *State v. Miller*, 2013 Ark. 329, at 2 (holding Rule 3 inapplicable in State appeals arising from collateral procedure).

We now turn to the merits of the State's argument that the circuit court erred by declining to require Scott to register as a sex offender. The State insists that the Act's plain language requires Scott to register. This court reviews issues of statutory interpretation *de novo*, as it is for this court to decide the meaning of a statute. *Newman v. State*, 2011 Ark. 112, 380 S.W.3d 395. We adhere to the basic rule of statutory construction, which is to give effect to the intent of the General Assembly. *Snyder v. State*, 332 Ark. 279, 965 S.W.2d 121 (1998). Absent a clear indication that a drafting error or omission has circumvented legislative intent, we will not interpret a legislative act in a manner contrary to its express language. *Id.* When reviewing a statute, we construe the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Harrell v. State*, 2012 Ark. 421.

Arkansas Code Annotated section 12-12-905 designates the persons required to register as a sex offender under the Act. The registration requirement applies to a person who "[i]s acquitted on or after August 1, 1997, on the grounds of mental disease or defect

for a *sex offense*, aggravated sex offense, or sexually violent offense.” Ark. Code Ann. § 12-12-905(a)(3) (emphasis added). The Act defines “sex offense” to include the offenses of kidnapping under section 5-11-102(a) (Repl. 2013) and first-degree false imprisonment under section 5-11-103 “when the victim is a minor and the offender is not the parent of the victim.” Ark. Code Ann. § 12-12-903(13)(A)(i)(q), (r).

The Act’s express language requires a person to register if he or she has been acquitted of a sex offense on the grounds of mental disease or defect. The Act further specifies that kidnapping and false imprisonment are deemed sex offenses if the victim is a minor and the offender is not the victim’s parent. It is undisputed that Scott is not the parent of the minor victims. Thus, Scott’s acquittal by reason of mental disease or defect of two counts each of kidnapping and first-degree false imprisonment of minors who are not his children requires him to register as a sex offender.

Scott stresses that he is exempted from registering under Arkansas Code Annotated section 12-12-906(a)(1)(A)(iii)(b) because there is no evidence he used force, compulsion, threats, or intimidation. However, this exemption applies only when the offender is not more than three years older than the victim. Ark. Code Ann. § 12-12-906(a)(1)(A)(iii)(a). At the time of the offense, the victims were four and eleven years old, while Scott was thirty-one years old. Thus, Scott is not exempted under section 12-12-906(a)(1)(A)(iii)(b) from registering as a sex offender because he is more than three years older than the victims.

For the foregoing reasons, we hold that the circuit court erred by not requiring Scott to register as a sex offender in its judgment of acquittal. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Leslie Rutledge, Att’y Gen., by: *Brooke Jackson Gasaway*, Ass’t Att’y Gen., for appellee.

Terrence Cain, for appellee.