

Sex Offender Registration

In Order To Be Convicted For Failure to Return Verification Form, Defendant Must Have Received Form.

State v. Braswell, ___ N.C. App. ___, ___ S.E.2d ___ (May 4, 2010).

The trial court erred by denying the defendant's motion to dismiss the charge of failing to register as a sex offender by failing to verify his address. In order to be convicted for failure to return the verification form, a defendant must actually have received the form. In this case, the evidence was uncontroverted that the defendant never received the form.

Sufficient Evidence to Prove Defendant, Registered Sex Offender, Changed His Address to Support Conviction Under G.S. 14-208.11(a)(2)

State v. Worley, ___ N.C. App. ___, 679 S.E.2d 857 (21 July 2009).

The court ruled, relying on *State v. Abshire*, ___ N.C. ___, 677 S.E.2d 444 (18 June 2009), that there was sufficient evidence to show the defendant had changed his address and did not report the change to the sheriff within 10 days to support the defendant's conviction of willfully failing to comply with the change of address requirements applicable to registered sex offenders under G.S. 14-208.11(a)(2). The court stated that everyone has at all times an "address" of some sort, even if it is a homeless shelter, a location under a bridge, or a some similar place. The defendant had a "place of abode" of some type after his departure by eviction from housing authority premises.

Sufficient Evidence to Prove That Defendant, a Registered Sex Offender, Changed Her Address and Thus Was Properly Convicted of Failing to Report Change of Address to Sheriff—Ruling of Court of Appeals Is Reversed

State v. Abshire, 363 N.C. 322, 677 S.E.2d 444 (18 June 2009), reversing, 192 N.C. App. 594, 666 S.E.2d 657 (16 September 2008).

The defendant, a registered sex offender, was convicted of failing to notify the sheriff of a change of address under G.S. 14-208.11(a)(2). The court determined that the legislature intended the definition of address to have the ordinary meaning of describing or indicating the location where someone lives. That is, a person's residence is the actual place of abode where he or she lives, whether permanent or temporary. It is not a person's domicile. The legislature clearly intended that even a temporary home address must be registered so that law enforcement and the general public know the whereabouts of sex offenders. Mere physical presence at a location is not the same as establishing a residence. Determining that a place is a person's residence suggests that certain activities of life occur at a particular location. The court examined the facts in this case and ruled that the defendant had changed her address, even if just for a temporary period. Thus, the defendant was properly convicted under G.S. 14-208.11(a)(2).

Court Affirms Trial Court's Order at Hearing Conducted Under G.S. 14-208.40B That Defendant When Released From Prison Will Be Subject to Satellite-Based

Monitoring for His Natural Life

State v. Wooten, ___ N.C. App. ___, 669 S.E.2d 749 (16 December 2008).

The court affirmed the trial court's order at a hearing conducted under G.S. 14-208.40B that the defendant when released from prison will be subject to satellite-based monitoring for his natural life. The defendant on October 23, 2006, had pled no contest to taking indecent liberties, which occurred on October 31, 2001. He was sentenced to prison, and the trial court conducted the hearing on the satellite-based monitoring issue just before his release from prison. The defendant had been previously convicted on April 25, 1989, of taking indecent liberties. The court ruled: (1) the trial court had subject matter jurisdiction to conduct the hearing (see the court's discussion of this issue); (2) the trial court correctly determined that the defendant was a "recidivist" as a result of the 1989 conviction, based on the statutory language in G.S. 14-208.6(2b) [prior conviction for an offense that is "described in" G.S. 14-208.6(4)], even though the 1989 conviction was not a "reportable conviction" because it predated the sex offender registration law; and (3) the issue whether satellite-based monitoring violates ex post facto was not properly preserved for appellate review.

City Ordinance Prohibiting Registered Sex Offenders from Knowingly Entering Any Public Park Owned, Operated, or Maintained by City Did Not Violate Their Due Process Rights to Intrastate Travel—Ruling of Court of Appeals Is Affirmed

Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728 (12 June 2008), affirming, 186 N.C. App. 134, 650 S.E.2d 618 (2 October 2007).

The court ruled that a city ordinance prohibiting registered sex offenders from knowingly entering any public park owned, operated, or maintained by the city did not violate their due process right to intrastate travel. The court determined that this right is not fundamental, so the ordinance needed only to meet a rational basis test, which the court concluded it did.

Double Jeopardy Clause Does Not Bar Criminal Prosecution of Registered Sex Offender for Failing to Register Change of Address With Sheriff After Same Conduct Was Basis to Revoke Offender's Post-Release Supervision—Ruling of Court of Appeals Is Affirmed

State v. Sparks, 362 N.C. 181, 657 S.E.2d 655 (7 March 2008), affirming, 182 N.C. App. 45 (2007).

The court ruled that the Double Jeopardy Clause did not bar the criminal

prosecution of a registered sex offender for failing to register a change of address with a sheriff after the same conduct had been basis to revoke the offender's post-release supervision. The court concluded: (1) a post-release revocation hearing (as well as a probation or parole revocation hearing) is not a criminal prosecution subject to the Double Jeopardy Clause; and (2) the Double Jeopardy Clause does not bar a criminal prosecution for conduct that also serves as the basis for a revocation of post-release supervision (as well as revocation of probation or parole).

Evidence-Hearsay--Sex Offender Registration documents-Records of regularly conducted activity

State v. Wise, 178 N. C. APP. 154 (2006).

A Sex Offender Registration Worksheet and Notice of Pending Registration were records of regularly conducted activity under N.C.G.S. § 8C-1, Rule 803(6) and were properly admitted into a prosecution for failing to register as a sex offender. Although police reports are specifically excluded under Rule 803(8), the inadmissibility of evidence under one hearsay exception does not necessarily preclude admission under another exception.

Sexual Offenses--Sex offender registration laws--Constitutionality--Notice

State v. Bryant, 359 NC 554 (2005)

The Court of Appeals erred by concluding that N.C.G.S. § 14-208.11, which criminalizes a convicted sex offender's failure to register, violates the notice requirement of the Due Process Clause of the United States Constitution either facially or as applied for an out-of-state offender who lacked notice of his duty to register upon moving to North Carolina, and this case is remanded to the Court of Appeals for consideration of the remainder of defendant's assignments of error not previously addressed, because: 1) N.C.G.S. § 14-208.11 is facially constitutional since by the very terms of the statute those individuals released from a North Carolina penal institution and subject to punishment for failure to register pursuant to N.C.G.S. § 14-208.11 are required to have actual notice of their duty to register, and defendant cannot establish that no set of circumstances exists under which the act would be valid; 2) with respect to the application of N.C.G.S. § 14-208.11 in regard to defendant, the sex offender registration statutes enacted in North Carolina and all other states are statewide registration programs directed at a narrow class of defendants who are convicted sex offenders and modern sex offender registration programs are specifically enacted as public safety measures based on legislative determinations that convicted sex offenders pose an unacceptable risk to the general public once released from incarceration; 3) defendant had

actual notice of his lifelong duty to register with the State of South Carolina as a sex offender, and this notice was sufficient to put defendant on notice to inquire into the applicable law of the state to which he relocated which in this instance was North Carolina; and 4) it would be nonsensical to allow sex offenders to escape their duty to register by moving to a state that has not provided them with actual notice of their duty to register and then allow a defendant to claim ignorance of the law.

1) Sexual Offenses--Failing to register as offender--Notice of requirement

State v. Harris, 171 N. C. APP. 127 (2005)

Defendant's motion to dismiss a charge of failing to register as a sex offender was correctly denied where he was notified of the requirement 5 days before his release rather than the statutory 10. N.C.G.S. § 14-208.8 is an administrative provision; the Legislature did not intend to eliminate registration requirements for sex offenders who receive untimely notice, especially when there was no prejudice.

2) Criminal Law--Defenses--Voluntary intoxication--Specific intent crimes only

State v. Harris, 171 N. C. APP. 127 (2005)

Voluntary intoxication was not a defense to failing to register as a sex offender, which is not a specific intent crime.

3) Sexual Offenses--failing to register as a sex offender--indictment--elements of offense

State v. Harrison 165 N. C. APP. 332 (2004)

An indictment against a homeless defendant for failing to register as a sex offender was sufficient where it clearly stated the elements of the offense. The argument that the indictment failed by not identifying the specific dates defendant moved and his new addresses is without merit.

Kidnapping--First-degree--Minor--Sex offender registration

State v. Sakobie, 165 N. C. APP. 447 (2004)

The trial court did not err in a first-degree kidnapping of a minor case by entering an amended judgment mandating that defendant be required upon release from the Department of Correction to register pursuant to the Sex Offender and Public Protection Registration Program under Article 27A, because: 1) registration pursuant to Article 27A is not a form of punishment unauthorized by Article XI, Section 1 of the North Carolina

Constitution when Article 27A is a civil rather than a criminal remedy; 2) even though defendant contends the kidnapping was in furtherance of larceny of a vehicle, N.C.G.S. § 14-208.6(i) provides that an offense against a minor includes kidnapping pursuant to N.C.G.S. § 14-39; 3) defendant's separate asportation or movement of the child was unnecessary to complete the offense of larceny of the vehicle as defendant already had possession of the vehicle; and 4) based on the language of the indictment and the fact that defendant was found guilty of the crime for which she was indicted, it is unnecessary to remand the case for a specific finding concerning whether the kidnapping involved a minor.

Constitutional Law--Due process--Sex offender registration

State v. Bryant 163 N. C. APP. 478 (2004) *Rev'd State v. Bryant* 359 NC 554 (2005)

The North Carolina statute requiring registration of sex offenders, N.C.G.S. § 14-208.11, is unconstitutional as applied to a person convicted in another state who has moved to North Carolina and lacks notice of his duty to register in North Carolina. Due process requires that a defendant have knowledge, actual or constructive, of the statutory requirements, and the statute as written does not adequately address the reality of our mobile society.

1) Sexual Offenses--Sex offender registration requirements--Knowledge--instruction

State v. White, 162 N. C. APP. 183 (2004)

The trial court did not err in a case concerning a failure to comply with the sex offender registration requirements under N.C.G.S. § 14-208.11 by failing to instruct the jury that the State was required to prove defendant's knowledge of the requirements, because: 1) our Court of Appeals has already held that the State is not required to prove knowledge under N.C.G.S. § 14-208.11; and 2) the statute's legislative history also confirms that the legislature intended to create a strict liability offense.

2) Constitutional Law--Due process--Sex offender registration requirements--Knowledge

State v. White, 162 N. C. APP. 183 (2004)

Due process did not mandate that the trial court had to instruct the jury that the State was required to prove that defendant knew of his duty to register in a case concerning a failure to comply with the sex offender registration requirements under N.C.G.S. § 14-208.11, because: 1) the

notice provisions of the registration act remove the statute from due process attacks under ordinary circumstances; 2) an oral explanation of the registration requirements to a defendant by a member of a sheriff's department provides actual knowledge enough to satisfy due process requirements for any reasonable and prudent man, and a detective in this case testified that he advised defendant of the registration requirements when defendant initially registered with the sheriff's department; and 3) defendant has not argued that he was incompetent or that the standards for a reasonable and prudent man are otherwise inapplicable to him.

3) Constitutional Law--Ex post facto laws--Sex offender registration requirements

State v. White, 162 N. C. APP. 183 (2004)

The trial court did not err by failing to dismiss the charge of failure to comply with the sex offender registration requirements under N.C.G.S. § 14-208.11 on the basis that it was a violation of the constitutional prohibitions against ex post facto laws, because: 1) the United States Supreme Court has recently ruled that statutes such as N.C.G.S. § 14-208.11 are not impermissible ex post facto laws; 2) the fact that the public disclosure provisions are contained in the same portion of the criminal code as the registration provisions does not justify a conclusion that the General Assembly intended the legislation to be punitive rather than a civil regulatory scheme; 3) any stigma flowing from the registration requirements is not due to public shaming, but arises from the dissemination of accurate information which is already public; 4) prior offenders are free to change jobs or move wherever they choose subject only to the indirect restraint of the registration requirements; 5) to hold that the mere presence of a deterrent purpose renders such sanctions criminal would severely undermine the government's ability to engage in effective regulation; 6) the Act's rational connection to a nonpunitive purpose is a most significant factor in the determination that the statute's effects are not punitive; 7) the penalty imposed for a violation of the registration requirements is irrelevant to the question of whether the requirements themselves constitute an unconstitutional ex post facto law; 8) the requirements of registering for ten years are not excessive in light of the General Assembly's nonpunitive objective; and 9) the General Assembly amended N.C.G.S. § 14-208.11 in 1998 to change the penalty for violation of the registration requirements from a Class 3 misdemeanor for a first conviction to a Class F felony, and defendant violated the requirements in 2001 which was three years after the change in the law.

Sexual Offenses--Indecent liberties--Felonious failure to notify sheriff of change of address--sufficiency of evidence

State v. Holmes, 149 N. C. APP. 572 (2002)

The trial court did not err by denying defendant's motion to dismiss the charges of two counts of felonious failure to notify the sheriff of a change of address by a sex offender as required by N.C.G.S. § 14-208.11 even though defendant contends he called someone in the sheriff's department to give notification of his change of address, because: 1) there is no evidence that defendant was adjudicated incompetent; 2) defendant had sufficient notice of the requirement that he change his address in writing since he signed a notice of duty to register the day he was released from prison; and 3) the State produced sufficient evidence to show that defendant was convicted of two counts of indecent liberties with a minor, which required him under N.C.G.S. § 14-208.7 to register with the sheriff.

**Constitutional Law--Sexual Offenses--Registration of sex offenders--
Defendant adjudicated incompetent**

State v. Young, 140 N.C. App. 1 (2000)

N.C.G.S. § 14-208.11, which requires sex offenders to register their address, is unconstitutional as applied to an adjudicated incompetent defendant because it fails to afford sufficient notice under the Fifth and Fourteenth Amendments. Although the defendant here was provided with sufficient actual notice to satisfy due process requirements for any reasonable and prudent man, defendant has been legally determined to be incapable of managing his own affairs and is not a reasonable and prudent man. Due to the nature of this statute's requirement and the wholly innocent act through which it may easily be violated, proof of an adjudicated incompetent defendant's ability to comply with this statute must necessarily be an element of the State's prima facie case, and a test for determining competency to stand trial is substantially different from one which would determine whether defendant was competent to comply with the requirements of this statute.