

No. 125,119

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

AUSTIN WAYNE DETIMORE,  
*Appellant.*

SYLLABUS BY THE COURT

1.

K.S.A. 2022 Supp. 22-4902(c)(19) contains a catch-all provision defining certain otherwise unenumerated, nonsex crimes as "[s]exually violent crime[s]" if the district court determines beyond a reasonable doubt the criminal act was "sexually motivated." However, the catch-all provision does not apply to convictions when the district court finds on the record that the act underlying the conviction involved non-forcible sexual conduct with a victim at least 14 years of age when the offender was not more than 4 years older than the victim.

2.

The exception to the definition of a "[s]exually violent crime" in K.S.A. 2022 Supp. 22-4902(c)(19) for acts that the court determines on the record "involved non-forcible sexual conduct" when "the victim was at least 14 years of age and the offender was not more than four years older than the victim" applies only to convictions for nonsex crimes not otherwise enumerated in K.S.A. 2022 Supp. 22-4902(c)(1)-(18).

Appeal from Shawnee District Court; STEVEN R. EBBERTS, judge. Opinion filed September 29, 2023. Affirmed.

*Corrine E. Gunning*, of Kansas Appellate Defender Office, for appellant.

*Jodi Litfin*, deputy district attorney, Michael F. Kagay, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., CLINE and HURST, JJ.

HURST, J.: After being convicted for one count of aggravated indecent liberties with a child, the district court ordered Austin Wayne Detimore to register as an offender pursuant to the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq. Although Detimore does not attack his conviction, he argues that the district court erred by ordering him to register as an offender under KORA. Detimore alleges that his conduct underlying his conviction for aggravated indecent liberties with a child meets an exception to the definition of "sexually violent crime" and thus excepts him from KORA registration. Although Detimore's argument is not without logical nuance, it is unsupported by the ordinary and plain reading of the applicable statute. The district court properly found that Detimore's conviction for indecent liberties with a child met the definition of a "sexually violent crime" that requires him to register under KORA.

#### FACTUAL AND PROCEDURAL BACKGROUND

The details supporting Detimore's conviction are mostly irrelevant to this court's determination and the material facts necessary for this review are undisputed. Detimore entered a guilty plea to one count of aggravated indecent liberties with a child for acts he committed in December 2018. At the plea hearing, upon Detimore's request, the district court made uncontested factual findings that: (1) the crime of conviction was sexually motivated, (2) the underlying sexual conduct was non-forcible, (3) the victim was 15 years old at the time of intercourse, and (4) Detimore was fewer than four years older than the victim. The district court also notified Detimore of his duty to register under

KORA. Detimore agreed to provisionally comply with KORA registration requirements subject to further litigation.

Before sentencing, Detimore challenged the district court's order requiring him to register under KORA. Detimore argued that the facts underlying his conviction satisfied an exception to the registration requirement. At sentencing, the district court overruled Detimore's objection and entered an order requiring his lifetime registration.

#### DISCUSSION

KORA requires "[o]ffenders," including "sex offenders," to register with a statewide database that holds information about them, including their address, and their offense(s) requiring registration. K.S.A. 2022 Supp. 22-4902(a)(1). Under KORA, a "[s]ex offender" is any person convicted of any "sexually violent crime" on or after April 14, 1994. K.S.A. 2022 Supp. 22-4902(b)(1). KORA lists several "[s]exually violent crime[s]" for which a conviction triggers the registration requirement. Among those identified are:

"(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2022 Supp. 21-5506(b), and amendments thereto;

....

"(19) any act that has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, 'sexually motivated' means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification." K.S.A. 2022 Supp. 22-4902(c).

An offender's required registration duration varies based on current and prior convictions. K.S.A. 2022 Supp. 22-4906. Certain convictions—including a conviction for

aggravated indecent liberties with a child—trigger a lifetime registration requirement. K.S.A. 2022 Supp. 22-4906(d)(3).

Detimore argues that despite the registration requirement for persons like him who are convicted of aggravated indecent liberties with a child—the facts underlying his conviction meet the exception from registration under K.S.A. 2022 Supp. 22-4902(c)(19). This court exercises unlimited review of questions of law, including interpreting statutory language such as KORA. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019). When interpreting a statute, this court first looks to "the plain language of the statute, giving common words their ordinary meaning" to determine the Legislature's intent. *In re M.M.*, 312 Kan. 872, 874, 482 P.3d 583 (2021).

The issue appears simple. KORA requires persons convicted or adjudicated guilty of certain offenses to register as an offender with the appropriate law enforcement agency. K.S.A. 2022 Supp. 22-4905. Persons convicted of a "sexually violent crime" are included in the registration requirement, and KORA plainly and unambiguously defines convictions for aggravated indecent liberties with a child as a conviction for a "sexually violent crime." K.S.A. 2022 Supp. 22-4902(c)(3); K.S.A. 2022 Supp. 22-4906(d)(3). "As used in the Kansas offender registration act, unless the context otherwise requires: . . . (b) 'Sex offender' includes any person who: (1) on or after April 14, 1994, is convicted of any sexually violent crime." K.S.A. 2022 Supp. 22-4902. The statute further provides that "(c) '[s]exually violent crime' means: . . . (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2022 Supp. 21-5506(b), and amendments thereto." K.S.A. 2022 Supp. 22-4902. Therefore, a plain reading of KORA demonstrates that Detimore's conviction for aggravated indecent liberties with a child carries a registration requirement.

Rather than accepting this clear reading of the statute, Detimore relies on subsection (c)(19) of K.S.A. 2022 Supp. 22-4902 to claim that the facts underlying his conviction make him excepted from registration:

"(c) 'Sexually violent crime' means. . . (19) any act that has been determined beyond a reasonable doubt to have been sexually motivated, *unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim.*" (Emphasis added.) K.S.A. 2022 Supp. 22-4902(c)(19).

The first part of subsection (c)(19) is a catch-all provision under which a conviction for an otherwise-unenumerated sexually motivated crime can trigger an offender's duty to register under KORA. K.S.A. 2022 Supp. 22-4902(c)(19); *State v. Coman*, 294 Kan. 84, 92, 273 P.3d 701 (2012) (addressing the catch-all provision in a prior version of the statute). This means that even if a particular conviction is not defined as a sexually violent crime in K.S.A. 22-4902(c)(1)-(18), it could still be classified as a "sexually violent crime" for KORA registration purposes if the district court determines "beyond a reasonable doubt" that the crime was "sexually motivated." However, the subsection also contains an exception to its application for those unenumerated offenses if "the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim." K.S.A. 2022 Supp. 22-4902(c)(19).

Detimore argues that the statutory language is ambiguous as to whether the exception contained in subsection (c)(19) applies to *all* sexually violent crimes—including those enumerated as such in subsections (c)(1)-(18)—or just the category of crimes pulled into the definition of sexually violent crimes by the catch-all in subsection (c)(19). According to Detimore, the ambiguity requires this court to resort to the statute's legislative history and canons of statutory construction to resolve that ambiguity in favor of applying the (c)(19) exception to *all* sexually violent crimes. Although a logical

argument could be made that by including the specific factors in subsection (c)(19) that undermine a finding that a conviction is a sexually violent crime, the Legislature intended to omit convictions meeting those factors from the definition of "sexually violent crimes." Under this reasoning, the factors creating an exception to registration in subsection (c)(19) should then be considered for any conviction—even if enumerated as sexually violent in the statute—not just the unenumerated convictions drawn in by the catch-all provision in (c)(19). In any event, this argument does not render the statute ambiguous.

Detimore argues the ambiguity arises because the catch-all in subsection (c)(19) only includes "sexually motivated" offenses, while the exception applies to crimes with "sexual conduct." He claims that if a nonsex crime is found to be "sexually motivated" as required by the catch-all provision in (c)(19), then it cannot also have "sexual conduct" as to make the exception apply. However, Detimore misreads the exception to somehow require a finding that the offender engaged in sexual conduct. Rather, the exception merely prohibits its application to offenses involving "forcible sexual conduct." Prohibiting application of the exception for crimes involving "forcible sexual conduct" does not create an inverse requirement that the crime itself involve sexual conduct for the catch-all provision to apply. Moreover, this court cannot say it is impossible to be convicted of a "sexually motivated" nonsex crime that also involves "sexual conduct." There is no need to create hypothetical applications of this subsection to establish its viability, as Kansas appellate courts have upheld several cases requiring defendants to register under KORA using the sexually violent crime catch-all provision. See *Coman*, 294 Kan. at 95 (identifying a series of cases where Kansas appellate courts have upheld application of the catch-all provision to find a crime sexually motivated for KORA registration purposes). The exception from registration under the catch-all provision for certain crimes involving non-forcible sexual conduct does not require that convictions for crimes meeting the catchall provision involve "sexual conduct" and does not render K.S.A. 22-4902(c)(19) ambiguous.

Finally, under the plain language of the statute, a conviction for aggravated indecent liberties with a child always requires registration. As the Kansas Supreme Court has recognized, "KORA's definition provision, K.S.A. 22-4902, includes a list of crimes that are per se 'sexually violent crimes,' i.e., crimes which always require KORA registration." *Coman*, 294 Kan. at 85. Nothing in the plain language of the statute indicates that the Legislature intended for the exception in subsection (c)(19) to apply to the litany of crimes specifically identified as sexually violent crimes.

The individual subsections in K.S.A. 2022 Supp. 22-4902(c) enumerating the various sexually violent crimes are separated from the catchall provision in subsection (c)(19) by the word "or," indicating that subsections (1) through (18) each identifies a different sexually violent crime. If the exception contained in the catch-all provision in subsection (19) was intended to apply to each sexually violent crime in the list—rather than just sexually violent crimes roped in by the catch-all provision—the exception would not have just been included with the catch-all subsection. Rather, the exception would have been included in the statute to demonstrate its application to all the separately enumerated crimes. For example, in a different section of the statute that provides another definition of who constitutes a "[s]ex offender" and is thus subject to registration, the Legislature made clear that the very same exception contained only in the catch-all subsection applies to all the separately enumerated crimes in that section:

"(b) 'Sex offender' includes any person who. . . (2) on or after July 1, 2002, is adjudicated as a juvenile offender for an act which, if committed by an adult, would constitute the commission of a sexually violent crime, *unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim.* (Emphasis added)." K.S.A. 2022 Supp. 22-4902(b)(2).

Unlike the universal application of the exception in subsection (b)(2), in subsection (c)(19) at issue here the Legislature chose to not make the exception applicable to the list of enumerated crimes. Had the Legislature intended for the exception in (c)(19) to apply to the entire list of enumerated crimes defined as sexually violent therein, the (c)(19) exception would have been written as it is in subsection (b)(2). Instead, the Legislature chose to limit the applicability of the exception in this content to the catch-all provision.

The plain and unambiguous reading of KORA demonstrates that the exception in subsection (c)(19) limits the reach of the catch-all provision and does not somehow negate the categorization of the litany of enumerated offenses in subsections (c)(1) through (18) as sexually violent. The (c)(19) exception merely narrows the category of sexually motivated nonsex offenses that could trigger KORA registration despite the offense not being expressly defined as a sexually violent crime. This result is not only consistent with the plain language of the statute but consistent with its intent.

#### CONCLUSION

Detimore was convicted of aggravated indecent liberties with a child, an offense expressly designated a sexually violent crime under KORA. Having found no ambiguity related to Detimore's allegations, this court declines to consider KORA's legislative history or employ the canons of statutory construction to interpret Detimore's registration requirements. Therefore, under the plain and unambiguous language of KORA, Detimore is a sex offender subject to lifetime KORA registration. Nothing in subsection (c)(19) alters or contradicts that result, and the district court's judgment is affirmed.

Affirmed.