

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

UNITED STATES OF AMERICA,

v.

GREGORY V. ROBERTS,

Defendant.

CASE No. 6:07-CR-70031

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on the Defendant's June 27, 2007 Motion to Dismiss Indictment. For the reasons given in open court and below, this motion is DENIED.

I. BACKGROUND

The facts of this case are not disputed. Defendant was convicted in the state courts of Virginia for various sex offenses in 1994. State law has required him, since that time, to register his whereabouts regularly with the authorities. He has been compliant with this requirement until very recently. Sometime close to November 7, 2006, he moved his residence to North Carolina and failed to inform the sex-offender registry in either Virginia or North Carolina of this move. He was indicted under 18 U.S.C. § 2250, the federal failure to register statute ("FFR") for failure to comply with the Sex Offender Registration and Notification Act, 42 U.S.C. §§ 16911-16919, effective July 27, 2006 (P.L. 109-248) ("SORNA").

Defendant argues that the provisions of SORNA do not include him on their face, and that only rulemaking by the Attorney General could bring him within its ambit. He raises numerous constitutional objections, including due process, the commerce clause, and excessive

delegation of authority. Finally, he challenges the venue in which this action is brought.

These objections were overruled in open court on July 18, 2007, and the Defendant entered a guilty plea, reserving the right to appeal the decision. I write now to more fully explain my decision.

II. DISCUSSION

a) Applicability of SORNA to Defendant

SORNA, enacted less than a year before this motion was filed, provides that “a sex offender shall register, and keep the registration current” where he lives, works, and studies. 42 U.S.C. § 16913(a). Initial registration must occur promptly after conviction or before release from imprisonment. *Id* at (b). Registration must be updated within 3 days of moving, changing jobs, or changing names. *Id* at (c). It requires an offender to notify one of the jurisdictions “involved pursuant to subsection (a),” which jurisdiction will then notify all of the others so involved. *Id*. Finally, for those offenders who cannot comply with subsection (b), the Attorney General is given the power to prescribe regulations on who must register and how such registration is to be accomplished. *Id* at (d).

It is this last subsection to which Defendant attaches great importance. Because the Attorney General is empowered to determine the “applicability” of the Act to those convicted before its enactment, he argues that SORNA as a whole does not apply to him, and that he cannot be expected to comply with it until the Attorney General has issued regulations which bring him within its terms. Defendant argues that the delegation provision in (d) means that the statute applies only to those convicted after its effective date, and that those convicted before then are exempt unless the Attorney General says they are not. This contention cannot be sustained

The bulk of the statute does not make a distinction between those convicted before the

Act and those convicted after. It imposes its requirements on “sex offenders,” without qualification. The proper distinction for these purposes is between those who are currently registered, and those who are not. Those currently registered are unambiguously required by subsections (a) and (c) to keep their registrations current. Those not currently registered must register in accordance with the “initial registration” provisions in subsection (b). Subsection (d), as its title reveals, is very narrow in scope: only those currently unregistered offenders literally *unable* to comply with (b) because of the age of their convictions are within the grey area which the Attorney General is authorized to illuminate by rule. In this subsection, Congress did distinguish between convictions from before and after the enactment of the act. But it is clear from the context that their intent was not to exempt all sex offenders convicted before July 2006 from registration requirements, but rather to avoid the obvious injustice of requiring such offenders to do the impossible by registering within 3 days of their years-old convictions.

This conclusion is bolstered by examination of the legislative history of the Act. Congress was concerned with the possibility that then-existing sex offenders were slipping through the cracks of the disparate 50 state registration systems. See *U.S. v. Hinen*, 2:07CR00005, 2007 U.S. Dist. LEXIS 36003 at 11, n. 5 (W.D.Va 2007) (collecting citations to the Congressional Record). The intent of SORNA was to improve the registration and tracking of existing known sex offenders, not merely those who might be convicted after the effective date.

Defendant, a sex offender who was registered prior to the enactment of SORNA, was required to keep his registration current in accordance with its terms. Because he had first registered years before SORNA, subsections (b) and (d), concerned exclusively with *initial* registration, do not apply to him. Thus he is a person “required to register under [SORNA]” and

subject to the penalties imposed by 18 U.S.C. 2250(a).

b) Constitutional issues

Because subsection (d) concerns a population of which Defendant is not a member, he lacks standing to pursue his Constitutional claim of excessive delegation of legislative authority.

Defendant claims he was denied due process because he received no notification of SORNA's requirements. This amounts to a claim that ignorance of the law excuses non-compliance. Unsurprisingly, Defendant cites no authority for this proposition, which is at odds with centuries of Anglo-American jurisprudence. Few offenders have ever had relevant sections of the U.S. Code read to them before committing their crimes, yet they are expected to comply with it even so. Owners of firearms, doctors who prescribe narcotics, and purchasers of dyed diesel are all expected keep themselves abreast of changes in the law which affect them, especially because such people are on notice that their activities are subject to regulation. *See, e.g. United States v. Mitchell*, 209 F.3d 319, 322 (4th Cir. 2000) (knowledge that firearm ownership was prohibited not necessary to sustain conviction under 18 U.S.C. § 922(g)). Sex offenders are no different; they must comply with the law even when it changes suddenly and without notice, and they are well advised to periodically check for changes because they are particularly subject to regulation.

The remaining constitutional claims were ably discussed in *Hinen*, and I endorse the resolution of those questions given there.

c) Venue

The final question is one of venue. Defendant asserts that the alleged omission—failure to register—occurred in North Carolina, which requires a trial there. The government replies that defendant was “supposed to have notified both” North Carolina and Virginia, so that the

omission has occurred in both places. The government's position may be accurate as a matter of state law, but SORNA only requires that an offender "appear in person in at least one jurisdiction involved pursuant to subsection (a)" to change the registration. 42 U.S.C. § 16913(c). "At least one" cannot plausibly be read as "both." Thus there was no SORNA requirement to register in both jurisdictions.¹

The government also argues that, under the general venue statute, 18 U.S.C. § 3237, venue is proper in any district through which defendant passed during his interstate travels. According to the government, this interpretation is supported by *United States v. Burns*, 990 F.2d 1426 (4th Cir. 1993), which finds venue proper in any district touched by violations of the Travel Act. But the Travel Act prohibits travel in interstate commerce which facilitates an underlying crime. 18 U.S.C. § 1952. A conventional example might be a road trip during which contraband is transported, or a visit to another state to consult with criminal associates on an unfolding conspiracy. These sorts of crimes are "continuing offenses" because it is illegal to possess the contraband or be a member of a criminal conspiracy at all points during the trip. Thus the crime is in some sense "committed" everywhere a defendant goes.

For failure to register under 18 U.S.C. § 2250, the crime is not committed until three days after a defendant establishes residency in a new district without a new registration. FFR does not forbid a defendant to cross state lines, or even to cross them under specified criminal circumstances, as does the Travel Act. It forbids failure to register *after having crossed* state lines. For this reason, I cannot conclude that it is a continuing offense, because no crime is

¹I express no opinion on whether Defendant might have been required to register in both jurisdictions by some other federal law, such as the Wetterling Act. It certainly seems likely that this failure to register would have violated state registration laws. Because only SORNA is in issue, only its requirements are relevant.

committed during the actual trip; it occurs only when a sex offender comes to rest in a new home.

The question is thus whether Virginia is a “jurisdiction involved” for the purposes of subsection (a). If so, then Defendants omission has occurred in both states, and can be prosecuted in either district. This subsection requires registration in any district in which the defendant resides, works, or attends school. 42 U.S.C. § 16913(a). Virginia was at one time a jurisdiction of residency for the Defendant. Due to his failure to re-register, it remained his nominal residence according to the sex offender registries. Because of these two factors, I find that Virginia was “involved” in the sense used by SORNA. Therefore, prosecution in Virginia satisfies the venue requirements.

III. CONCLUSION

For the foregoing reasons, the Motion to Dismiss is DENIED.

The Clerk of the Court is directed to send a certified copy of this Order to all counsel of record.

ENTERED: _____
U.S. District Judge

Date