

No. 122008

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF)	Appeal from the Appellate Court of
ILLINOIS,)	Illinois, No. 1-14-3150.
)	
Plaintiff-Appellee,)	There on appeal from the Circuit
)	Court of Cook County, Illinois, No.
-vs-)	14 CR 11336.
)	
JEROME BINGHAM)	Honorable
)	Bridget Jane Hughes,
)	Judge Presiding.
Defendant-Appellant)	

**PETITION FOR REHEARING
FOR DEFENDANT-APPELLANT**

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This Court’s holding that it did not have jurisdiction to review SORA’s constitutionality on Jerome Bingham’s direct appeal was incorrect because (1) it violates well-established principles of equal protection and substantive due process to require poor people to suffer criminal conviction in order to challenge registration requirements that more affluent people can challenge without being convicted; (2) under this Court’s precedent, the consequences of a criminal conviction cannot be “collateral” if they qualify as legal punishment; and (3) it is contrary to the plain language of Supreme Court Rule 615(b).

In dismissing Jerome Bingham’s direct appeal, this Court said, “The two proper ways that the kinds of constitutional issues involved in this case typically make their way to a reviewing court are (1) through a direct appeal from a case finding a defendant guilty of violating the regulation he attempts to challenge as unconstitutional, such as the sex offender registration law” or “(2) by filing a civil suit seeking a declaration of unconstitutionality and relief from the classification as well as the burdens of sex offender registration[.]” *Bingham*, 2018 IL 122008, ¶ 21. Thus, this Court held that indigent registrants may not challenge

the constitutionality of the registration requirements unless they file a civil lawsuit or subject themselves to a criminal conviction.

This holding is erroneous because it makes it far more difficult for indigent defendants to challenge registration requirements, thus violating the Fourteenth Amendment requirement “that indigents have an adequate opportunity to present their claims fairly within the adversary system.” *Ross v. Moffitt*, 417 U.S. 600, 612 (1974), citing *Griffin v. Illinois*, 351 U.S. 12, 23 (1956). As *Griffin* held, “[b]oth equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, ‘stand on an equality before the bar of justice in every American court.’” *Griffin*, 351 U.S. at 17. Accordingly, “a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons.” *Ross*, 417 U.S. at 617. This Court’s decision conflicts with this well-established law because it creates a system by which indigent registrants, who do not have the means to pursue a civil suit challenging their registration requirement, may not litigate constitutional claims unless they first subject themselves to criminal prosecution and conviction.

In other words, by prohibiting such litigants from challenging registration on direct appeal from the criminal conviction that triggered the registration requirement, this Court’s holding effectively creates a two-tier system of justice that makes it far more difficult for indigent defendants to challenge the severe, burdensome consequences of sex offender registration. This Court should grant rehearing to reconsider this consequence of its decision.

This Court should also grant rehearing because one of the central questions at issue in Jerome Bingham's direct appeal was whether Illinois' sex offender registration and notification scheme has evolved from a valid regulatory scheme into punishment under *Mendoza-Martinez's* intent-effects test. This question far transcends Bingham's individual claims. Yet this Court held that it lacked jurisdiction to consider the question on direct appeal after stating that sex offender registration is a collateral consequence of Bingham's theft conviction, not part of his sentence. *Bingham*, 2018 IL 122008, ¶¶ 10, n. 1, 18. This point requires rehearing for two reasons.

First, the question of whether sex offender registration is punishment is one of substantial public nature that has been raised in numerous Illinois cases and is likely to recur.¹

Second, this Court has explained that "a direct consequence of a guilty plea is one which has a definite, immediate and largely automatic effect on the range of a defendant's sentence." *People v. Hughes*, 2012 IL 112817, ¶ 35. By contrast, "[a] collateral consequence is one which the circuit court has no authority to impose and 'results from an action that may or may not be taken by an agency that the trial court does not control.'" *Hughes*, 2012 IL 112817, ¶ 36. This Court further held that collateral consequences differ from direct consequences because

¹ This list is not comprehensive, but instead offers a sample of recent decisions that reflect disagreement within the Appellate Court: *People v. Tetter*, 2018 IL App (3d) 150243, leave to appeal pending; *People v. Kochevar*, 2018 IL App (3d) 140660; *People v. Cetwinski*, 2018 IL App (3d) 160174, ¶ 54; *People v. Owens*, 2018 IL App (4th) 170506, ¶ 16; *People v. Begay*, 2018 IL App (1st) 150446, ¶ 59, leave to appeal pending.

the former “lack the definite, immediate or automatic effect on the sentence imposed.” *Id.*

In *People v. Cowart*, the defendant relied on *Hughes* to argue that the trial court was required to admonish him of the requirement that he register as a sex offender. 2015 IL App (1st) 131073, ¶ 18, leave to appeal denied, 2015 IL App (1st) 131073. The Appellate Court acknowledged that “[t]he requirement to register as a sex offender is definite and automatic.” *Cowart*, 2015 IL App (1st) 131073, ¶ 18. These characteristics suggest that the registration requirement is a direct consequence under *Hughes*. However, relying on *People v. Malchow*, 193 Ill. 2d 413, 424 (2000), the Appellate Court instead determined that the registration requirement is a collateral consequence because “it does not affect the defendant’s punishment.” *Cowart*, 2015 IL App (1st) 131073, ¶ 18.

The idea that sex offender registration is a collateral consequence that may equate with legal punishment is in direct conflict with *Cowart*, *Hughes*, and *Malchow* because these cases stand for the proposition that the consequences of a criminal conviction cannot be “collateral” if they affect the defendant’s punishment. Rehearing should be granted to reconcile the conflict. *See People v. Denson*, 2014 IL 116231, ¶¶20-21 (observing that the Court has an obligation to explain and reconcile inconsistent precedent).

Finally, this Court should grant rehearing because its holding that a reviewing court has no power on direct appeal of a criminal conviction to order that a defendant be relieved of the obligation to register as a sex offender is contrary to the plain language of Supreme Court Rule 615(b). Rule 615(b) permits reviewing courts

to “modify any or all of the proceedings ... dependent upon the judgment or order from which the appeal is taken” or “reduce the punishment imposed by the trial court[.]” Sup. Ct. R. 615(b). This Court held that the issues raised in this case did not come within the ambit of Rule 615(b) and therefore both the Appellate Court and itself lacked power to consider Bingham’s claims.

According to this Court’s decision, the registration requirement cannot “be fairly characterized as a ‘proceeding.’” *Bingham*, 2018 IL 122008, ¶ 17. Although Rule 615(b) does not define the word “proceeding,” this Court has said that “[i]t is appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase.” *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 76. The dictionary definition of the word “proceeding” most relevant to this case is: “The business conducted by a court or other official body; a hearing.” Black’s Law Dictionary (10th ed. 2014).

Contrary to this Court’s decision, the requirements of Illinois’ sex offender registration and notification scheme qualify as business conducted by an official body because the scheme is managed by the Illinois State Police. This Court’s decision is therefore contrary to the plain language of Supreme Court Rule 615(b).

Moreover, Rule 615(b) provides that the reviewing court may “set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken.” Sup. Ct. R. 615(b). There is no question that Bingham’s obligation to register as a sex offender is dependent on his theft conviction. This Court should grant rehearing because its decision

is contrary to the plain language of Rule 615(b) and will lead to confusion in an area that was previously clear.

CONCLUSION

For the foregoing reasons, Jerome Bingham, defendant-appellant, respectfully requests that this Court grant rehearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Deborah Nall, certify that this petition for rehearing conforms to the requirements of Supreme Court Rule 341(a) and 367(a) and (c). The length of this petition, excluding pages containing the Rule 341(d) cover and the Rule 367(a) certificate of compliance is 6 pages.

/s/Deborah Nall
DEBORAH NALL
Assistant Appellate Defender

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Defendant-Appellant)	

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 1, 2018, the Petition for Rehearing was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Petition for Rehearing to the Clerk of the above Court.

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