

MSC Opinion: Homeless sex offenders are not exempt from the reporting and notification requirements of the Sex Offender Registration Act

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In *People v. Dowdy*, Case No. 140603, the Michigan Supreme Court ruled that homeless sex offenders are required to comply with the reporting obligations and notification requirements of Michigan's Sex Offender Registration Act ("SORA"). Specifically, the Court held that persons who are required to register as a sex offender must appear in person at a law enforcement agency every January, April, July and October to register their "residence" or "domicile", even if they are homeless. This category of sex offenders must also comply with MCL 28.725(1), which requires offenders to notify law enforcement officials within 10 days of changing their residence or domicile. Accordingly, the Court reversed the Court of Appeals and remanded the case against Mr. Dowdy for trial.

In 1984, Randall Dowdy was convicted of kidnapping, possession of a firearm during the commission of a felony, and five counts of first-degree criminal sexual assault. He was released from custody in 2002. As a result of his CSC convictions, Dowdy is required to register as a sex offender. Every January, April, July and October, Dowdy is required to appear in-person at a law enforcement agency and provide information regarding his residence or domicile. He is also required to notify law enforcement officials within 10 days of a change in his residence or domicile. Although Dowdy was homeless, most nights he was able to stay at the Volunteers of America homeless shelter. Accordingly, he initially provided officials with the shelter's address.

In 2006, the shelter discovered that Dowdy was a convicted sex offender. Pursuant to the shelter's policy, it is prohibited from providing services to convicted sex offenders. From that point forward, Dowdy was no longer able to sleep at the shelter. He did not notify police of the change in his residence. Additionally, he failed to appear for the next 16 quarterly reporting periods. When police discovered Dowdy was no longer living at the shelter, he was arrested and charged with failing to notify police of a change in his residence, in violation of MCL 28.725(1), and failing to report to law enforcement on a quarterly basis, in violation of MCL 28.725a(a)&(B). Dowdy filed a motion to dismiss the charges arguing that homeless offenders were categorically excluded from these statutory obligations because it was impossible for these offenders to comply—they had no residence or domicile. The trial court agreed and dismissed the case.

The Court of Appeals initially denied leave to appeal. The Michigan Supreme Court, however, directed the Court of Appeals to consider the case as on leave granted. The Court of Appeals affirmed the trial court's dismissal of charges against a homeless defendant for his failure to comply with the reporting requirements of the SORA. Although acknowledging that the terms "domicile" and "residence" are often used interchangeably, the Court of Appeals emphasized that the term "residence" generally, and as it is defined in SORA, does not include the intent to make a residence a permanent home. Under the plain language of SORA, the term "residence" refers to a place, dwelling, or abode, where an individual has a "regular place of lodging." Applying dictionary definitions to the term "lodging," the Court of Appeals stated that it is defined as "[a] place to live," or "accommodations in a house, esp. in rooms for rent[.]" In considering whether the homeless defendant has a residence for purposes of SORA, the Court of Appeals explained that "[t]he provisional location where a homeless person happens to spend the night does not fall within the ambit of these definitions." The Court

of Appeals recognized the Legislature's intent to provide for public safety by requiring the maintaining of information regarding the location of convicted sex offenders, but focused on those who have a domicile or residence as defined by SORA.

The Supreme Court disagreed. First, the Court held that a residence, for purposes of SORA, is a place where an offender habitually sleeps and establishes regular lodging. It is not necessary that the residence is a home, a street address, or even a physical structure. Instead, the residence only has to be a "place". Under this definition, presumably an offender could register his or her residence as a park, or even a street corner.

Second, the Court ruled that, under Michigan law, every person has a domicile. Even if a homeless person is transient, he or she can provide sufficient information to comply with SORA's reporting requirement. Under the statute, Michigan State Police are empowered to adopt rules and regulations necessary to register offenders. In fact, the Michigan State Police promulgated an order which permits homeless offenders to register their domicile as "123 Homeless" followed by the city where the offender primarily stays. In light of this policy, the Court held that it is not impossible for homeless offenders to comply with SORA. They must personally appear each quarter and provide law enforcement officials with sufficient information to record their domicile. The Court ruled there was no excuse for Dowdy to fail to appear in-person 16 times, even if he assumed he couldn't provide an adequate residence or domicile. It also held that Dowd was not excused from notifying law enforcement officials within 10 days after he moved out of the shelter.

Accordingly, the Court held it was clear legal error for the lower courts to excuse Dowd's failure to comply with SORA. Therefore, the Court of Appeals' opinion was reversed and the case was remanded to the trial court for trial.

Justice Marilyn Kelly, joined by Justices Cavanagh and Hathaway, strongly disagreed with the majority's opinion. The dissenters noted that while a "park bench, highway underpass, or steam grate" may be where a homeless offender sleeps, it is not a regular place of lodging, as the Court of Appeals recognized. Additionally, the dissenters note that under the rule established in *Beecher v. Common Council of Detroit*, 114 Mich. 228 (1897), an individual must establish a residence before he or she can establish domicile. If a homeless offender does not have a regular place of lodging, he or she does not have a domicile. Finally, the dissenting opinion notes that the use of a fake address, "123 Homeless", by the Michigan State Police contravenes the purposes of SORA. It does not allow police or the public to easily locate offenders or guard against future sex crimes by these offenders.