

FILED _____

AT _____ O'clock _____ M
CLERK, DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 JUSTIN WOLFGANG LANGER,)
)
)
 Defendant.)
)
 _____)

Case No. **CRF 1999 191**

**MEMORANDUM DECISION AND
ORDER DENYING
DEFENDANT/PETITIONER'S PETITION
TO REMOVE DEFENDANT FROM SEX
OFFENDER REGISTRY**

I. PROCEDURAL HISTORY AND BACKGROUND.

On October 6, 1999, Justin Langer (Langer) was sentenced by Judge James F. Judd to a suspended sentence of five years fixed and ten years indeterminate, for a total not to exceed fifteen years, for the felony crime of Lewd Conduct With a Minor Under Sixteen, a violation of I.C. § 18-1508. The Information charged Langer had manual-genital contact with a nine-year-old female victim. The presentence report is consistent with such events. Langer was placed on five years of supervised probation. Langer successfully completed that probation. Affidavit of Justin Langer, p. 1.

On April 26, 2011, Langer filed his Petition to Remove Defendant from Sex Offender Registry and supporting Affidavit. A copy of those pleadings was sent to the Kootenai County Prosecuting Attorney. On August 2, 2011, this Court filed an Order to Show Cause

Hearing, scheduling the matter set forth in the petition for hearing on September 27, 2011. The State of Idaho filed no written response to Langer's petition.

Hearing was held on September 27, 2011. At the hearing, Langer testified, Langer's wife testified, and Exhibits A-F (letters of recommendation in support of Langer) were received and admitted. Langer had previously (April 26, 2011) filed with the Court his October 11, 2010, polygraph test results, and a November 18, 2010, psychosexual report from Thomas J. Hearn. No evidence was offered by the State.

II. ANALYSIS.

Idaho Code § 18-8310, allows a person, other than 1) a recidivist, 2) "an offender who has been convicted of an aggravated offense", or 3) a violent sexual predator, ten years after being released from prison or placed on parole or probation, to petition the district court for a show cause hearing to determine whether the person shall be exempted from the duty to register as a sexual offender. I.C. § 18-8310(1). It is the second situation, whether Langer's crime is an "aggravated offense", which is at issue here.

At the time Langer was sentenced on October 16, 1999, for the crime of Lewd Conduct with a Minor Under Sixteen, for committing a lewd act upon a nine-year-old, he was subject to the Sexual Offender Registration Notification and Community Right-to-Know Act of 1998 (SORA), Idaho Sess. Laws ch. 411, § 1, p. 1976, replacing the earlier 1993 Sex Offender Registration Act, 1993 Idaho Sess. Laws ch. 155, § 1, p. 392. In 1999, the only types of cases that were not allowed to eventually be removed from the sex offender registry were those involving violent sexual predators. However, the statute subsequently changed.

In 2001, while Langer was serving his probation term, SORA was amended, creating a new class of "aggravated offenses". 2001 Idaho Sess. Laws, ch. 194, § 1, p. 659. An

individual convicted of an aggravated offense is not permitted to seek exemption from the duty to register as a sex offender under I.C. § 18-8310(1). See *State v. Hartwig*, 150 Idaho 326, ___, 246 P.3d 979, 980 (2011). The 2001 SORA amendment included within the category of aggravated offenses convictions of lewd conduct where the victim was less than twelve years of age. The current SORA version has no age requirement and deems any individual convicted of I.C. § 18-508 (lewd conduct) as having committed an aggravated offense. I.C. § 18-8303(1).

Idaho Code § 18-8304 states the provisions of SORA apply to any person who on or after July 1, 1993, is convicted of the crimes listed in I.C. § 18-8304(1)(a), which includes the crime of lewd conduct with a minor child, I.C. § 18-1508, to which Langer pled guilty in 1999. The amendment to SORA, deeming an individual convicted of lewd conduct with a minor as being ineligible to apply for release from the registration requirement, first came about while Langer had been on probation for two years (and was therefore ineligible to apply for release from the registration requirements for eight additional years after the “aggravated offense” provision came into place). A subsequent statutory change defining an “aggravated offense” as lewd conduct with a minor being limited to lewd conduct with a minor under the age of twelve or thirteen, and then a more recent statutory change to those crimes where the victim is under sixteen, are of no import here because Langer’s conviction was for lewd conduct with a nine-year-old victim.

At the time Langer filed his petition on April 26, 2011, I.C. § 18-8310(1)(c) required only that the petitioner “[provide] proof of service of such petition upon the county prosecuting attorney for the county in which the application is made.” Langer complied with this requirement, serving the Kootenai County Prosecuting Attorney’s office on April 25, 2011. Subsequent to the filing of his petition, I.C. § 18-8310 was amended,

effective July 1, 2011. The section now reads, “[p]rovide proof of service of such petition and supporting documents upon the county prosecuting attorney for the county in which the application is made *and upon the central registry.*” I.C. § 18-8310(1)(c) (emphasis added).

This Court finds Langer abided by the then-in-place requirements at the time his petition was filed. Idaho Code § 18-8310(1)(c) was amended effective July 1, 2011, to require service upon the central registry. Such change is a procedural change. The Idaho Supreme Court has held that, “[a]lthough substantive changes in a statute may not be given retroactive effect, remedial and procedural amendments should be applied retroactively.” *Tuttle v. Wayment Farms, Inc.*, 131 Idaho 105, 108, 952 P.2d 1241, 1244 (1998) (citing *Jensen v. Shank*, 99 Idaho 565, 566-67, 585 P.2d 1276, 1277-78 (1978)). Thus, after July 1, 2011, Langer should have given the central registry (a copy of) notice of his petition and affidavit. This Court should have included the central registry on its notice of the show cause hearing. However, this Court views such failure as *de minimus*, because the central registry was not prejudiced as Langer is not entitled to the relief he requested. A copy of this decision is being sent to the central registry.

Langer argues:

At the time of his conviction, Idaho Code §18-8310 allowed anyone other than a designated violent sexual predator to petition for removal from the sex offender registry. Because being on the sex offender registry prohibits certain employment as well as imposing many other onerous conditions, denying the right to be removed from the registry after the fact would violate the ex post facto provisions of the United States and Idaho Constitutions.

Petition to Remove Defendant from Sex Offender Registry, p. 2. No citation to any legal authority is given by Langer for this argument.

The Idaho Supreme Court has held sexual offender registration requirements are remedial and therefore civil in nature. *State v. Hartwig*, 150 Idaho 326, _____, 246 P.3d 979, 981 (2011). Thus, amendments to SORA may be applied retroactively; effectively preventing this Court from granting Langer the relief sought in light of the statute's amendment to include the crime of which Langer was convicted as an "aggravated offense" precluding his ability to seek release from registration requirements under I.C. § 18-8310(1). In *Smith v. State*, 146 Idaho 822, 203 P.3d 1221 (2009), the Supreme Court wrote:

"The purpose of Idaho's [sexual offender] registration statute is not punitive but remedial...[t]he fact of registration is not an additional punishment; it does not extend a sentence. Rather, registration provides an information system that assists in the protection of communities." [*State v. Ray*, 133 Idaho [96] at 101, 982 P.2d at 935-36; see also *State v. Gragg*, 143 Idaho 74, 137 P.3d 461 (Ct.App. 2005). (concluding that "Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, I.C. §§ 18-8301 *et seq.*, and its effects, are not punitive, and therefore, do not violate the *ex post facto* prohibition...").

146 Idaho 822, 839, 203 P.3d 1221, 1238. *Smith, Ray* and *Gregg* make it clear that SORA is a remedial, non-punitive, civil statute, "...and its effects...do not violate the *ex post facto* prohibition." *Id.*

Because this Court finds, as a matter of law, that Langer is not eligible for his requested relief due to the crime to which he pled guilty (Lewd Conduct With a Minor Under Sixteen) being an "aggravated offense", and because the statutory changes since he pled guilty do not violate the *ex post facto* prohibition, this Court need not reach the factual issues as to whether Langer has proven by clear and convincing evidence that he is not a risk to reoffend via a violent or sexual offense (I.C. § 18-8310(a)), and that he has no criminal charge pending for under investigation for any violent or sexual offense (I.C. § 18-8310(b)).

IV. CONCLUSION AND ORDER.

For the reasons stated above, defendant/petitioner Langer’s Petition to Remove Defendant from Sex Offender Registry must be denied.

IT IS HEREBY ORDERED Langer’s Petition to Remove Defendant from Sex Offender Registry is DENIED.

DATED this 5th day of October, 2011.

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of October, 2011 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Bruce H. Greene
Prosecuting Attorney – David Robbins

Central Registry, c/o Stephanie
Altig, Deputy Attorney General, via
fax 1(208) 884-7090

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____
Deputy