

**IN THE COURT OF APPEALS OF IOWA**

No. 1-574 / 10-1696  
Filed August 10, 2011

**LESLIE D. NEWTON,**  
Petitioner-Appellant,

**vs.**

**IOWA DEPARTMENT OF  
PUBLIC SAFETY,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

Appeal from the district court's ruling on judicial review affirming the  
commissioner of public safety's determination that petitioner was required to  
register as a sex offender for life. **AFFIRMED.**

Gordon E. Allen, Drake Legal Clinic, and Bryan P. O'Neill, Student Legal  
Intern, Des Moines, for appellant.

Thomas J. Miller, Attorney General, John R. Lundquist, Assistant Attorney  
General, Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

**SACKETT, C.J.**

Leslie Newton appeals from the district court's ruling on judicial review affirming the commissioner of public safety's determination that Newton was required to register as a sex offender for life, based on convictions of two, separate sexual abuse offenses. He contends the court (1) incorrectly interpreted the statute and prior case law in affirming the commissioner, and (2) incorrectly ruled he was required to register for life because of two convictions entered on the same date. We affirm.

**Background and Proceedings.** On September 12, 1980, the petitioner entered two, separate guilty pleas to two, separate charges of sexual abuse in the third degree. The offenses occurred on separate dates, against different victims, and were charged in two separate cases—CR 1004 and CR 1076. On October 17, 1980, the court entered two, separate judgment and sentence orders. Each judgment and sentence provided for a sentence of not more than ten years. The sentence in CR 1076 was to run consecutive to the sentence in CR 1004.

The petitioner was paroled in January of 1987, but two weeks later was arrested and charged with robbery. Upon his conviction he was sentenced to another prison term and his parole in the sexual abuse cases was revoked. While the petitioner was incarcerated, Iowa enacted its sexual-offender registration requirement. See 1995 Iowa Acts, ch. 146, §§ 1-15 (codified at Iowa Code §§ 692A.1-15 (1997)). Before his release in August of 1998, he was

required to register as a sex offender for ten years. See Iowa Code § 692A.2(1) (1997). After his release, the petitioner moved to Kansas.

In 2008, after being on the registry for ten years, the petitioner filed an application with the department of public safety for determination of requirement to register, seeking to be removed from the registry. See *id.* § 692A.8. The commissioner of public safety issued a “decision of determination” that the petitioner was required to register:

The offenses for which you were convicted on 8/8/80 and 7/31/81 in Tama County, Iowa, Sexual abuse in the third degree in violation of Iowa Code Section 709.4, are offenses that require you to register with the Iowa Sex Offender Registry beginning on the date of your release to parole (8/13/98). This is mandated by Iowa Code Sections 692A.1(1)(c) and 692A.2(1)(b) [2007]. Per Iowa Code Section 692A.2(5), you are considered to have been convicted of a “second or subsequent” sexual offense requiring you to register for the remainder of your life.

The petitioner contacted the department about the factual error in the conviction dates, which the department acknowledged in a phone conversation, but the determination he was required to register for life was not changed because the petitioner had two, separate convictions on separate trial informations.

The petitioner then sought judicial review. He alleged the plain language of then sections 692A.2(1) and 692A.2(5) did not permit the State to require him to register for life. He further alleged he was required to register only once for the original convictions and sentences entered on October 17, 1980, that both convictions were entered on the same day and should not be treated as separate crimes for purposes of the sex offender registry, and that the requirement to register for life is an illegal sentence.

The district court held a contested, unreported hearing on the petition for judicial review in August of 2010 and issued its ruling in September. Between the time of the commissioner's determination in November of 2008 that the petitioner was required to register for life and the hearing on the petition for judicial review, the legislature amended chapter 692A. See 2009 Iowa Acts, ch. 119, §§ 1-31 (repealing sections 692A.1 through 692A.16 and adding sections 692A.101-130). The court noted in footnote one of its ruling:

These amendments are applicable to Petitioner only if he was "required to be on the sex offender registry as of June 30, 2009." Iowa Code § 692A.125(2) (Supp. 2009). Because his duty to register as a sex offender in Iowa would have expired in 2008 if then applicable law did not otherwise require lifetime registration, Newton's registration status must be analyzed under the prior provisions of Iowa Code chapter 692A.

The court then interpreted Iowa Code chapter 692A (2007), as its provisions applied to the commissioner's determination, to see if the determination was rendered in error of law and affirmed the commissioner's determination the petitioner was required by statute to register for life. The court noted the purpose of chapter 692A was "to require registration of sex offenders and thereby protect society from those who because of probation, parole, or other release are given access to members of the public." *In re S.M.M.*, 558 N.W.2d 405, 408 (Iowa 1997). With the exception of multiple offenses that are "prosecuted within a single indictment" and "considered as a single offense for purposes of registration," see Iowa Code § 692A.2(6), the statute required a person who was required to register to register for life "upon a second or subsequent conviction that requires a second registration." See *id.* § 692A.2(5). The court concluded each October 17, 1980 conviction for sexual abuse "independently required

Petitioner to register as a sex offender.” The court cited an Illinois case, *People v. Doyle*, 578 N.E.2d 15 (Ill. App. Ct. 1991), which interpreted similar statutory language, in support of its conclusion the commissioner’s determination was correct. The Illinois court held:

The two offenses to which the defendant pleaded guilty were separate offenses committed against two different victims at different times. The defendant argues that, because he pleaded guilty to these offenses at the same time and the convictions were entered at the same time, he has not been convicted a “second” time within the meaning of the statute. Such an argument is neither supported by the plain and ordinary meaning of the language of the statute nor the rules of statutory construction. In construing the statute as a whole and in examining the context in which the words “second or subsequent” are used, it becomes clear that the legislature intended that the accused be qualified for status as an habitual child sex offender when he commits and is convicted of two sex offenses which are separate in time. If the legislature wanted to qualify the word “second” so as to require that the convictions be entered at different times, it would have so specified. For example, the legislature could have stated that the additional conviction be second and subsequent to the first, as opposed to second or subsequent. We construe the word “second” here as meaning that the defendant qualifies if he is convicted twice of any of the enumerated offenses and the second of two convictions stemmed from a different act or from an offense that occurred at a different time from the other.

•••••

Next, in considering the meaning of the phrase “second or subsequent” in the context of the provision, we observe that the legislature specifically excepted from consideration as a second or subsequent conviction any conviction resulting from the same act or resulting from an offense committed at the same time as the offense resulting in the other conviction. . . . To the extent the provision may be considered ambiguous (although we do not believe it is), the rule of statutory construction *expressio unius est exclusio alterius* is applicable here: an expression of certain exceptions in a statute is construed as an exclusion of all others.

*People v. Doyle*, 578 N.E.2d 15, 17-18 (Ill. App. Ct. 1991). The district court affirmed the commissioner’s determination the petitioner is required to register as a sex offender for life.

**Scope and Standards of Review.** Our review of a district court's decision on judicial review pursuant to section 17A.19 is for correction of errors at law. *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 830 (Iowa 2002). We apply the standards of review in Iowa Code section 17A.19(10) to the commissioner's decision to determine whether our conclusions are the same as those of the district court. See *Litterer v. Judge*, 644 N.W.2d 357, 360 (Iowa 2002). Because the determination in this case did not involve a contested case, we consider whether the commissioner committed an error of law or acted unreasonably, capriciously, or arbitrarily. See *Greenwood Manor*, 641 N.W.2d at 831. When determining whether "other agency action" was arbitrary or capricious, we consider whether the determination "was without regard to the law or facts." *Id.*

**Merits.** The petitioner contends the district court did not correctly interpret the law in affirming the commissioner's determination the petitioner was required to register for life. For the reasons that follow, we disagree and affirm the district court.

We find the statute is straightforward and clear.<sup>1</sup> Iowa Code section 692A.2(5) (2007) states:

---

<sup>1</sup> Neither party challenges the application of the 2007 Code to this action. Upon our review of Iowa Code section 692A.16, we also find the 2007 Code applicable to Newton's case. Under section 692A.16, the registration requirements apply to persons convicted of a "sexually violent offense" prior to July 1, 1995, if, among other things, the person is released from incarceration on or after July 1, 1995. Newton was convicted of sexual abuse in the third degree, a sexually violent offense, before July 1, 1995, and was released from incarceration after that date making Iowa Code chapter 692A (2007) applicable.

A person who is required to register under this chapter shall, upon a second or subsequent conviction that requires a second registration, or upon conviction of an aggravated offense, or who has previously been convicted of one or more offenses that would have required registration under this chapter, register for the rest of the person's life.

See also Iowa Code § 692A.106(4) (2011). The legislature provided for one exception to the “second or subsequent conviction” language in section 692A.2(6) where it said, “Convictions of more than one offense which require registration under this chapter but which are *prosecuted within a single indictment* shall be considered as a single offense for purposes of registration.” (Emphasis added.); see also Iowa Code § 692A.102(6) (2011).

Newton’s two convictions resulted from two separate incidents on different dates, against two separate victims, and were charged in two separate trial informations. The convictions and sentences, even though entered on the same date, were on two separate orders, one for each case. Each conviction was for an offense qualifying for registration after release from custody—sexual abuse in the third degree. We find Newton’s conviction in CR 1076 was a “second” conviction separate and apart from the first conviction in CR 1004.

Newton seeks for us to apply the rule developed in *State v. Hollins*, 310 N.W.2d 216, 217 (Iowa 1981), that each succeeding conviction must be subsequent in time to the previous conviction. However, the rule in *Hollins* is applicable only to recidivism statutes that enhancement criminal sentences where the legislature has not provided otherwise. See *State v. Freeman*, 705 N.W.2d 286, 288–91 (Iowa 2005) (detailing the history and application of the *Hollins* rule). Where the statute is civil, not criminal, in nature, the *Hollins* rule

does not apply. See *id.* at 289 (citing *State v. Thomas*, 275 N.W.2d 422, 423 (Iowa 1979)).

Newton acknowledges the sex offender registration statute is not punitive. *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997). Yet Newton claims that requiring him to register for life has the effect of creating a perpetual sentence for a crime for which he has already served his punishment. The primary purpose “is not to punish but to aid the efforts of law enforcement officers in protecting society.” *Id.* The statute is remedial, and not for deterrence or retribution. *Id.* In addition, it is not the court that imposes registration, but is an administrative process carried out by the department of public safety. *State v. Bullock*, 638 N.W.2d 728, 734–35 (Iowa 2002). Because Iowa Code chapter 692A is not punitive, we find the *Hollins* rule does not apply in this case.

Like the district court, we find the reasoning in the Illinois Court of Appeals case, *Doyle*, 578 N.E.2d at 16-17, persuasive in that the factual circumstances and statutory language are nearly identical to the instant case: separate offenses on different days, but guilty pleas and convictions on the same date. In interpreting its statute, the Illinois Court of Appeals held the defendant would be considered to have committed a “second or subsequent” offense “if he has been convicted twice . . . and the second of the two convictions stemmed from a different act or from an offense that occurred at a different time from the other.” *Doyle*, 578 N.E.2d at 18. Interpreting Iowa Code section 692A.2(5) in a similar fashion, we find two convictions based on two different trial informations, which resulted from two separate incidents on different dates, against two separate



victims qualifies as a “second or subsequent conviction” requiring Newton to register as a sex offender for the rest of his life.

This interpretation of “second or subsequent” advances the purpose of the sex offender registry statute to “protect society from those who because of probation, parole, or other release are given access to members of the public.” *S.M.M.*, 558 N.W.2d at 408.

**AFFIRMED.**