

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

McLEAN COUNTY
FILED
JUL 07 2015
CIRCUIT CLERK

THE PEOPLE OF THE STATE OF ILLINOIS,

VS.

CASE NO. 14 CF 1076

MARK MINNIS,
DEFENDANT.

ORDER

THIS CAUSE having come on for hearing on defendant's Motion To Dismiss, filed 14 May 2015, the court having heard the arguments of counsel and now being fully advised, DOES HEREBY FIND AND ORDER:

1. That the court has jurisdiction of the parties and subject matter;
2. That the motion seeks dismissal of the indictment based upon the defendant's argument that the statute under which he has been indicted is unconstitutionally vague and/or overbroad;
3. That the court first finds that the statute as applied to defendant's alleged conduct herein is not unconstitutionally vague. In order to invalidate a statute as vague, the statute must be impermissibly vague in all of its applications, (People v. Law, 202 Ill.2d 578 (2002)). If the conduct alleged to have been committed by the relevant defendant is clearly proscribed by the statute challenged, then that defendant cannot complain that the statute is vague as it may be applied to some other person's conduct, (Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)). Here, the indictment alleges, in relevant part, that the defendant "...did not register an internet site, a Facebook page, which he had uploaded content to." The challenged statute, 730 ILCS 150/3, states, in relevant part, that a person required to register as a sex offender must provide accurate information, to include all "...Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information." A reasonable person can understand this to mean that if the sex offender has uploaded content or posted messages or information to an Internet site then the sex offender must report this Internet site. That is precisely what the indictment alleges the defendant herein failed to do. The statute is therefore not facially vague;
4. That the court finds that the statute is unconstitutionally overbroad under the First Amendment. To succeed on an over breadth challenge the defendant must demonstrate that the statute, despite serving a legitimate State interest, prohibits constitutionally protected speech and is not sufficiently narrowly tailored to serve that legitimate purpose, (Ward v. Rock

Against Racism, 491 U.S. 781 (1989)). In the instant case, defendant concedes that the challenged portion of the statute at issue serves a legitimate State interest, that being protecting the public, and in particular minors, from improper sexual comments and/or solicitation from convicted sex offenders on the internet. While not bound by a decision of a federal district court, the court finds the reasoning of the court in Doe v. Nebraska, 898 F.Supp.2d 1086, (D.Nebraska 2012) to be persuasive and sound. That case addressed a Nebraska statute with language very similar to that in the instant statute. 730 ILCS 150/3 requires, in relevant part, that a sex offender report “...all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information,” (emphasis added). By its terms, the statute has no limitations on the type of speech or communication which the offender is required to report and register, regardless of whether that speech is in any way related to the legitimate purpose of the statute. As noted in defendant’s brief, the statute requires a sex offender to report things such as use of banking, restaurant or hotel reviews, or political sites to which the offender may have uploaded content, posted a comment or sent a message. As noted by the federal district court in Doe, this broad requirement “...clearly chills offenders from engaging in expressive activity that is otherwise perfectly proper, and the statute is therefore insufficiently narrow,” (Doe v. Nebraska, 898 F.Supp.2d 1086 at 1120). The court therefore finds that the provisions of 730 ILCS 150/3 referenced above are plainly overbroad and facially unconstitutional under the First Amendment;

5. That in compliance with Supreme Court Rule 18, the court specifically finds:

- (a) That this finding of unconstitutionality is being made in this written order;
- (b) That the portion of 730 ILCS 150/3 that is being held unconstitutional is the language referred to above, found in subsection (a), as follows:

...all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information...;

- c) (1) That the constitutional provision upon which the finding of unconstitutionality is based is the First Amendment of the United States Constitution;
- (2) That the portion of the statute cited above is being found unconstitutional on its face and as applied;

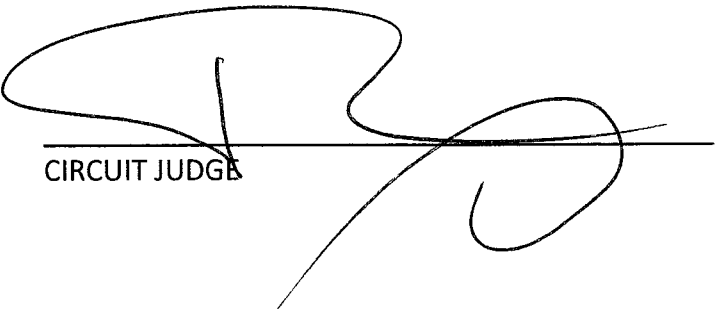
(3) That the portion of the statute being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

(4) That the finding of unconstitutionality made herein is necessary to the judgment rendered in this order, and that such judgment cannot rest upon an alternative ground;

(5) That the notice required by Rule 19 has been served, and that those served with such notice were given adequate time and opportunity under the circumstances to defend the statute challenged, and in fact did appear and argue the against the motion;

WHEREFORE, the Motion to Dismiss the indictment is allowed.

DATE: 7 JULY 2015



CIRCUIT JUDGE