

Affirmed and Opinion filed January 11, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01389-CR

ROY DEAN TURNER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from 185th District Court
Harris County, Texas
Trial Court Cause No. 815,123**

O P I N I O N

Roy Dean Turner appeals a conviction for failure to register as a sex offender on the grounds that the registration requirement violates the ex post facto clauses of the United States and Texas Constitutions and the double jeopardy clause of the United States Constitution.¹ We affirm.

¹ Appellant's brief also complains that the registration requirement violates the cruel and unusual punishment clause of the United States Constitution, but fails to cite any authority supporting this claim. TEX. R. APP. P. 38.1(h) (appellant's brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities). Therefore, we do not address it.

Appellant was charged by indictment with failure to register as a sex offender, pled guilty, and was sentenced by the trial court to 180 days confinement. He contends that his punishment under the sex offender registration program² violates the ex post facto clauses of the Texas and United States Constitutions³ and the double jeopardy clause of the United States Constitution⁴ because the sex offender registration program was not in effect when he was originally convicted of a sex related offense. Appellant thus argues that the law is unconstitutional as applied to him because it adds an additional punitive measure to an act previously committed. In particular, appellant contends that: (1) the public notification provisions provide additional punishment in the form of public ostracism, scorn, and humiliation; and (2) the required reporting provisions are forms of parole or probation which the State is not authorized to impose upon someone like appellant who has served his entire sentence.

However, appellant cited no case invalidating a sex offender registration program on ex post facto or double jeopardy grounds, and several courts have expressly held that the ex post facto and double jeopardy prohibitions do not apply to such a registration requirement because it is not a punishment.⁵ According to two of those opinions, registration is not considered punishment because it only requires the registrant to supply basic information, the burdens imposed are minor, it is not a restraint on the activities

² See TEX. CODE CRIM. PROC. ANN. art. 62.01-.12 (Vernon Supp. 2000).

³ See U.S. CONST. art. I, § 10; TEX. CONST. art. I, § 16. Under Texas and United States constitutional analysis, an ex post facto law: (1) punishes as a crime an act previously committed which was innocent when done; (2) changes the punishment and inflicts a greater punishment than the law attached to the criminal offense when committed; or (3) deprives a person charged with a crime of any defense available at the time the act was committed. *Ex parte Davis*, 947 S.W.2d 216, 219-20 (Tex. Crim. App. 1996).

⁴ See U.S. CONST. amend. V (providing that no person shall be placed in jeopardy twice for the same offense). This clause has been interpreted as a protection against multiple criminal punishments for the same offense. *Monge v. California*, 524 U.S. 721, 727-28 (1998).

⁵ See *Cutshall v. Sundquist*, 193 F.3d 466, 472-77 (6th Cir. 1999); *State v. Williams*, 728 N.E.2d 342, 348, 357 (Ohio 2000); *White v. State*, 988 S.W.2d 277, 279 (Tex. App.—Texarkana 1999, no pet.) (holding that the statutory duty of a sex offender to register is remedial rather than punitive in nature); see also *Ruffin v. State*, 3 S.W.3d 140, 144 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (holding that the requirement to register as a sex offender is not a direct consequence of a plea of guilty).

of a registrant, and its intent is to monitor convicted sex offenders for protection of the public. *See Cutshall*, 193 F.3d at 474-76; *Williams*, 728 N.E.2d at 356-57. Because we agree with those decisions, appellant's points of error are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed January 11, 2001.

Panel consists of Justices Edelman, Wittig, and Frost.

Do not publish — TEX. R. APP. P. 47.3(b).