

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Appellant,)
)
 v.)
)
 SONYA RENEE WICHERT,)
)
 Appellees.)

NOT FOR PUBLICATION
Case No. S-2012-244

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
APR - 8 2013

OPINION

MICHAEL S. RICHIE
CLERK

A. JOHNSON, JUDGE:

The State of Oklahoma appeals from an order entered March 6, 2012, by the Honorable Ray Dean Linder, District Judge of the District Court of Garfield County in Case No. CF-2011-404, sustaining the February 14, 2012 preliminary hearing ruling of Special Judge Brian N. Lovell granting Wichert’s demurrer to the evidence and dismissing the case. We exercise jurisdiction pursuant to 22 O.S.2011, § 1053, and affirm the district court’s order.

BACKGROUND

Sonya Renee Wichert was charged with eleven counts of Unlawful Purchase of Pseudoephedrine While Subject to the Oklahoma Methamphetamine Offender Registry Act (hereinafter “Meth Registry Act”), in violation of 63 O.S. § 2-701(B). Wichert is currently serving probation for the balance of a fifteen year suspended sentence imposed on June 23, 2005, based on her guilty plea to a charge of possession of a controlled dangerous substance (methamphetamine). While investigating violations of the Meth Registry Act, Deputy Sheriff Logan Niles of the Garfield County Sheriff’s Office conducted a search of the Oklahoma

Bureau of Narcotics and Dangerous Drugs program that tracks the sale and purchase of pseudoephedrine products (a key ingredient in the manufacture of methamphetamine). His search revealed that Wichert made eleven pseudoephedrine purchases after November 1, 2010, the date the Meth Registry Act went into effect. A warrant for Wichert's arrest was issued and charges were filed against her in Case No. CF-2011-404.

After presentation of the State's evidence at preliminary hearing, Wichert demurred to the evidence. Judge Lovell granted the demurrer and dismissed the case ruling that the Meth Registry Act did not apply to Wichert because she was convicted prior to November 1, 2010, the date the Act went into effect and to rule any other way would present "significant due process problems." Thereafter, the State announced its intent to appeal on the record.

DISCUSSION

This case is controlled by *Wolf v. State*, 2012 OK CR 16, 292 P.3d 512. The Meth Registry Act, 63 O.S.2011 § 2-701, establishes "a registry of persons convicted of various methamphetamine crimes, and applies to all persons convicted after November 1, 2010, and all persons on probation for any specified offense as of that date." *Wolf*, 2012 OK CR 16, ¶ 3, 292 P.3d at 514. The *Wolf* court explained the mechanics of the Meth Registry Act:

Upon conviction, the district court clerk is required to send the name of the offender to the Oklahoma State Bureau of Narcotics and Dangerous Drugs (OSBNDD), which maintains the registry. A person subject to the registry is prohibited from buying pseudoephedrine. Every pharmacist or other person who sells, manufactures or distributes pseudoephedrine must check the

registry at each purchase, and deny the sale to any person on the list.

Id.

Wolf claimed in her case that, to be constitutional, the Meth Registry Act must provide notice to the persons who are subject to criminal prosecution under its provisions. We agreed and dismissed the case against Wolf. *Id.* at ¶¶ 18-19, 518. We explained the lack of notice to Wolf:

Subsection E of § 2-701 explains how OSBNDD is notified when persons are subject to the registry. However, Subsection E makes no provision for anyone to notify OSBNDD which persons currently serving probation, like Wolf, are subject to the registry. Wholly absent from the statute is any provision giving notice to a person in Wolf's position - someone on probation at the time the statute went into effect - that she is subject to the registry and thus subject to criminal penalties. In fact, the statute does not provide that court clerks notify any convicted person that their name has been submitted to the OSNBDD, or that they are subject to the registry.

Id. at ¶ 6, 514-15.

The *Wolf* court held:

Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process . . . Section 2-701 fails to meet the basic notice requirements of due process. As any notice requirement is wholly omitted from the statutory language, there is no statutory language regarding notice which this Court may interpret in a constitutional manner. This Court cannot provide constitutional language where no language exists in the statute. For this reason, we find Subsections (B) and (H) of Section 2-701 unconstitutional.

Id. at ¶ 18, 518.

Like Wolf, Wichert was on probation at the time the statute went into effect, and had no notice that she was subject to the registry and thus criminal penalties for the purchase of pseudoephedrine. The magistrate found, and the district court agreed, that the Meth Registry Act could not apply to Wichert because her conviction preceded the effective date of the Meth Registry Act. The actual issue was notice. Applying the Meth Registry Act to Wichert without notice that she was subject to it violates due process. For the reasons discussed in *Wolf*, the district court's order affirming the dismissal of the case against Wichert is affirmed.

DECISION

The Order of the District Court of March 6, 2012, granting the demurrer of Sonya Renee Wichert and dismissing the case is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY
THE HONORABLE RAY DEAN LINDER, DISTRICT JUDGE

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LEWIS, P.J.: Concur in Results
SMITH, V.P.J.: Concur
LUMPKIN, J.: Concur in Results
C. JOHNSON, J.: Concur**

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