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Court Applies SORA in Relocation Case

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Out-of-state sex offenders who were on parole or probation at the time New York's sex offender registration act was enacted are required to register in New York state if they relocate here, a panel of the Appellate Division, Fourth Department, has held in reversing the trial court.

The panel's decision in <u>DeWine v. Board of Examiners of Sex Offenders</u>, 11-00774, addressed an unresolved question governing the application of the Sex Offender Registration Act (SORA).

Records show that Mark H. DeWine was convicted in Wyoming of crimes comparable to the New York state offenses of first- and second-degree sexual abuse for molesting a child under 14 and another under 11. Mr. DeWine was discharged from probation in June 1996, six months after SORA took effect.

SORA applies to offenders who were under sentence—incarcerated or under court-ordered supervision such as probation or parole—as of its Jan. 21, 1996, effective date. It applies to individuals who committed a crime in another state that would require registration in New York and, under a 1999 amendment, to individuals who are subject to another state's sex offender registration law.

Mr. DeWine was no longer under sentence when the 1999 amendment took effect, so the fact that he is required to register in Wyoming is irrelevant, the Fourth Department said, agreeing with the trial judge, Supreme Court Justice John J. Brunetti of Syracuse (See Profile).

However, the appellate court differed with Justice Brunetti on an issue concerning the fact that Mr. DeWine was still on Wyoming probation when New York's law was enacted.

Justice Brunetti had held that since Mr. DeWine's probationary term had expired before he moved to New York, he was not subject to this state's registration requirement. But the Fourth Department rejected the trial court's holding that the retroactivity provision applies only to offenders who were on parole or probation in New York when SORA was implemented.

"Individuals such as petitioner who were serving a sentence or on parole or probation in another state at the time of SORA's implementation are clearly no less dangerous than similarly situated individuals in New York," the court said in an opinion by Justice Erin M. Peradotto and joined by Justices John V. Centra, Edward D. Carni, Samuel L. Green and Jerome C. Gorski.

The panel said another decision "could have the unintended and undesirable effect of encouraging sex offenders convicted in other states to evade the registration requirements of those states by relocating to New York."

Assistant Attorney General Robert M. Goldfarb appeared for the Board of Examiners.

Mr. DeWine was represented by David E. Zukher of Weisberg, Zukher & Vanstry in Syracuse.

According to the New York State Division of Criminal Justices Services' website, there are about 33,000 sex offenders registered in New York, including more than 8,000 deemed of low risk to re-offend and about 12,500 considered high risk. Brooklyn, with 2,125 registered sex offenders living within its borders, has the most of any county in the state. By comparison there are 1,525 in the Bronx, 1,248 in Queens, 1,181 in Manhattan, 291 on Staten Island—and 919 in Onondaga County, where the DeWine case arose.

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