

No.

IN THE
SUPREME COURT OF THE UNITED STATES

EARL CASPERSON MEGGISON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Fifth District Court of Appeal**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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FIFTH DISTRICT COURT OF APPEAL

STATE OF FLORIDA

Case No. 5D2023-2383

LT Case No. 1986-CF-002463-A

EARL CASPERSON MEGGISON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Seminole
County.

William S. Orth, Judge.

Michael Ufferman, of Michael Ufferman Law Firm,
P.A., Tallahassee, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and
Kristen L. Davenport, Assistant Attorney General,
Daytona Beach, for Appellee.

October 22, 2024

PER CURIAM

AFFIRMED.

JAY, HARRIS, and MACIVER, JJ., concur.

2 Opinion of the Court 5D2023-2383

Not final until disposition of any timely and authorized
motion under Fla. R. App. P. 9.330 or 9.331.

IN THE CIRCUIT COURT FOR THE
EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR
SEMINOLE COUNTY, FLORIDA

CASE NO.: 1986-CF-002463-A

STATE OF FLORIDA,

Plaintiff/Respondent,

vs.

EARL CASPERSON MEGGISON,

Defendant/Petitioner.

_____ /

ORDER DENYING DEFENDANT'S PETITION TO
REMOVE THE REQUIREMENT FOR
REGISTRATION AS A SEXUAL OFFENDER

THIS CAUSE came before the Court on
Defendant's "Petition to Remove the Requirement for
Registration as a Sexual Offender" filed on January 27,

2023, pursuant to section 943.0435(11)(a), Florida Statutes (2000). Having reviewed the Petition, the State's objection, Defendant's reply, and the court file, having heard the arguments of counsel at the June 19, 2023 hearing, and being otherwise fully advised, the Court finds as follows:

On July 30, 1990, Defendant entered a plea of guilty to contributing to the delinquency of a minor in violation of section 827.04(3) (Count 1), lewd and lascivious assault upon a child in violation of section 800.04 (Counts 2, 3, 4, 7, and 9), and engaging in sexual activity with a child in violation of section 794.041(1), (2)(b) (Counts 5, 6, 8, 10, 11, 12, and 13). He was sentenced to 1 year of probation (consecutive to 5 years of probation previously ordered for unlawful interception and 1 year of probation previously ordered for contributing to the delinquency of a minor) as to

Count 1; 3 years' imprisonment with credit for 3 years served as to Count 2; 10 years of probation as to Counts 3, 4, 7, and 9, to run concurrent with one another and Counts 1, 5, 6, 8, 10, 11, 12, and 13 (but consecutive to the probation previously ordered); and 10 years of

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probation as to Counts 5, 6, 8, 10, 11, 12, and 13, to run concurrent with one another and Counts 1, 3, 4, 7, and 9 ((but consecutive to the probation previously ordered). On September 22, 2000, the parties entered a stipulation clarifying the sentence, and it was ordered that the 1 year of probation on Count 1 was to run concurrent with the 10 years of probation on Counts 3 through 13, and the 10-year terms would

terminate on July 30, 2000, at which time the 5 years of probation previously ordered would begin.

Defendant argues that the statute that was in effect when he completed his probation on July 30, 2000 - section 943.0435(11)(a), Florida Statutes (2000) - permits him to petition the Court to remove the requirement for registration as a sexual offender. He claims that he meets all of the requirements under that statute because he has been lawfully released from probation for at least twenty years and he has not been arrested for any felony or misdemeanor offenses since his release.

The State objects to the removal of the sex offender registration requirements, arguing that the instant petition is governed by the current language of the statute rather than the language that existed in 2000. The State contends that Defendant is not eligible

for removal because: (1) he was convicted of an offense for which he is statutorily barred from ever being removed from the registration requirements; (2) his petition is premature because the statutory period of twenty-five years has not yet been reached; and (3) granting the petition will run afoul of federal standards applicable to removal of the registration requirement which, in turn, violates the statute. The State further contends that the statute is procedural in nature and does not violate ex post facto or due process constitutional protections.

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In his reply, Defendant argues that application of the current version of the statute violates constitutional ex post facto principles, relying upon a

decision from Maine, *State v. Letalien*, 985 A.2d 4 (Me. 2009).

Florida's sex offender registration statute was initially enacted in 1997. Effective July 1, 2000, the statute provided:

A sexual offender must maintain registration with the department for the duration of his or her life However, a sexual offender:

(a) Who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release . . .

may petition the criminal division of the

circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender. The court may grant or deny such relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current

or potential threat to public safety.

§ 943.0435(11)(a), Fla. Stat. (2000).

The current language contained in section 943.0435(11)(a) was adopted on July 1, 2021, and provides:

[A] sexual offender shall maintain registration with the department for the duration of his or her life However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender *only if the person:*

(a)1. Has been lawfully released from confinement, supervision, or sanction, whichever is later, *for at least 25 years* and has not been arrested for any felony or misdemeanor offense since release,

*provided that the sexual offender's
requirement to register was not based
upon an adult conviction:*

b. For a *violation of s. 794.011*, excluding
s. 794.011(10)

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§ 943.0435(11)(a), Fla. Stat. (2021) (emphasis added).
Thus, the 2021 amendment increased the period of
release from supervision from twenty to twenty-five
years, and added a list of offenses for which a
conviction would disqualify an individual from
eligibility to apply for removal from the sex offender
registration requirements. Defendant was charged
with, and pleaded guilty to, violating section
794.041(1), (2)(b). However, “[i]n 1993, section 794.041,

which formerly outlawed sexual battery by a familial custodian, was repealed, and section 794.011(8)(b), outlawing the same crime, was enacted.” *Holt v. State*, 808 So. 2d 290, 291 (Fla. 1st DCA 2002). Defendant’s conviction is therefore included in that list of offenses.

The Court finds, based on a review of Florida case law, that section 943.0435 is nonpunitive and procedural in nature, and that retroactive application of the 2021 amendment does not violate ex post facto protections. *See Giddens v. State*, 863 So. 2d 1242, 1244 (Fla. 5th DCA 2004) (“we note that this court has previously held that sexual offender registration requirements do not violate the ex post facto clause or procedural due process”) (citing *Johnson v. State*, 795 So. 2d 82 (Fla. 5th DCA 2000) and *Smith v. Doe*, 538 U.S. 84 (2003)); *Vega v. State*, 208 So. 3d 215, 216 (Fla. 3d DCA 2016) (noting that section 943.0435 became

effective in 1997 and “was subsequently held to apply retroactively without violating the Ex Post Facto Clause of the United States Constitution”) (citing *Givens v. State*, 851 So. 2d 813, 814 (Fla. 2d DCA 2003)); *Freeland v. State*, 832 So. 2d 923 (Fla. 1st DCA 2002) (holding that section 943.0435 is “regulatory and procedural in nature and do[es] not violate the ex post facto clause”); *Simmons v. State*, 753 So. 2d 762, 763 (Fla. 4th DCA 2000) (holding that section 943.0435 is a regulatory statute that does not constitute punishment, is “procedural in nature and do[es] not violate the ex post facto clause”).

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Thus, the Court agrees with the State and finds that Defendant’s petition is governed by the current

language of the statute rather than the language that existed in 2000. Under the current language of section 943.0435, Defendant's petition is premature because he has not been released from supervision for at least twenty-five years. § 943.0435(11)(a)(1), Fla. Stat. (2021). Also, Defendant is ineligible for removal from the sexual offender registration requirements because he was convicted of a qualifying offense. § 943.0435(11)(a)(1)(b), Fla. Stat. (2021).

Accordingly, it is hereby ORDERED AND ADJUDGED that Defendant's "Petition to Remove the Requirement for Registration as a Sexual Offender" is DENIED.

DONE AND ORDERED in Chambers at Sanford, Seminole County, Florida, on Wednesday, June 21, 2023.

[signature of Judge Orth]

William Orth, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order
has been furnished by e-mail or U.S. Mail on
Wednesday, June 21, 2023, to the following:

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