No. 124965

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court
	)	of Illinois, Third District,
Plaintiff-Appellee,	)	No. 3-16-0667
	)	
	)	There on Appeal from the Circuit
v.	)	Court of the Thirteenth Judicial
	)	Circuit, LaSalle County, Illinois
	)	No. 16 CM 530
	)	
PATRICK A. LEGOO,	)	The Honorable
	)	H. Chris Ryan, Jr.,
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2235
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellee
People of the State of Illinois

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Carolyn Taft Grosboll
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

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NATURE OF THE CASE

Defendant was convicted of violating 720 ILCS 5/11-9.4-1(b), which prohibits a child sex offender or sexual predator from knowingly being present in a public park. He appeals, arguing that an exemption contained in a different statute, 720 ILCS 5/11-9.3(a-10), which prohibits a child sex offender from interacting with minors in parks unless the offender's minor child is also present, should be read into the statute proscribing his crime.

No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether an exemption in 720 ILCS 5/11-9.3(a-10), prohibiting child sex offenders from interacting with minors in public parks (and other places minors are likely to be), should be read into 720 ILCS 5/11-9.4-1, which prohibits sexual predators and child sex offenders from being present in public parks.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 604, and 612(b)(2). On September 25, 2019, this Court allowed defendant's petition for leave to appeal.

STATUTES INVOLVED

720 ILCS 5/11-1.50:

> (b) A person commits criminal sexual abuse if that person is under 17 years of age and commits an act of sexual penetration or sexual conduct with a victim who is at least 9 years of age but under 17 years of age.

(c) A person commits criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim.

720 ILCS 5/11-9.3(a-10):

It is unlawful for a child sex offender to knowingly be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds.

720 ILCS 5/11-9.4-1:

(a) For the purposes of this Section:

"Child sex offender" has the meaning ascribed to it in subsection (d) of Section 11-9.3 of this Code, but does not include as a sex offense under paragraph (2) of subsection (d) of Section 11-9.3, the offenses under subsections (b) and (c) of Section 11-1.50 . . . of this Code.

* * *

(b) It is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park.

STATEMENT OF FACTS

On an early May evening, an off-duty police officer saw defendant riding his bicycle through Strouss Park in Mendota, Illinois. R7.[1] The park included three baseball diamonds where children were playing baseball. R5,

[1] "R_", "C_", and "A_" refer to the report of proceedings, common law record, and the appendix to defendant's brief, respectively.

7. The officer believed that defendant was a registered child sex offender, and he alerted the police department. R7. The officer was correct: defendant had been convicted of criminal sexual abuse in LaSalle County case No. 2006 CF 465. R14. Defendant was ultimately charged with being a child sex offender in a public park, a Class A misdemeanor, in violation of 720 ILCS 5/11-9.4-1(b). C1.

At defendant's bench trial, Officer Kevin Corrigan testified that he interviewed defendant. R11. Defendant admitted that he had been at the park, and stated that he had gone to the park to look for his son, C.B. R12. C.B. was sitting on the bleachers with a girl, watching a baseball game. R18, 22. Defendant told C.B. to go home or he would be in trouble, but C.B. remained to watch the rest of the game. R19, 22.

The circuit court rejected defendant's necessity defense, in which he maintained that there was "nobody available to go get his son out of the park." R26, 27. The judge found defendant guilty and sentenced him to thirty days in jail and two years of conditional discharge, staying the sentence pending appeal. C12, 15; R27-28, 39-40.

Defendant moved to vacate the conviction, arguing that an exemption contained in a different statute should be applied to his crime. C18. Under that separate statute, a child sex offender is not guilty of contacting a minor in a park or park building if the offender is the parent or guardian of a minor

present in the park or building. The circuit court denied the motion. C21; R35, 49.

Defendant appealed, and the appellate court affirmed, rejecting defendant's argument that the exemption from § 9.3(a-10) should be read into § 9.4-1(b). A7-8. The appellate court reasoned that the language of the two provisions was clear, and that while the statutes overlapped, they had significant differences. *Id.* They prohibited different conduct: § 9.3(a-10) criminalized approaching and contacting minors in public parks, while § 9.4-1(b) criminalized mere presence in public parks. *Id.* They applied to different offenders: § 9.4-1(b) applied to sexual predators, while § 9.3(a-10) did not; conversely § 9.3(a-10) applied to "Romeo and Juliet" offenders (consensual sex when the offender is under seventeen years old and the victim is nine to seventeen years old or the victim is between thirteen and seventeen years old and the offender is less than five years older), while § 9.4-1(b) did not. *Id.* And they provided different punishments for violations: violations of § 9.3(a-10) were Class 4 felonies, while violations of § 9.4-1(b) were Class A misdemeanors. A7.

STANDARD OF REVIEW

This Court reviews de novo the legal questions of statutory construction and the constitutionality of a statute. *People v. Casas*, 2017 IL 120797, ¶ 17; *People v. Pepitone*, 2018 IL 122034, ¶ 12.

ARGUMENT

The plain language of 720 ILCS 5/11-9.4-1, which prohibits most child sex offenders and sexual predators from being present in a public park, contains no exemption for offenders whose children are present in the park. Defendant's contention that the General Assembly meant but forgot to include such an exemption in § 9.4-1 falls flat.

The plain language, and defendant's own recitation of the legislative history, shows that § 9.4-1 was intended to impose a flat ban on the presence of child sex offenders and sexual predators in public parks. Contrary to defendant's suggestion, it did not merely add an exemption of Romeo and Juliet offenders from § 9.3. The General Assembly clearly considered § 9.3, incorporated the desired elements, and intentionally did not include the exemption at issue here. Indeed, the enumeration of the Romeo and Juliet exemption demonstrates that the General Assembly did not intend to exempt others.

Moreover, while §§ 9.3 and 9.4-1 both seek to protect people, particularly children, from sex offenses, they differ in several key respects, including the people to whom they apply, the behavior prohibited, and the punishment for violations. The existence of the exemption in one and not the other is just one more difference between the two provisions. Because defendant cannot demonstrate that the General Assembly could not have

contemplated the literal enforcement of § 9.4-1, this Court should give effect to its plain meaning.

Nor is reading in an exemption necessary to render § 9.4-1(b) constitutional. There is no fundamental right to be in a park, whether or not a child sex offender has a child. *See Pepitone*, 2018 IL 122034, ¶ 14.

I. The Court Should Not Depart from the Plain Language of 720 ILCS 5/11-9.4-1.

The "primary goal when construing a statute is to determine and give effect to the legislature's intent." *People ex rel. Glasgow v. Carlson*, 2016 IL 120544, ¶ 17. "Because the most reliable indicator of legislative intent is the statutory language itself, we must give the language its plain and ordinary meaning whenever possible." *Id.* "A reviewing court must enforce clear and unambiguous statutory provisions as written, and it should not read into the statute exceptions, conditions, or limitations not expressed by the legislature." *Id.*

Here, the plain language of the statute, which prohibits child sex offenders and sexual predators from being in a public park, contains no exemption from liability when their children are present. Defendant's contrary arguments invite this Court to ignore established rules of statutory construction and read into § 9.4-1 an exception not expressed by the legislature. This Court should decline to do so.

Defendant's argument reduces to an assertion that the General Assembly intended to include the exception in § 9.4-1(b) but forgot to do so.

He suggests that after the legislature consolidated former § 9.4 into § 9.3, the enactment of § 9.4-1(b) "confused matters." Def. Br. 16. But defendant fails to demonstrate that the legislators were either confused or forgetful. To the contrary, the legislative history recited in defendant's brief, as well as the statutory language itself, establish that the General Assembly did exactly what it intended in enacting § 9.4-1: it banned all child sex offenders and sexual predators from public parks, other than "Romeo and Juliet" child sex offenders.

As defendant describes, Def. Br. 10-16, §§ 9.3 and 9.4-1 reflect the efforts of the General Assembly over many years and through several iterations to address the serious problem of sex offenses, particularly, though not exclusively, against children. Notably, the General Assembly knew how to include the exemption claimed by defendant, which is present in multiple subsections of § 9.3, when it wanted to, and in fact tailored that exemption specifically to the different situations presented. For instance, the exemption applies any time a minor child is in a park or park building, § 9.3(a-10); by contrast, it applies to being in or loitering near a school the minor child attends only in certain circumstances, such as parent-teacher conferences, § 9.3(a), (b). Similarly, the exemption applies to sex offenders who participate in holiday events only when the child is "present in the home and other non-familial minors are not present." § 9.3(c-2). Given the multiple appearances and precise tailoring of the exemption, it is improbable that the

General Assembly merely forgot to include it in § 9.4-1. Rather, § 9.4-1(b)'s plain language reflects the legislative intent.

A. The enumeration of another exemption makes clear that in enacting 720 ILCS 5/11-9-4.1, the General Assembly did not intend to exempt sex offenders whose children are also present.

Defendant argues that the General Assembly's decision not to include "Romeo and Juliet" offenders in 720 ILSC 5/11-9.4-1 shows that it intended that the statute's ban not apply to all child sex offenders. Def. Br. 17-19; *see also* 720 ILCS 5/11-9.3(d) (defining "child sex offender"); 720 ILCS 5/11-9.4-1(a) ("child sex offender" has meaning from 720 ILSC 5/11-9.3(d) but excludes offenses under subsections (b) and (c) of 720 ILSC 5/11-1.50 (criminal sexual abuse involving consensual sex when the offender is under seventeen years old and the victim is nine to seventeen years old or the victim is between thirteen and seventeen years old and the offender is less than five years older)). While true, that fact only undermines defendant's argument that the legislators forgot to exempt child sex offenders with children. Instead, it is evidence that the General Assembly considered which child sex offenders it wanted to exempt and did so via the express language used in section 9.4-1.

Indeed, defendant's proposed construction, which would exempt child sex offenders whose children are present in addition to Romeo and Juliet offenders listed, runs afoul of the "principle of *expressio unius est exclusio alterius,* the enumeration of exceptions in a statute is construed as an exclusion of all other exceptions." *People ex rel. Sherman v. Cryns*, 203 Ill.

2d 264, 286 (2003). This Court has "observed that this rule of statutory construction is based on logic and common sense, as it expresses the learning of common experience that when people say one thing they do not mean something else." *Id.* (internal quotation marks and brackets omitted). In fact, this Court generally refuses to import an exception even from one section of a statute to another. *See People v. Clark*, 2019 IL 122891, ¶ 23 ("When the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposely in the inclusion or exclusion . . . and that the legislature intended different meanings and results.") (internal quotation marks and brackets omitted); *People v. Goossens*, 2015 IL 118347, ¶ 12 ("It is well settled that when the legislature uses certain language in one instance of a statute and different language in another part, we assume different meanings were intended."); *see also People v. Hunter*, 2017 IL 121306, ¶ 49 ("Had the legislature intended all of the new sentencing provisions to have the same temporal reach as the provisions in subsection (a), the legislature could have included the limiting language in a separate subsection so stating, as it did in connection with another amendment adopted as part of the same public act.").

This principle of construction applies with particular force here. In drafting § 9.4-1, the legislature analyzed § 9.3 and incorporated its definition of child sex offender, added the Romeo and Juliet exemption, but did not

include the exemption claimed here. In other words, not only did the General Assembly not include the exemption, it declined to do so after analyzing and incorporating other parts of the statute in which it was included. This Court should not override that clear legislative intent.

B. 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1 pertain to different people, prohibit different conduct, and lead to different punishments.

720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4-1 both seek to protect people, particularly children, from sex offenses, but they differ with respect to the persons to whom they apply, the behavior prohibited, and the punishment. For instance, a person who violates § 9.4-1 (which prohibits child sex offenders and sexual predators from being present in public parks) commits a Class A misdemeanor, 720 ILCS 5/11-9.4-1(d), while a person who violates § 9.3 (which prohibits child sex offenders from interacting with minors in public parks (and other places minors are likely to be)) commits a Class 4 felony, 720 ILCS 5/11-9.3(f). This reflects the legislature's common-sense belief that while both situations present inherent dangers, a defendant with a history of committing sex offenses against minors poses a greater threat when he actively approaches, contacts, or communicates with minors. Defendant's argument that each statute merely describes the relevant conduct as "unlawful" and in a separate subsection announces the offense level, Def. Br. 18, does nothing to change the fact that violations of the two statutes are punished differently.

Similarly, § 9.3 applies to people that § 9.4-1 does not, and vice versa. For instance, in addition to child sex offenders, § 9.4-1 applies to sexual predators. Thus, § 9.4-1 applies to defendants convicted of criminal sexual assault when the victim is over 18, while § 9.3 does not. *Compare* 730 ILCS 150/2(E)(1) with 720 ILCS 5/11-9.3(d)(2)(ii).[2] Again, the distinction is logical: a defendant who commits a violent sex offense against another adult poses a threat to all people in parks, and the General Assembly quite reasonably sought to protect people of all ages from such dangers. *See Pepitone*, 2018 IL 122034, ¶¶ 27-31 ("We conclude that there is a rational relation between protecting the public, particularly children, from sex offenders and prohibiting sex offenders who have been convicted of crimes against minors from being present in public parks across the state."); Planty, Langton, Krebs, Berzofsky, and Smiley-McDonald, *Female Victims of Sexual Violence*, 1994-2010, Bureau of Justice Statistics Special Report, available at https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf at 4, Table 2 (highest

[2] Defendant asserts that "[e]ach of the offenses listed in section 730 ILCS 150/2 (2016) . . . is included in 720 ILCS 5/11-9.3(d)(2) (2016), because section 11-9.3 also added sexual predators to the group of offenders to whom its prohibitions applied . . . . See 720 ILCS 5/11-9.3(d)(a)(iii) [*sic*]." Def. Br. 19. But § 11-9.3(d)(a)(iii) simply does not exist. Section 11-9.3(d)(1)(iii) applies to people subject to Section 2 of the Interstate Agreements on Sexually Dangerous Persons Act, which addresses a person on conditional release as a sexually dangerous person who transfers residency to Illinois. *See* 425 ILCS 20/2. Section 11-9.3(d)(2)(iii) relates to various crimes, such as kidnapping, when the victim is under eighteen years old. Neither subsection incorporates sexual predators into the offenders governed by § 11-9.3.

percentage of sexual assaults of females outside of their homes occurs in "locations such as . . . a park, field, or playground not on school property"). But such offenders may not pose an elevated threat of grooming children for a sex offense while communicating with them, and thus were not included in § 11-9.3.

Conversely, as discussed, § 9.3 applies to the defendants convicted of "Romeo and Juliet" offenses, while § 9.4-1 does not. *See supra* p. 8. The legislature considered the question and determined that it was not necessary to prohibit Romeo and Juliet offenders from being present in public parks, in order "to protect users of public parks from child sex offenders and sexual predators who use the attributes of a park to their advantage to have access to potential victims." 96th Ill. Gen Assemb., Senate Proceedings, March 16, 2010, at 55 (Statement of Senator Althoff).

It is therefore irrelevant that, as defendant points out, where a general statutory provision and more specific statutory provision relate to the same subject, we will presume that the General Assembly intended the more specific provision to govern. *See* Def. Br. 11. While both § 9.3 and § 9.4-1 seek to protect Illinois citizens from sex offenses, neither is "more specific" than the other. As illustrated above, and as recognized by the appellate court below, A7-8, they differ in several key ways. And even if defendant were correct that § 9.3(a-10) is simply § 9.4-1 plus an additional element, Def. Br. 11, 19, it would not make the former "more specific" such that an exemption

in § 9.3 should apply to § 9.4-1. For example, home invasion and criminal trespass to a residence both involve the unauthorized entry into another's dwelling, while the former carries additional elements, but an affirmative defense that applies to one would not necessarily apply to the other. *See* 720 ILCS 5/19-6(b) (having left immediately is an affirmative defense to home invasion); 720 ILCS 5/19-4 (no corresponding defense).

Similarly, contrary to defendant's suggestion, Def. Br. 20, the statutes do not conflict simply because a child sex offender may violate § 9.4-1 without at the same time violating § 9.3. As shown, the statutes prohibit different conduct and have several differences, of which this is just one. The Court can, and therefore must, interpret them without finding a conflict and give effect to each. *See Barragan v. Casco Design Corp.* 216 Ill. 2d 435, 441-42 (2005) ("Where two statutes are allegedly in conflict, a court has a duty to interpret the statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible."). And even if the statutes did conflict, because neither is clearly "more specific," § 9.4-1 would control because it was enacted more recently. *See People ex rel. Ill. Dep't of Corr. v. Hawkins*, 2011 IL 110792, ¶ 46 (if neither statute is clearly "more specific," Court will "presume that the legislature intended the more recent statutory provision to control").

In the end, defendant has not demonstrated that the General Assembly "could not have contemplated" the consequences of the "literal

enforcement" of § 9.4-1, as he acknowledges he must. Def. Br. 21 (internal quotation marks omitted). To the contrary, the legislature deliberately crafted the statutes and the exemption, and this Court may not ignore their clear intent.

II. 720 ILCS 5/11-9.4-1(b) Is Constitutional Without Reading in 720 ILCS 5/11-9.3(a-10)'s Additional Exception.

Alternatively, defendant argues that this Court should read the exception from § 9.3(a-10) into § 9.4(1)(b) to cure an alleged constitutional infirmity in § 9.4(1)(b) that "deprives parents who have been convicted of child sex offenses of their constitutional right to the society of their children." Def. Br. 22. But this argument fails because he cites no precedent holding that the right of parents to care for and raise their children includes the right to take them to a park.

In assessing defendant's substantive due process argument, this Court "must begin with a careful description of the asserted right, for the doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field." *Reno v. Flores*, 507 U.S. 292, 302 (1993). "Then, we must ask whether that interest is 'fundamental,' that is, whether it is objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if it were sacrificed." *Washington v. Glucksberg,* 521 U.S. 702, 720–21 (1997) (internal quotation marks and brackets omitted).

To be sure, "the interest of parents in the care, custody, and control of their children" "is perhaps the oldest of the fundamental liberty interests recognized." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). But, as defendant acknowledges, there is no fundamental right to be present in a park. Def. Br. 22-23; *see also Pepitone*, 2018 IL 122034, ¶ 14 ("being present in a park is not a fundamental right."); *Doe v. City of Lafayette, Ind.*, 377 F.3d 757, 772-73 (7th Cir. 2004) (right to enter park not fundamental).

If there is no fundamental right to be in a park, there can be no fundamental right of a parent to take a child to a park. Indeed, defendant provides no authority for this alleged constitutional right except for the exemption in § 9.3(a-10), and such a recent statutory exemption cannot establish that it is deeply rooted in the country's history. Thus, this Court need not depart from the plain language of the statute to interpret it in a constitutional manner.

CONCLUSION

This Court should affirm the judgment of the appellate court.

January 31, 2020

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2235
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellant
People of the State of Illinois

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is sixteen pages.

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 31, 2020, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

Jay Wiegman
Office of the State Appellate Defender
770 East Etna Road
Ottawa, Illinois 61350
3rddistrict.eserve@osad.state.il.us

State's Attorneys Appellate Prosecutor
628 Columbus Street
Ottawa, Illinois 61350
3rddistrict@ilsaap.org

Karen Donnelly
LaSalle County State's Attorney
LaSalle County Governmental Complex
707 East Etna Road, Room 251
Ottawa, Illinois 61350
karen-donnelly@lasallecounty.com

Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General