



MARCH 10, 2017

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Davis v. State

An Unconditional Pardon Granted to a Convicted Sex Offender by the Parole Board Releases the Defendant from the Duty that He Register as a Sex Offender

In *Davis v. State*, A16A1650 (3/10/17), the record showed that appellant was convicted of the aggravated sodomy of his minor (six-year old) biological daughter after entering a non-negotiated guilty plea to that charge, which resulted in a sentence of ten years with two to serve in confinement. Following his release from prison, appellant served the remainder of his sentence on probation until it terminated on July 15, 2005. In 2013, the Georgia Board of Pardons and Paroles (“Board”) granted him a pardon, specifically providing: “Whereas, having investigated the facts material to the pardon application, which investigation has established to the satisfaction of the Board that [appellant] is a law-abiding citizen and is fully rehabilitated; THEREFORE, pursuant to Article IV, Section II, Paragraph II (a), of the Constitution of the State of Georgia, the Board, without implying innocence, hereby *unconditionally pardons* said individual, and it is hereby ORDERED that *all disabilities under Georgia law* resulting from the above stated conviction and sentence ... *are hereby removed*; and ORDERED FURTHER that all civil and political rights, except the right to receive, possess, or transport in commerce a firearm ... are hereby restored.” (Emphasis supplied). Approximately one month after receiving the pardon, appellant moved to North Carolina, but he did not provide notice to the sheriff’s office that he was doing so. The sheriff’s office obtained a warrant for appellant’s arrest, and on February 26, 2014, the State indicted appellant for failing to register as a sex offender as required by O.C.G.A. § 42-1-12. The trial court denied appellant’s general demurrer and the Court granted him an interlocutory appeal.

Appellant did not dispute that he moved without informing the sheriff. Nevertheless, he argued, the trial court erred in denying his motion for a general demurrer because the requirement to register as a sex offender constitutes a legal disability, which the Board’s pardon of him removed, and thus, he committed no offense under Georgia law. The Court agreed.

In so holding, the Court focused on the Board’s powers and the language of the pardon that it chose to grant appellant. The Court found that given the separation of powers and the constitutional mandate of the Board, its review in this case could not concern the propriety of the pardon the Board granted appellant, but rather only the scope of that pardon.

Here, the Court noted, the pardon received by appellant was “unconditional” and ordered that “all disabilities under Georgia law resulting from the above stated conviction and sentence ... are hereby removed; and ... all civil and political rights, except the right to receive, possess, or transport in commerce a firearm ... are hereby restored.” Nevertheless, in denying appellant’s general demurrer, the trial court found that the requirement that appellant register as sex offender was merely regulatory and did not constitute a disability

State Prosecution Support Division



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under the law that could be removed by the pardon. But, the Court stated, although the trial court was correct that sexual offender registry requirements such as those contained in O.C.G.A. § 42-1-12 are regulatory, and not punitive, in nature, that does not end the inquiry.

Thus, the Court stated, the question is whether the registration requirement is also a legal disability. And here, the Court found, given that the registration statute requires one to provide law enforcement with significant details as to where one lives, where one works, and where one travels, it strains credulity to characterize compulsory registration as a sex offender as merely regulatory but not as an "incapacity" in the eyes of the law. Indeed, the ability of an American citizen to live freely without reporting to the government his or her every movement is a defining characteristic of our constitutional republic. Consequently, the question was not whether appellant was deserving of such freedom (that was already answered by the Board), but only whether the requirement that appellant register as sex offender constitutes a legal disability that the Board's pardon obviated, and, the Court held, it was "constrained to conclude that it is a disability and that the trial court erred in holding otherwise."

Nevertheless, having reached this conclusion, the Court stated as follows: "[W]e we take this opportunity to express our sympathy with many of the concerns raised by the State and DAAG in this proceeding. Like the State and DAAG, this Court is deeply troubled by the fact that neither the victim nor the District Attorney's Office were ever notified that the Board was considering a pardon of [appellant]'s aggravated sodomy conviction. Indeed, while the Board resisted the State's attempts at every turn to unseal [appellant]'s pardon file, one of its members did agree to speak with the District Attorney's Office about the pardon process in general. And in doing so, this board member indicated that (1) the Board has no policy of contacting the District Attorney's Office from the convicting circuit or the victim before granting a pardon, (2) no real criteria exists for granting a pardon ("It's very subjective"), and (3) 99% of all pardon requests are granted. Suffice it to say, these averments, if true, are shocking—especially the assertion that 99% of all pardon requests are granted. To be sure, these revelations about the Board's pardon process have no bearing on this appeal. As previously noted, the separation-of-powers doctrine does not permit this Court to overturn or any way disturb the Board's pardon of [appellant]. We are bound by the Board's exercise of that exclusive executive power. Nevertheless, the General Assembly may very well wish to investigate the manner in which the Board is currently exercising its pardon power, and then take any remedial measures that it deems necessary. And while perhaps some or even all of the Board's members genuinely believed that their pardon of [appellant] did not relieve him of his duty to continue his registration as a sex offender, this Court is not at liberty to disregard the plain meaning of the words used by the Board in issuing that pardon or the applicable law detailed supra. Instead, we are duty bound to abide by the plain language used by the Board in its pardon of [appellant], not the unexpressed intentions of one or more board members." (citations omitted).