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Recent Developments: Young v. State: Supreme Court's Holding in Apprendi Does Not Apply to Sex Offender Registry

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Young v. State:

Supreme Court's Holding In *Apprendi* Does Not Apply to Sex Offender Registry

By: Chrys P. Kefalas

In a case of first impression, the Court of Appeals of Maryland held the Supreme Court's holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), does not apply to sex offender registry. *Young v. State*, 370 Md. 686, 690, 806 A.2d 233, 235 (2002). In so holding, the court determined Maryland's Registration of Offenders statute, which requires certain convicted defendants to register as sex offenders, is not punishment, and does not violate due process rights enunciated in *Apprendi*. *Id.* at 716, 806 A.2d at 250.

In the summer of 1999, Jessica McGregor ("McGregor"), a sixteen-year-old girl, met Jessie Lee Young ("Young"), a thirty-four-year-old man who ran an escort service in New York. Young, with knowledge that McGregor was a minor, allowed her to join his escort service as a prostitute. During the first week of September 1999, Young and McGregor moved to metropolitan Washington D.C., where McGregor continued to work as a prostitute.

Young was convicted in the Circuit Court for Anne Arundel County for transporting a person for the purposes of prostitution in violation of Md. Code Art. 27, section 432 (1996 & Supp. 2000). The statutory maximum sentence was ten years. The circuit court sentenced Young to ten years, with credit for time served, and all but eight years suspended. Additionally, the court placed Young on five years probation and ordered, pursuant to Md. Code Art. 27, section 792 (1996 & Supp. 2000) that he register as a sexual offender.

Young appealed to the Court of Special Appeals of Maryland, challenging the registration requirement. The court of special appeals affirmed. Young filed a petition for a writ of certiorari, which was granted by the Court of Appeals of Maryland.

The major issue before the court of appeals was whether Md. Code Art. 27, section 792 (1996 & Supp. 2000) is a punitive statute that imposes a sanction triggering a right to a jury trial and the right to proof beyond a reasonable doubt under *Apprendi*. *Young*, 370 Md. at 693, 806 A.2d at 237. Accordingly, the court began its analysis by reviewing the Supreme Court's landmark *Apprendi* decision. *Id.* at 695, 806 A.2d at 238.

In *Apprendi*, the Supreme Court held "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 696, 806 A.2d at 239. Thus, the court stressed in order for Young's challenge to succeed, he must demonstrate the following independent elements: (1) the sex offender registry constitutes punishment; (2) factual findings in question expose Young to a greater penalty than the prescribed statutory minimum; and (3) "that such factual prerequisites involve facts 'other than the fact of a prior conviction.'" *Id.* at 696-97, 806 A.2d at 239.

The court had not previously considered any case that addressed whether the sex offender registration statute violates due process in light of *Apprendi*. *Id.* at 697, 806 A.2d at 239. Accordingly, the court turned to both state and federal case law from other jurisdictions. *Id.* Other jurisdictions dealt with whether registration and notification provisions of sex offender registration statutes or civil and forfeiture provisions constitute punishment for *ex post facto*, double jeopardy, and cruel and unusual punishment purposes. *Young*, 370 Md. at 697, 806 A.2d at 239. The court concluded the "overwhelming body of judicial precedent" demonstrates that sex offender registration is not punishment. *Id.*

The common thread underlying the case precedent was the

application of the *Usery-Hendricks* "intent-effects test." *Id.* at 702-07, 806 A.2d 242-46. In determining whether registration under Section 792 constitutes punishment, the court applied the following two-part test: (1) whether the Legislature intended the sanction as punitive; and (2) whether there is "clearest proof" the statute is "so punitive" in effect as to prevent the court from legitimately viewing it as regulatory or civil in nature, despite the Legislature's intent. *Id.* at 702-03, 806 A.2d at 242.

To decipher the Legislature's intent, the court examined the legislation's declared purpose and the statute's text and structure. *Id.* at 711-12, 806 A.2d at 248. The court noted Section 792 contained no express statement of purpose. *Id.* at 712, 806 A.2d at 248. However, the court found the "plain language" and design of the statute "clearly indicated that it was not intended as punishment" but as a regulatory requirement intended to protect the public. *Young*, 370 Md. at 712, 806 A.2d at 248.

The court's next step determined whether, despite the Legislature's intent, Section 792 was "so punitive" in effect to prevent the court from legitimately viewing it as remedial in nature. *Id.* at 712-13, 806 A.2d at 249. The court applied the following *Mendoza-Martinez* factors: (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of *scienter;* (4) whether its operation will promote the traditional aims of punishment -- retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether it lacks an alternative purpose to which it rationally may be connected; and (7) if such alternative does exist, whether the statute appears excessive in relation to it. *Id.* at 698, 806 A.2d at 240.

Applying the *Mendoza-Martinez* factors, the court concluded the effect of Section 792 was not "so punitive" as to outweigh the Legislature's remedial purpose. *Id.* at 714, 806 A.2d at 50. It noted the statute's physical restraints are minimal, emphasizing the affected person's movements are not restricted in any way and the information required to register does not impose an unreasonable burden. *Id.* at 713, 806 A.2d at 249. In addition, the court stated while the stigma associated with registration is an affirmative disability, "the burden is not so unreasonable, in light of the statute's remedial aims, that it converts the statute to a punitive one." *Id.* Furthermore, it found sex offender registration was not traditionally regarded as punishment and the statute contained no *scienter* requirement. *Young,* 370 Md. at 714-15, 806 A.2d at 250.

The court acknowledged that registration requirements further the aim of deterrence. *Id.* at 715, 806 A.2d at 250. Nevertheless, the court found the statute had legitimate purposes other than punishment, including protecting the public, and alerting law enforcement and surrounding community to sexual offenders who may reoffend. *Id.* The court also asserted the statute was narrowly tailored to protect the public from sex offenders. *Id.*

Finally, the court dealt squarely with whether the factual findings required under Section 792 exposed the defendant to a greater penalty than the prescribed statutory maximum. *Id.* at 716, 806 A.2d at 251. In holding that it did not, the court stated the fact McGregor was under the age of eighteen is not "a fact that increases [the sentence]." *Id.* In fact, the trial court sentenced Young to ten years, the statutory maximum, but suspended two years and ordered Young to register as a sex offender as a condition of probation. *Young*, 370 Md. at 716, 806 A.2d at 251. Thus, the court stated "*Apprendi* does not apply to a case in which a trial court imposes a discretionary sentence within the permissible statutory range." *Id.*

The Court of Appeals of Maryland, as a matter of first impression, held the Supreme Court's holding in *Apprendi v. New Jersey* does not apply to sex offender registration. In so holding, the court settled the issue of sex offender registration in light of Apprendi's criminal due process implications in Maryland. However, Maryland practitioners should be aware, the court remained silent on new internet notification requirements and their Fourteenth Amendment due process implications.