

SUPREME COURT OF LOUISIANA

96-KA-0786

STATE OF LOUISIANA

versus

ROBERT CALHOUN

KNOLL, J., dissenting.

For the majority to find reversible error in not advising the defendant of the sex offender registration laws before the defendant entered his guilty plea, the majority elevates this notice requirement to the level of a violation of defendant's constitutional rights under *Boykin*. This is clear error based upon an erroneous interpretation of the legislative intent by the majority. It is clear that the legislature intended **notice** to the defendant in La.R.S. 15:543(A) so the defendant can comply with the registration requirement. This statute is one of the few statutes where the legislature clearly expressed its intent in La.R.S. 15:540. For overriding public policy considerations regarding sex offenders, I find it significant that the legislature found sex offenders to "have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government." The legislature clearly stated that the purpose of sex offender registration was to protect the general public and to assist law enforcement agencies' efforts to protect their communities. The notice requirement shall be given to defendants when charged, when released from prison, when moving to Louisiana, and when renewing their driver's license. Clearly the legislative intent was to give a defendant **notice** *to insure his compliance under the registration requirements* rather than to assist or forewarn him in making an informed plea of guilty.

The majority goes awry by finding reversible error in failure to inform defendant of the registration requirements before he enters a plea.

The failure to inform a defendant of the registration requirements on a “guilty plea form” is not error. The use of “guilty plea forms” is not mandatory in Louisiana, and the judge in the instant case, like many of our district judges, chose not use them. In effect, the majority opinion impliedly requires all courts to use guilty plea forms when accepting a plea from sex offenders.

Reversible error is a harsh remedy and has heretofore been reserved for serious and irreversible constitutional violations that abridge the free, knowing, and intelligent waiver of a defendant’s rights. The alleged violation of La.R.S. 15:543 does not affect these rights, and does not merit reversible error. The registration requirement for sex offenders forms no part of the constitutional safeguards that flow to a defendant in determining a voluntary and intelligent waiver of a defendant’s rights before he enters a plea. The failure to inform affects the public safety, not whether the defendant entered his plea voluntarily or intelligently. The defendant may not want to comply with these “scarlet letter” requirements, but then he probably does not want to be locked up in a prison with steel bars either. It has no bearing on the voluntariness of his plea. This defendant would have had to register regardless of the severity of the charge to which he pled. Since the registration provision was mandatory for all sex offenses, it forms no part of a defendant’s voluntary plea consideration. He was given notice of the registration requirements for sex offenders by the sentencing court when sentence was imposed. I do not find this notification after the plea an error.

Throughout these proceedings, the defendant has never stated that he would have changed his plea had he been informed of the registration requirement. Defendant did not show that he has been prejudiced by the court’s failure to inform him of this requirement before he entered his plea. Furthermore, the defendant’s general

allegations of his counsel's incompetence are suspect considering the excellent plea bargain his counsel negotiated.

In sum, the majority makes two erroneous conclusions: first, that it is error to give defendant the notice requirements after he enters his guilty plea; and secondly, an untimely offender notification is a factor to consider in setting a defendant's plea aside. In my view the majority's conclusions pervert the statute's intended purpose. La.R.S. 15:543 was never intended to afford an additional constitutional safeguard to defendants charged with sex offenses. For the foregoing reasons, I respectfully dissent.