

Patti Tremblay-Pluta - SB 188 and 189 (sent Monday March 14th 2011)

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Subject: SB 188 and 189 (sent Monday March 14th 2011)

I live in California now and am unable to read this, or speak at the House Judiciary Committee, on Thursday, March 17, 2011 at 9:00am in Room 521 of the House Office Building.

I will try to be as brief as I can. I am not much of a public speaker, and have not taken up many causes before, however my life has been changed because of an accusation and criminal conviction. The next several years of my life will be steered by some of your upcoming views, thoughts, and final decisions, as you weigh a very touchy topic with America.

I used to think this was black and white issue too, until I found myself on the list. Currently I am being forced to move from my residence because of complaints from neighbors. The only thing I can think I'm guilty of, is being on the list. I keep to myself, I don't mingle with the neighbors, because I didn't want this situation to even happen, to get close to people and later have them find out, and complain. I kept to myself, and they still found out. My landlord has issued an ultimatum, I have to leave, but my family, my wife and daughter and mother-in-law can stay. My mother-in-law and wife have resided here years before my wife and I even met. I know this action violates my rights, but there is nothing I can do about it, without wondering if to remove me, the landlord would file an eviction notice on the whole family.

One month later:

Today I'm homeless, for the very first time in my life.
Not by drugs, alcohol, or any other chemical dependency.
I'm homeless because of my status, on the registry.

My landlord told me I had to leave and my wife and daughter could stay.
His actions questionable, one attorney used the term cherry picking who lives there, no written notice, ignoring that I should have been granted 60 days (by California law), he only gave me 30. Even changing the locks,

Again neighbors complaining, but not indicating what their complaints are about. Nobody documenting what I'm doing, if anything. Just fear for their children's safety, then he had the audacity to say my family should be concerned for my daughters welfare.

If I am seen at the residence, my wife will get a 30 day notice to move also.

It's been 77 hours since I've seen my daughter and wife as I write this.

The crime I was convicted of didn't even involve on a child.
It was initiated by an adult two years old than myself at the time.

This is the problem with the registry, the average person can not, nor has the ability, and I sometimes wonder, if they even care to substantiate what a person is on the registry for.

I've paid particular close attention to a number of events and actions in west Michigan and Lansing, The Thomas Cress case, and the Lorinda Swain case, both with lots of questions asked about them, are also out of Calhoun County, as is mine.

It's likely neither here nor there to you about my conviction, and that I have appealed up to the Michigan Supreme Court, but the reason I'm going

to go into so much detail as follows is because of the comments I've read as I watch WOOD channel 8 out of Grand Rapids, press stories as of late about the registry, and the bills in the works to revamp the registry to try to make it functionable, and useful, and do the job at informing the public it was meant to do.

At least a quarter of the comments I have read reflect, "If you can't do the time, you shouldn't do the crime."

Many more I've read over the five years I've been on the registry are much more hurtful.

I've spent the last four years appealing my conviction. I hired a therapist who dealt in addictions when I was in court ordered therapy to help me figure out if I was missing something, if there was truly something "wrong" with me or my way of thought. After all, here I'm told "You just need talk about it", and to "Come clean." And there is a 70% chance of me re offending.

My therapist told me he saw no mention of a crime even being committed, much less mentioned, and I needed to speak to an attorney to ask about appealing my conviction.

The prosecutor contends I got a favorable outcome of no time served. I beg to differ, I have served 5 years on the registry, and thought I had 20 more to go.

I think the consensus is no matter where you live, in the UK, the US, or Canada, the point was that the sex offenders registry is not supposed to be a form of punishment, but instead a device to keep the public safe from dangerous sex offenders. It rather defeats the purpose if people who are not dangerous are on the list.

My attorneys statement about my case:
There has never been a reported case involving adults where mere touching without more, qualified as criminal sexual conduct of any degree

Force by physics is not force as the statue requires.

His response to the prosecutor:

1. Defendant does not raise a sentencing issue. Therefore, the prosecutor's argument that "the sentence was in accordance with an agreement and was within the sentencing guidelines" and "A defendant who bargains for a sentence waives the right to later challenge the sentence" are of no significance.

2. The prosecutor argues that if the defendant pleads no contest, then that admits all the elements of the crime, therefore, he cannot challenge that the elements of the crime are shown. However MCR6.302(D) requires the following in the case of a no contest plea:

"(D) An Accurate Plea

(2) If the defendant pleads nolo contendere, the court may not question the defendant about participation in the crime. The court must:

(a) state why a plea of nolo contendere is appropriate; and

(b) hold a hearing, unless there has been one, that establishes support for a finding that the defendant is guilty of the offence charged or the offense to which the defendant is pleading."

The court rule expressly applies in cases of a no contest plea. If the police reports and preliminary examination do not establish support for a finding that the defendant is guilty of the offense charged, then the plea is not supposed to be accepted, even if the defendant at the time of the plea expresses his willingness to plead. Otherwise, the rule would be meaningless; all pleas would be accepted, whether the factual basis is shown or not.

3. Moreover, the prosecutor's argument utterly ignores the ruling in PEOPLE v KOTESKY: "We initially note that ascertations that a charge is brought under an inapplicable statue are not waived by a plea of guilty. PEOPLE v

NEW. and PEOPLE v BECKNER."

4. The prosecutor cites PEOPLE v NEW, 427 mich 482 (1986) holding that a guilty or no contest plea waives "most" issues for a later review. However, "most" is not "all". Among the things expressly stated not to be waived are: "challenge that a charge is brought under an inapplicable statute." 427 Mich at 492. The Michigan Supreme Court in PEOPLE v NEW stated "Such rights may never be waived." 427 Mich at 492.

The prosecutor ignores that after PEOPLE v NEW, in PEOPLE v MITCHELL, the Michigan Supreme Court reversed a plea based conviction for lack of a factual basis, directly holding that issue was not waived. The prosecutor's position that PEOPLE v NEW holds this issues to be waived is frivolous.

5. The prosecutor asserts that the plea in question was not "involuntary, unknowing, or coerced," ignoring that if the defendant is not made aware by his counsel that the statute does not cover the actions he is accused of, it would be "unknowing."

6. The prosecutor asserts the "Defense counsel achieved a favorable outcome for his client," ignoring that a far more favorable outcome was readily at hand, complete dismissal, and avoidance of a long term registration as a sexual offender. The prosecutor utterly ignores the 4 things we assert, that defense counsel acting competently and diligently would have done. Moreover, a plea without a factual basis is not to be upheld even if the sentence is favorable.

7. The prosecutor does not cite even a single case holding that the considerations they mention are cause to uphold a conviction under an inapplicable statute, without an actual factual basis, while we cite several holding that a plea may not be sustained if brought under an inapplicable statute, or without an actual factual basis.

8. The prosecutor states "the Plaintiff disagrees with the Defendant's argument that there was no factual basis for a district court to order the bind over or for this court to accept the plea," but does not cite a single case, or state a single reason, for that disagreement.

A party may not simply announce a position without supporting it with argument or legal authority.

My sentencing judge statement for denial:

The Defendant's alleged conduct was analogous to the prohibited conduct described in MCL 750.520e(1)(b)(iv) where an actor engages in a medical treatment or examination of a victim in a manner for purposes which are medically recognized as unethical or unacceptable. Such is one of the circumstances specifically listed as constituting "force or coercion." Likewise, engaging in sexual contact under the guise of a legitimate physical therapy massage to relieve pain or soreness could be seen as force or coercion. One notes that the examples listed in MCL 750.520e(1)(b) of what constitutes force or coercion are not exclusive of other acts as being ones of force or coercion.

If he felt his attorney had ill-advised him he could have and should have appealed his conviction.

My attorneys statement:

This case involves a massage therapy session, voluntarily sought out by the complainant, during which the complainant admittedly did not object to any of the touching, or even pull away. There was no testimony of any threat by the defendant, nor was there any objections stated by the complainant, for over one hour, accepted the touching by the massage therapist, by not complaining, objecting, or physically withdrawing.

The question of whether the acts in question even constitute a crime is one worthy of attention by this court. If the actions do not constitute a crime as defined by the legislature, it is unconstitutional to punish for them.

This case is exceptionally important to the jurisprudence of the state as the trial court adopted a new definition of criminal sexual conduct not found in the statute.

We submit that to find a factual basis on the ground that massage is "analogous" to medical treatment [for which the statute contains express limitations and standards] is to add a provision to the statute that the legislature did not put there. Massage is not medical treatment. Even if it were, the record does not support the statutory

requirement as the conduct would have to be shown to involve "purposes which are medically recognized as unethical or unacceptable."

No physician testified to any such thing.

Due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.

It is not justice for a person to be convicted of a crime where the elements of the crime are neither established by evidence nor admitted by the defendant.

What crime?

I have tried many times over to correct a wrong.

Are we in dire need to keep people of no danger on the registry?

It is time to make the long needed changes to this registry.

Allow people the opportunity, any opportunity, to petition to be removed, and resume their lives again.

Questions

Now that tier status is going into effect, does the non public status of 750.520e carry over in to how other states view it.

ie..if it's non public in MI, how would other states view it?

I was told when I first moved here that "we don't know what to equate it to as an offense out here" Subsequently I'm listed with my name and photo, and that is why I'm homeless today.

If I return to Michigan, as I have in the past to finish out my probation, in Sept of 07, I know my 25 years started from day one.

Will that be the same? Starting from day one if I move back.
I'll be non public, but I've already done 5 years, and 15 more means almost nothing changes for me as far as the length of time.

Alaric F

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